

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)	FINDINGS OF FACT,
Banks School District 13)	CONCLUSIONS,
)	AND FINAL ORDER
)	Case No. 25-054-003

I. BACKGROUND

On January 16, 2025, the Oregon Department of Education (the Department) received a written request for a special education complaint (Complaint) from the parents (Parents) of a student (Student) residing in the Banks School District (District). The Parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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

On January 23, 2025, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the District identifying specific allegations in the Complaint to be investigated and establishing a *Response* due date of February 6, 2025. On February 5, 2025, the District submitted a *Response*, disputing the allegations described in the Complaint. The District submitted the following relevant items:

1. District Written Response
2. IEP Team Meeting Notes, 12/12/2024
3. Notice of IEP Team Meeting, 12/12/2024
4. Statement of Eligibility for Special Education, Intellectual Disability, 12/12/2024
5. Student Assessment Results, 12/12/2024
6. File Review, 11/21/2024
7. Student IEP Team Meeting Notes, 9/10/2024
8. Prior Notice about Evaluation/Consent for Evaluation, 9/10/2024
9. Notice of Team Meeting, 9/9/2024
10. Prior Notice of Special Education Action, 9/10/2024
11. Student IEP, 9/10/2024
12. Special Education Progress Notes for (Student)

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

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

13. IEP Team Meeting Minutes, 2/16/2024
14. Notice of Team Meeting, 1/23/2024
15. Prior Notice of Special Education Action, 2/16/2024
16. Statement of Eligibility for Special Education, Other Health Impairment, 2/16/2024
17. Student IEP, 2/16/2024
18. File Review, 10/17/2023
19. Special Education Progress Notes for [Student]
20. Prior Notice about Evaluation/Consent for Evaluation, 11/9/2023
21. Email: Fwd: testing, 9/9/2024
22. Email: Meeting follow-up, 12/13/2024
23. Email: Re: Please complete this form regarding a student – Neurodevelopmental Struggles, 12/3/2024
24. Email: Looking forward to our meeting tomorrow, 9/9/2024
25. Email: Planner, 2/3/2025
26. Email: Fwd: 2nd semester, 2/1/2025
27. Email: Re: [Student] accommodations, 1/28/2025
28. Email: Meeting Date for IEP, 1/7/2025
29. Email: Message, 1/2/2025
30. Email: Social Studies, 12/3/2024
31. Email: Meeting, 12/9/2024
32. Email: Things, 12/12/2024
33. Email: eligibility form questions, 12/12/2024
34. Email: PWN [Student], 12/13/2024
35. Email: PWN from Meeting, 12/16/2024
36. Email: Conferences: 11/5/2024
37. Email: Idea check-in, 11/6/2024
38. Email: This week, 11/13/2024
39. Email: quick chat?, 11/15/2024
40. Email: Fwd: 11/14/24 follow up, 11/18/20/24
41. Email: Evaluation Meeting, 11/19/2024
42. Email: observation documentation, 10/17/2024
43. Email: Social Studies Test, 10/29/2024
44. Email: permission slip, 10/25/2024
45. Email: Support Strategies – updated draft, 10/31/2024
46. Email: Meeting Times, 10/28/2024
47. Email: IA Staffing, 10/30/2024
48. Re: permission slip, 10/24/2024
49. Email: Strategy request follow-up, 10/24/2024
50. Email: Document shared with you: “[Student] Parent Request Tracking”, 10/31/2024
51. Email: Re: Social studies, 9/25/2024
52. Email: New Information, 9/5/2024
53. Email: Supports, 8/28/2024
54. Email: SLC changes, 5/16/2024
55. [Student] Parent Request Tracking

56. Email: Supports, 8/28/2024
57. Email: SLC changes, 5/16/2024
58. Email: Re: Check-in, 5/6/2024
59. Email: Re: Meeting Date for IEP, 1/10/2025
60. Email: Re: Meeting Date for IEP, 1/10/2025
61. Email: Meeting Date for IEP, 1/7/2025
62. Email: Meeting, 12/9/2024
63. Email: Social Studies, 12/4/2024
64. Email: Re: Evaluation Meeting, 11/19/2024
65. Email: Re: Idea check-in, 11/7/2024
66. Email: November Field Trip's for Life Skills, 11/4/2024
67. Email: Re: Document shared with you: "[Student] Parent Request Tracking", 10/31/2024
68. Email: Social Studies Test, 10/29/2024
69. Email: Fwd: permission slip, 10/29/2024
70. Email: Re: observation documentation, 10/18/2024
71. Email: Re: Social studies, 9/25/2024
72. Email: Re: social studies, 9/25/2024
73. Email: Social studies, 9/24/2024
74. Email: Re: Supports, 8/29/2024
75. Email: Re: meeting, 8/23/2024
76. Email: Meeting Notice, 1/16/2025
77. Email: Notice of Team Meeting, 11/21/2024
78. Email: PWN_[Student]_SpedAction.pdf, 12/16/2204
79. Email: Fwd: FW: Concern, 1/16/2205
80. Email: Support Strategies – updated draft, 10/31/2024
81. Email: permission slip, 10/25/2024
82. Email: Re: observation documentation, 10/21/2024
83. [School] Inservice Weeks Schedule
84. Student IEP Team Meeting Minutes, 8/23/2023
85. Student IEP Team Meeting Minutes, 2/16/2024
86. Student academic schedules 2024/25
87. Student IEP (incomplete) 2/12/2025

On February 13, 2025, the Parent's submitted a written response to the District's January 23, 2025 *Response* and materials.

On February 22, 2025, the Department's Complaint Investigator interviewed the Parents. On February 26, 2025, the Department's Complaint Investigator interviewed the District's Director of Special Education and the Student's Principal. Following the interview the District provided the Department with additional documents arising out of the February 26, 2025, interview. The Complaint Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parents' allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from January 17, 2024, to the filing of this Complaint on January 16, 2025.

Allegations	Conclusions
<p>When IEPs Must Be In Effect (Implementation)</p> <p>It was alleged that the District violated the IDEA when it:</p> <ul style="list-style-type: none"> a. failed to provide adult support in accordance with the Student's IEP. It was alleged that instead of the District providing the required adult support, the Student was sent to the library to work during class time. It was alleged that this occurred during the period of April 2024, through May 2024; b. failed to provide push-in support for the Student in August 2024, in accordance with the Student's IEP; c. failed to provide adult support in accordance with the Student's IEP on the following dates in September of 2024: the 4th, 6th, 10th, 27th, and 29th; d. failed to ensure that staff responsible for implementing the Student's IEP were aware of the Student's IEP accommodations, specifically the accommodation that the Student take their social studies test in a separate testing space apart from the classroom; e. failed to provide push-in adult support for the Student's general education health/tech class, and instead placed the Student in the Life Skills classroom during this instruction time; f. failed to provide specific IEP accommodations such as access to a scribe, and differentiating assignments, an omission observed by the District's Occupational Therapist at the Student's December 12, 2024, IEP team meeting; and, 	<p>Not Substantiated</p> <ul style="list-style-type: none"> a. The Student's IEP is not specific regarding the degree of adult support, therefore the Department does not substantiate this portion of the allegation. b. The District reported that the adult support was provided support during this time period and that comments to the contrary were statements of potential staffing obstacles. The Department does not substantiate this portion of the allegation. c. The District acknowledged that adult support was not provided throughout the duration of each class. However, there is no evidence that this impacted the Student's ability to make progress toward their IEP goals. The Department does not substantiate this portion of the allegation. d. The Student's IEP does not include an accommodation for separate space for testing, therefore the Department does not

<p>g. failed to provide school to home communications through the Student's planner, as outlined in the Student's IEP, from November 22, 2024, through to the date of this Complaint.</p> <p>(OAR 581-015-2220; 34 CFR §§ 300.323 & 300.324)</p>	<p>substantiate this portion of the allegation.</p> <p>e. The record suggests that this was a matter of scheduling rather than a failure to provide IEP supports and did not impact the Student's ability to make progress toward their IEP goals, therefore the Department does not substantiate this portion of the allegation.</p> <p>f. There is insufficient information in the record to support this accommodation was not provided, therefore the Department does not substantiate this portion of the allegation.</p> <p>g. The Student was not provided the school to home communication accommodation for the time period alleged, however the failure does not appear to have impacted the Student's ability to make progress toward their IEP goals. The Department does not substantiate this portion of the allegation.</p>
<p>IEP Team Considerations and Special Factors</p> <p>It was alleged that the District violated the IDEA when the district:</p> <p>a. failed to consider the Parent's concerns regarding the Student's potential eligibility for special education under the category of Intellectual Disability. It was alleged that information provided to the District in support of this additional eligibility</p>	<p>Not Substantiated</p> <p>a. Based on an outside evaluation provided by the Parents, the District initiated and completed evaluations of the Student and did determine the appropriateness of adding an additional special</p>

<p>category was dismissed by a single IEP team member, and not determined by the entire IEP team; and,</p> <p>b. failed to consider the Parent's concerns about the addition of social goals for the Student. It was alleged that this need was highlighted by the Student's direct conflict with peers.</p> <p>(OAR 581-015-2205; 34 CFR §§ 300.320, 300.324(a)(1) & (2) & ((b)(2))</p>	<p>education eligibility category for the Student.</p> <p>b. Based on concerns from the Parents, the District initiated observations of the Student in support of crafting a social goal for the Student. Following the filing of this complaint the observations were completed and a social goal added for the Student.</p>
<p>Requirement for Least Restrictive Environment</p> <p>It is alleged that the District violated the IDEA when it removed the Student from the general education environment, specifically their scheduled general education health/tech class, and instead placed the Student in the Life Skills classroom during that instruction period.</p> <p>(OAR 581-015-2240; 34 CFR §300.114)</p>	<p>Not Substantiated</p> <p>The record supports that the District did not remove the Student from the general education environment, but rather planned to deliver health curriculum in the special education environment. When the Parents asked that the Student receive this instruction in the general education environment, the District complied with this request.</p>
<p>Placement of the Child</p> <p>It is alleged that the District violated the IDEA by changing the Student's placement when it removed the Student from the general education health/tech class to the Life Skills classroom.</p> <p>(OAR 581-015-2250; 34 CFR §300.117)</p>	<p>Not Substantiated</p> <p>The determination to deliver instruction in the Life Skills Classroom was a scheduling matter rather than a change of educational placement.</p>

REQUESTED CORRECTIVE ACTION

The Parents request that the District:

- Implement the Student's IEP, including the provision of support staff for the Student, differentiated work, and provide compensatory education for the missed education time;
- Provide notification anytime the Student's IEP service change;
- Provide effective communication with the Parent's regarding the implementation of the Student's IEP;
- Provide training to staff regarding confidentiality of educational records;
- Add intellectual disability as an eligibility category for the Student;
- Collect data appropriate to support the Student; and
- Inform teachers and support staff of the Student's IEP accommodations;

III. FINDINGS OF FACT

1. The Student is 13 years of age and attends the seventh grade in a District middle school. The Student is eligible for special education under the categories of Other Health Impairment (OHI), and Intellectual Disability (ID).
2. The Student works hard and displays helpful behaviors when working in groups. The Student displayed growth in Language Arts and Math. Teachers report that the Student always comes to class prepared, is attentive and takes notes.
3. The Student's September 10, 2024, IEP includes specially designed instruction (SDI) in several areas. This included 160 minutes per weeks of SDI in reading, 120 minutes per week in writing, 160 minutes per week in math, and 120 minutes per month in speech/language. The Student would receive this SDI from their special education teacher in a special education classroom. The Student's IEP also included supplementary aids, services and accommodations. Among these were, longer tasks broken down, preferential seating, content and tests read aloud, differentiated assignments and assessments, access to notes, frequent check-ins for understanding, access to scribe/dictation, test questions turned into sentence frames, access to notes on tests, access to visual pictures on PowerPoint or computer, additional adult support, note cards with picture to support understanding, access to speech to text, access to text to speech, access to books with audio reading support, and planner check for homework understanding/organization.
4. The Student's September 10, 2024 IEP also included the supplementary aids and services to include 80 minutes per day of curriculum modification in language arts and math. In addition, the Student's IEP included program modifications and support to staff to include three hours per year of occupational therapy consultation for staff, two hours

per year of consultation with special education staff, and 90 minutes per year of speech language pathologist consultation for staff.

5. On January 23, 2024, the District sent a Notice of Team Meeting to the Parents for an IEP team meeting scheduled for February 16, 2024.
6. On February 16, 2024, the Student's IEP team held a meeting to review the Student's IEP. The team noted that the Student was performing well academically and discussed continuing the current IEP services and SDI due to continuing needs in those areas. During this meeting, the IEP team discussed the Student's placement and adult support, noting that the Student "...benefit from the additional adult support being given this year with [Life Skills] placement and additional staff in the GenEd classroom to help with implementation of IEP accommodations."
7. On February 16, 2024, the District completed a statement of eligibility for special education for OHI for the Student. Furthermore, Meeting Minutes document that all members of the IEP team agreed on the Student's placement.
8. On May 3, 2024, the Parents sent an email to the District inquiring about testing, and whether the District was providing the Student with push-in support for their classes. The Parents related that the Student "comes home from time to time and tell [them] that [they do] not. Lately, it seems to be more often."
9. On May 5, 2024, the District, responding to the Parent's May 3, 2024, email, reported that staff were "transitioning through some changes, however [the District is] covering [the Student] the best we can for the next two weeks. We have put in for a sub to fill in during this two week time. We pull [the Student] out to help with assignments when we are not able to be in the classroom with [the Student]..." The District noted that different staff members were providing support to the Student during this time.
10. On May 5, 2024, the Parents responded by email asking why "is the library coverage more important than the education of the SPED students and the legal obligations of their IEP?"
11. On May 6, 2024, the Parents asked by email for the District to provide them with updates when the Student's IEP supports would not be provided.
12. On May 16, 2024, the Parents sent an email to the District reporting that the Student had come home on many occasions reporting that they had not received push-in support in classes where they had that support previously. The Parents reported that a teacher in the District had reported staffing changes that might have impacted the Student's push-in support. The Parents documented their understanding that the District might not have had staff available to provide the push-in support in accordance with the Student's IEP. The Parents also reported that the Student was pulled out of

classes where they previously had support to spend time in the library. The Parents asked for clarification why the Student was seemingly being pulled out of general education classes for support, instead of being provided with push-in support.

13. On May 17, 2024, the 2024, the District responded to the Parent's May 16, 2024 email seeking to schedule a meeting to discuss the concerns raised by the Parents.
14. On May 17, 2024, the District sent an email to the Parent reporting that the Student only had partial support in their class due to a field trip that occurred that day. The District reported that adult support was only available for part of the class period that day.
15. On May 20, 2024, the District sent an email to the Parents providing additional clarification on the adult support discussed on May 17, 2024. The District provided more detail about what staff provide adult support and what portion of the day the support was provided.
16. On August 28, 2024, the Parents sent an email to the District inquiring about push-in support for the Student's general education classes as outlined in the Student' IEP. The Parents noted that their inquiry was based on the Student reporting to them that the Student did not have push-in support on their first day of school, August 26, 2024.
17. On August 29, 2024, the District, responding to the Parents' August 28, 2024, email, confirmed that the Student did have push-in support for their classes. The District outlined the specific staff responsible for these services and their method of implementation. The District further documented their conversation with the Student to clarify which staff provides that support and how it may differ from the prior school year.
18. On August 29, 2024, the Parents sent an email asking for clarification about the manner in which the support was provided and whether it was made clear to the Student. The Parents noted that the lack of support, or lack of understanding on how the support was provided to the Student, was upsetting to the Student. The Parents also noted that during the prior school year they were provided conflicting information about the presence of supports in the Student's class.
19. On September 5, 2024, the Parents sent an email to the District reporting that a neuropsychologist saw the Student over the summer and conducted testing resulting in a diagnosis of Intellectual Disability. The Parents requested that as a result of this testing, that the District add ID as an eligibility category to the Student's IEP. The Parents expressed interest in discussing this with the District further, including new emotions observed in the Student not previously seen.
20. On September 6, 2024, the District confirmed with the Parents the scheduling of an IEP

team meeting for September 10, 2024 to discuss the concerns raised in the Parents' September 5, 2024, email.

21. On September 9, 2024, the District sent the Parents formal notice of a prearranged IEP team meeting scheduled for September 10, 2024.
22. On September 9, 2024, the District confirmed receipt of the community neurophysiologist report for the Student that the Parents provided.
23. On September 10, 2024, the IEP team met to review information provided by the Parents and the Student's Pediatric Neuropsychologist. The Student's September 10, 2024, IEP indicated that the Student's placement had not changed. The Student continued to receive classes in the Life Skills Classroom and push-in adult support when necessary.
24. On September 10, 2024, the District sent the Parents a Prior Notice of Evaluation and Consent to evaluate the Student to consider adding the additional eligibility category of ID. The Parents signed the consent on the same date. Included on this prior notice was the District's intent to conduct evaluations of the Student to determine their need for the addition of a social goal.
25. On September 23, 2024, the Parents sent an email to the District with concerns about the support provided to the Student in class, specifically that the Instructional Assistant assigned to the Student did not understand the Student or their needs. The Parents inquired about additional or different support for the Student in the class as a result.
26. On September 24, 2024, the District, responding to the Parent's September 23, 2024 email, reported that the District would observe the Student in the specific class to determine the Student's needs.
27. On September 25, 2024, the District, responding to the Parent's September 23, 2024 email, reported that the Student was provided with their IEP accommodations in the class and that they would continue observations in the class to address the Parent's concerns.
28. On October 7, 2024, the District, sent an email to the Parents reporting that there was an additional staff member in the Student's class to provide adult support for half of the class period. The District also reported that additional staff were available to the Student for the entire class period.
29. On October 17, 2024, the Parents sent an email to the District inquiring about the addition of social goals to the Student's IEP, observing that the Parent had previously requested the same on September 10, 2024. The Parents noted that this was also a recommendation from the Student's private evaluator. The Parents also noted that

recent events with the Student suggested the need to add social and self-advocacy goals to the Student's IEP as soon as possible.

30. On October 18, 2024, in response to the Parents' October 18, 2024 email, the District wrote that it had collected data from teachers and that this data was ready for the Parents to review. The District noted that the data collected from the Student's teachers was correlated to the two goal areas the IEP team was considering adding, self-advocacy and social interaction. The District also suggested adding additional social support mechanisms to the Student's school day.
31. On October 18, 2024, the Parents, responding to the District's email of the same day, expressed interest in ensuring data is captured from school settings where the Student was spending time with preferred people. The Parents explained the way the Student interacts and tries to interact in groups, advocates for themselves, and advocates for themselves during conflict. The Parents suggested that the District collect data on how the Student makes friends and their struggles and strengths in such classes as physical education within a "competitive environment." The Parents also observed that when adult support is not present, the Student has difficulties advocating for themselves.
32. On October 21, 2024, the District sent an email to the Parents informing them that additional data was added to the spreadsheet correlated to the two goal areas the Student's IEP team was considering adding and reiterated the additional social support suggestions.
33. On October 24, 2024, the District sent an email to the Parents inviting their input on support strategies for the Student.
34. On October 29, 2024, the District sent an email to the Parents informing them that the Student's October 30, 2024 social studies test would be presented with the Student's IEP accommodation of having the text read to them.
35. On October 31, 2024, the District shared an updated list of support strategies for the Student with the Parents.
36. On October 31, 2024, the District shared a method for collecting and documenting recommendations from the Parents for the enhancement of the Student's education.
37. On November 14, 2024, the Parents sent an email to the District reiterating points from a conversation on November 13, 2024, wherein the Parents inquired about the Student moving from the Life Skills curriculum and instead substituting elective courses. The Parents expressed interest in the Student working toward their IEP goal in the general education environment with general education peers.
38. On November 15, 2024, District staff exchanged emails relating that the Parents had

requested that the District remove the Student from the Life Skills program and add electives to their schedule the following semester.

39. On November 15, 2024, the Parents sent an email to the District as a follow-up to their phone conversation the day prior. The Parents inquired about supports for the Student in the second semester. The Parents reiterated their interest in removing the Student from the Life Skills Class and having more general education exposure and time with general education peers. The Parents invited further conversation about supports and options for the Student. On the same date, the District responded with some thoughts regarding the Student's possible schedule and means of ensuring the Student had appropriate supports in their classes.
40. On November 18, 2024, the District, in response to the Parents' November 14, 2024 email, agreed to move the Student from the Life Skills Classroom and provide them with a team sports class. The District noted that "...the Life Skills class usually gives [the Student] additional time to work on anything that [they need] more time with or/and additional help with. [The Student] has this opportunity again when [they have] the option to work in the SLC instead of Middle School Success." The District expressed interest in the Student receiving the necessary support to be successful.
41. On November 21, 2024, the District completed a file review in response to the IEP team considering adding additional eligibility categories to the Student's special education identification. As part of the meeting, the team decided to collect rating scales from the Student's teachers.
42. On December 12, 2024, the District sent the Parents a Notice of Team Meeting for the Student's IEP team meeting scheduled for December 12, 2024.
43. On December 12, 2024, the IEP team met to review the Student's evaluation report, observation data, observations regarding the Student's behavior, and instructional modifications. As part of the meeting, the team agreed on the Student's special education eligibility category.
44. On December 12, 2024, the District completed an assessment of the Student. The Student was then determined to be eligible for special education services in the category of OHI based on an underlying medical diagnosis. The evaluation was conducted in response to the Student's IEP team considering adding the additional eligibility category of for the Student. As part of the evaluation, it was recommended that the Student may benefit from a scribe and/or written notes, use of color coded highlighting techniques, instruction on organizing thoughts, additional of life skills strategies, participation in classes that boost adaptive life skills, and other similar assistance for the Student's unique needs. At the conclusion of the meeting, the IEP team agreed to the addition of ID as a special education eligibility category for the Student.

45. As part of the December 12, 2024 IEP team meeting, the Parents discussed their interest in having the Student receive their health instruction in the general education setting rather than the Classroom due to concerns that the Student would be perceived differently by peers for spending time out of the general education setting. The Parents expressed interest in prioritizing self-esteem for the Student in the learning environment.
46. On January 16, 2025, the Parents filed this Complaint with the Department.
47. On February 22, 2025, the Department's Complaint Investigator interviewed the Parents regarding this Complaint. The Parents reported that at times the Student requested to leave class to go to the library to work with the Student's preferred aide, due to a lack of support in the classroom. As a result of this, the Parents alleged that the Student was deprived of general education class time. The Parents reported that this occurred in the April to May 2024, time frame. The Parent noted that the District appeared to support their concerns in the May 17, 2024, email reporting that the Student only had "partial support" that day due to a field trip.
48. The Parents also reported that during a call with the District it was reported that the Student would not have adult support during the first week of school because little to no instruction occurred during the first week.
49. The Parents also reported their understanding that the Student's support would be for a full class period. The Parents disputed the argument in the District's *Response* that the Student's IEP did not require bell to bell adult support. The Parents reported the understanding that the Student's adult support would be available through the class period.
50. The Parents reported that the Student requested to go to the Life Skills Classroom to take tests, and that this was a prearranged agreement with the District. The Parents question why, in light of this agreement, the Student would go to the common area to take tests. The Parents interpreted this as a pull-out support instead of the push-in supports the Student should receive pursuant to their IEP. The Parents noted that the other students pulled-out of class into the common area also had IEPs and therefore operated to separate the Student from their general education peers.
51. The Parents reported confusion regarding the Student's schedule. The Parents acknowledged that Life Skills was included on the Student's schedule from the beginning of the school year but expressed disappointment that the District had not explained the purpose of this class, or what instruction was delivered in that class. The Parents noted that over time the Student became frustrated in this setting, eventually expressing the desire to not attend school due to this special education placement. As a result, the Parents requested that the Student's schedule be changes to remove them from the Life

Skills Classroom.

52. The Parents reported that the Student's IEP included a scribe as an accommodation, but that as part of the Student's December 4, 2024, evaluation for adding ID as an eligibility category, the District observed that the Student could benefit from the use of as scribe. The Parents reported that this implied that the Student was not receiving this IEP accommodation.
53. The Parents reported having requested that the District add social goals to the Student's IEP. The Parents noted that this was not immediately done, and in the interim the Student was accosted in the locker room. Following this incident, the Parents again reiterated the need for the addition of social goals to the Student's IEP. The Parents reported that on several occasions they requested that the District add social goals to the Student's IEP, and that despite these requests the District had not gathered data in support of a possible goal, nor added the goal.
54. The Parents reported that the District had not discussed with the Parents the Student's placement, rather, after the District moved to a new schedule, the Student began receiving SDI in the Life Skills Classroom. The Parents questioned whether the District should have revisited the Student's placement determination in light of the schoolwide schedule change.
55. On February 26, 2025, the Department's Complaint Investigator interviewed the District's Director of Special Education and the Student's Principal.
56. The District noted that the Student's IEP indicated that the Student's math and language arts curriculum would be modified, and as such, delivered in the Life Skills Classroom. The District expressed awareness that the Student did not want to stand out among peers due to their disabilities, and that the Student's IEP team had conversation about these concerns from the Student. As such, the Student's IEP was crafted in such a way that the Student's supports were to be provided without staff "hovering" over the Student. The Student's adult support was crafted on an as needed basis. The District explained that the Student did not need someone near him at all times, but rather the Student needed support in the classroom if needed. The District reported that the Student typically utilized a variety of support including asking peers and teachers for assistance, and that the Student utilized other problem-solving strategies.
57. The District reported that the Instructional Assistant in the classroom may assist the Student with scribing larger assignments. The District noted that the Parents' concerns about staffing in May 2024 stemmed from concerns about the Student potentially lagging behind. The Student was then performing well academically, though there were three days when the Student's classrooms were not fully staffed. The District noted that the adult support was provided by various different staff members in different classes, and was not a 1:1 aide. The District expressed the view that at times the Student was

not aware of who performed the adult support role in certain classes.

58. The District reported that some of the phone conversations cited by the Parents were not intended to provide specific information regarding staffing during the school year, but rather were informal discussions about staffing challenges and possible problems with staffing.
59. The District observed that at other times the perception of staffing may not have matched reality, such as when an instructional assistant left the classroom for the bathroom, and the Student came to the office asking whether there was an instructional assistant for them at that time. The District also observed that the Student's preferred Instructional Assistant had changed job positions and that this change, coupled with the Student's closeness with that individual, caused some upheaval. At times, when the Student requested to go to the library, where that instructional aide was, the District allowed it. In such a scenario, the District disputed that this was a pull-out support over the Student's IEP intended push-in supports. Since these incidents, the District reported that it has since clarified with the Student that it is the Student's choice on which supports to access.
60. The District noted that in the previous school year, the Parents had requested a 1:1 aide for the Student, but that this was not needed to meet the Student's needs. The District noted that the level of adult support as discussed at length at that time and the current adult support accommodation added to the Student's IEP. The District noted that the Student's adult support accommodation did not include specifics about time, rather it was focused on the part of the curriculum that they may need assistance with.
61. The District reported that at times the Student was pulled out of the classroom and into the commons space to do work. The District characterized this as small group work or intervention support, rather than a pull-out from general education. The District reported that this occurred generally in classes that did break outs into small groups.
62. Regarding the District's revised schedule, the District reported having sent numerous communications to families about the schedule changes and that this information was included in the curriculum guide. As part of those communications were that seventh graders take health and communications. Generally, for students with IEPs, the health curriculum was delivered in the Life Skills Classroom, and specifically tailored to the needs of those students, including the implications of their specific disabilities as they relate to the health curriculum. The District also reported that students schedules are available through the District's online portal, and schedules are available to view by August 14.
63. The District noted that in October the Parents raised concerns about the Student's schedule, but understood that this had more to do with the field trips that were part of the Life Skills Classroom curriculum. The District agreed to the change in the Student's

schedule, but noted that delivery of instruction in the Life Skills Classroom was generally more appropriate for students identified under ID.

64. Regarding the Parents' requested social goal for the Student, the District was not opposed to the addition but was unclear what the specifics of the goal would be based on the Parents' request. Through the course of their conversations, the District agreed to observe the Student to help craft an appropriate social goal. The District initially focused on the potential need for a self-advocacy goal and a socializing goal. The District reported having observed no connection between the physical altercation the Student was part of and a lack of social skills, rather the District reported that the classmate was dysregulated and took it out on the Student. The District noted that since the completion of the observations a social goal was added to the Student's IEP which was under review during the pendency of this Complaint.
65. The District also observed that the Student's schedule included a functional math class, and functional language arts class, where SDI is delivered. The Student received safety, and social goal instruction in the Life Skills Classroom. The District observed that the SDI minutes are not all delivered in the functional classroom, but are instead spread throughout the school day in various settings.
66. At the conclusion of the interview, District staff pledged to send additional documentation regarding the formulation of the Student's schedule and supports.
67. On February 27, 2025, the District sent the Department's Complaint Investigator additional information in support of the topics addressed in the interview with District staff. Included with these documents was an IEP the Student's IEP team was working to complete that included a social goal for the Student.
68. The Student's schedule for the 2024-25 school year indicated that the Student was scheduled to receive their SDI in reading and mathematics in the Life Skills Classroom from the specific education teacher. The Student had an additional class in the Life Skills Classroom, Learning Strategies. The District indicated that the modified health curriculum was delivered to the Student during this period.
69. As part of the documents shared by the District were IEP team Meeting Notes from the Student's August 23, 2023, IEP team meeting where the team discussed the nature of the adult support offered, and whether the Student would benefit from a 1:1 aide. The team determined that the Student did not require a 1:1 aide. During that meeting, the District documented that the adult support offered to the Student would not be as attentive to the Student as a 1:1 aide, and that "the adult may be supporting other students in the classroom as well."
70. The District's Middle School Curriculum Guide includes the notice that, "All 7th grade students will take one semester of Technology class and one semester of Health 7."

IV. DISCUSSION

When IEPs Must Be In Effect (Implementation)

The Parents alleged that the District violated the IDEA when the District:

- a. failed to provide adult support in accordance with the Student's IEP. The Parents alleged that instead of the District providing the required adult support, the Student was sent to the library to work during class time. The Parents allege that this occurred during the period of April 2024 through May 2024;
- b. failed to provide push-in support for the Student in August 2024, in accordance with the Student's IEP;
- c. failed to provide adult support in accordance with the Student's IEP on September 4, 6, 10, 27, and 29, 2024;
- d. failed to ensure that staff responsible for implementing the Student's IEP were aware of the Student's IEP accommodations, specifically the accommodation that the Student take their social studies test in a separate testing space apart from the classroom;
- e. failed to provide push-in adult support for the Student's general education health/tech class, and instead placed the Student in a Life Skills Classroom during this instruction time;
- f. failed to provide specific IEP accommodation such as access to a scribe, and differentiating assignments, an omission allegedly observed by the District's occupational therapist at the Student's December 12, 2023, IEP team meeting; and
- g. failed to provide school to home communication through the Student's planner, as outlined in the Student's IEP, from November 22, 2024, through to the date of this complaint.

At the beginning of each school year, a district must have in effect, an IEP for each child with a disability. School district must provide special education and related services to a child with a disability in accordance with an IEP. As soon as possible following the development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP. School districts must ensure that the IEP is accessible to each regular education teacher, special education teacher, related service providers, and other service providers responsible for implementing the IEP. The district must also inform each teacher and service providers of their specific responsibilities for implementing the child's IEP.³

A district violates the IDEA when it materially fails to implement a student's IEP: "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." The court noted further that, "[t]he 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

³ OA581-015-2220(1)—(3); 34 CFR §300.323, 300.324

the child's reading achievement, that would certainly tend to show 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."⁴

The Student's IEP includes an accommodation for additional adult support in core educational classes, school-wide, primarily provided by the Student's Case Manager. The District reported that at times the Student requested to go to the library because their preferred Instructional Assistant had been transferred to the library. The District denied that the Student was removed from the classroom or sent to the library, rather the District consented to the Student's request. The District denied that this was a frequent occurrence.

The Department does not substantiate this portion of the allegation.

The Parents reported that the District informed them that the Student may not have their accommodation for adult support at the start of the 2024-25 school year due to staffing shortages, and given that there was little instruction delivered during that time. The District noted that the comment about the unavailability of adult support at the start of the school year were not meant as a definitive statement about staffing or the provision of accommodations, but rather a casual comment regarding potential staffing levels at the start of the school year. The District reported that they were not aware whether there was a lack of staffing for the Student during this time. Prior IEP team Meeting Minutes suggest that the adult support was not specific to the Student but rather available to the Student.

The Department does not substantiate this portion of the allegation.

The Parents reported that the District failed to provide adult support on certain days during September 2024. The Student's IEP noted that the Student would be provided with "additional adult support," and that this support would be available "in core Ed classrooms." The District responded that there were times during that period when additional adult support was not present in the classroom, but observed that the Student's IEP did not specify bell to bell adult support. The Parents responded that if bell to bell support was not required, then the District would have no need to inform them of staffing issues. The Student's adult support accommodation does not include a time component limiting it to a portion of the class period, rather it states that the accommodation is available "in core Ed classrooms." The District acknowledged that at times this support was not always present for the full class period; however, there is no evidence that this impacted the Student's ability to make progress toward their IEP goals.

The Department does not substantiate this portion of the allegation.

The Parents reported that the District failed to provide a separate testing space for the Student's social studies testing. The District observed that the Student was provided this

⁴ *Van Duyn v. Baker Sch. Dist.* 5J, 502 F3d 811 (9th Cir. 2007)

accommodation, when the Student took said test in the commons area. The Student's IEP does not include an accommodation for testing in a separate space, only accommodations for modifications to the test. The District reported that it consented to the Student's request to move to the Life Skills Classroom to complete their test.

The Department does not substantiate this portion of the allegation.

The Parents reported that the District failed to provide push-in support for the Student's general education health and technology class, instead placing the Student in the Life Skills Classroom to receive instruction there. The District observed that the Student's schedule included the provision of their health curriculum in the Life Skills Classroom from the beginning of the school year, and that this information was accessible to the Parents in advance of the school year. The Student's schedule includes reference to the Life Skills Classroom, but is not specific to all curriculum. The District noted that the specifics of grade level curriculum are published in the District's curriculum guide. The curriculum guide indicates that all seventh grade students receive health instruction as part of the first semester.

The Department does not substantiate this portion of the allegation.

The Parents allege that the District failed to provide the Student's scribe accommodation. The Parents point to the District's Occupational Therapist's observation suggesting the need for that accommodation. The District disputes the allegation, reporting that the accommodation was available to the Student during the time observed by the Occupational Therapist, and that the observation was not a comment on the absence of the accommodation. The District further observed during interviews with the Department that the scribe was not a separate person, but rather an accommodation through an adult whenever the Student requested it.

The Department does not substantiate this portion of the allegation.

The Parents report that the Student had a planner for use in school-to-home communication, and that this planner was not utilized for this purpose from November 22, 2024, through to the date of this complaint. The Student's IEP included an accommodation for "planner check for homework understanding/organization" daily. The District acknowledged that the use of the planner was discontinued during the period noted by the Parents because the Student appeared to perform well without the use of the accommodation. While the District failed to provide the accommodation for a period of time, the Student continued to perform well academically, and the failure appears not have had a material impact on the Student. There is no indication in the record that the District's failure to provide this accommodation impacted the Student's ability to make progress toward their IEP goals.

The Department does not substantiate this portion of the allegation.

IEP Team Considerations and Special Factors

The Parents alleged that the District violated the IDEA when the district;

- a. Failed to consider the Parents' concerns regarding the Student's potential eligibility for special education under the category of Intellectual Disability. The Parents reported that information provided to the District in support of this additional eligibility category was dismissed by a single IEP team member, and not determined by the entire IEP team; and,
- b. Failed to consider the Parents' concerns about the addition of social goals for the Student. The Parent's alleged that this need was highlighted by the Student's direct conflict with peers.

In the development, review, and revision of a child's IEP, the IEP team must consider a variety of information about the student. The IEP team should consider the strengths of the child, the concerns of the parents, the result of recent evaluations, and the academic, developmental, and functional needs of the child.⁵

The Parents report providing the District with an outside evaluation of the Student that included a diagnosis of intellectual disability. On September 10, 2024, the Student's IEP team met to discuss the outside evaluation. As part of the meeting the District sent the Parents a prior written notice documenting its intent to evaluate the Student based on the information contained in the outside evaluation. The District provided, and the Parents signed, the consent to evaluate the Student for IDEA eligibility category of Intellectual Disability on September 10, 2024. The Parents signed the consent on the same date. On December 12, 2024, the Student's IEP team met to review the results of the evaluation. The IEP team determined that the Student did qualify for special education service with an eligibility of Intellectual Disability. The Department does not substantiate this part of this allegation.

The Parents report that the District did not consider the Parent's concerns for enhancing the education of the Student, specifically, that the District was not responsive to the Parents' concern that the Student may benefit from the addition of a social goal to their IEP. The Parents report having initially requested the addition of a social goal on August 22, 2024. The Parents report having reiterated the request September 10, 2024, October 15, 2024, and on October 17, 2024, following an altercation between the Student and a peer. The Parents noted as of the date of their complaint to the Department, the District had not added a social goal as requested. The District reported that the Parents' initial request for the addition of a social goal was not specific as to what the goal would contain. As part of discussions with the Parents, the District agreed to observe the Student to gather data regarding what aspects of social dynamics the Student may need support in. The District reported that the parents had not suggested a specific goal, therefore the objective of the observations was to determine an appropriate goal for the Student. The District noted that since the filing of the complaint, the process of gathering data for a potential social goal was completed, and that the Student's IEP team met and had added a social goal for the Student.

⁵ OAR 581-015-2205(1)—(5)

The Department does not substantiate this allegation.

Requirement for Least Restrictive Environment

The Parents alleged that the District violated the IDEA when it removed the Student from the general education environment, specifically their scheduled general education health/tech class, and instead placed the Student in a Life Skills Classroom during that instruction period.

Districts must ensure that, to the maximum extent possible, students with disabilities are educated with students who do not have disabilities. Districts should only use special classes, facilities, and removal from the general education environment when the nature and severity of the disability makes educating such students impractical in the regular education classroom.⁶

The Parents report that the Student received their health curriculum in the District's Life Skills Classroom, rather than participating in the general education health curriculum. The Parents reported that they were not consulted regarding the creation of the Student's schedule and later requested that the Student receive their health education in the Life Skills Classroom. The District observed that the District curriculum guide is available on the District's web site, that the District sent numerous communications about student curriculum to the school community generally throughout the last half of the 2023-24 school year, and that the Student's schedule was available to review as early as August 2024. The District also observed that the Student's IEP team had planned to deliver the health curriculum in the Life Skills Classroom.

There is no evidence in the record that the Student's schedule was not available to the Parents. The Student's IEP, and schedule indicate that the Student would receive their reading and math, instruction in the Life Skills Classroom, from the special education teacher. Health education was not explicitly cited in the Student's schedule as it was delivered in the Life Skills Classroom as part of the general curriculum provided by the special education teacher. The Student had three periods with the Special Education Teacher daily during the first semester. When the Parents requested that the District remove the Student from receiving their health education in the Life Skills Classroom, the District complied with the request. At that time, the Parents expressed interest for doing so to prioritize the Student's self-esteem. There is no evidence in the record that the Student's placement was not appropriate, rather the IEP team weighed various factors for the Student's benefit in making placement choices initially, and later when the issue was raised by the Parents.

The Department does not substantiate this allegation.

Placement of the Child

The Parents alleged that the District violated the IDEA by changing the Student's placement when it removed the Student from the general education health/tech class to the Life Skills

⁶ OAR 581-015-2240(1)—(2)

Classroom.

The educational placement of a child with disabilities must be determined by a group of persons, including the parents, and others knowledgeable about the child, the evaluation data, and placement options. The child's educational placement must be made in conformity with least restrictive environment provisions. The placement must be based on the child's IEP. The placement determination should also consider the potential harmful effects on the child and the quality of services they need.⁷

The Parents reported that they were unclear how the decision to deliver the health curriculum to the Student was determined. The record includes concerns from the Parents that peers may perceive the Student differently because the Student received their health curriculum in the Life Skills Classroom. The District responded that the Student's IEP team had discussed delivering health curriculum in the Life Skills Classroom. The District also observed that the addition of Intellectual Disability as an eligibility category for the Student also argued in favor of the appropriateness of the Student receiving their health education in the Life Skills Classroom.

While the Student's IEP does not specifically address the health education, nor do the IEP team minutes specifically address the health curriculum discussion, the IEP does indicate that a significant portion of the Student's instruction is delivered in the special education classroom by the special education teacher.

The Department does not substantiate this allegation.

VII. CORRECTIVE ACTION

*In the Banks School District
Case No. 25-054-003*

The Department does not order corrective action in this case.

Dated: this 18th Day of March 2025



Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

⁷ OAR 581-015-2250(1)—(5)

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 provision of ORS § 183.484. (OAR 581-015-2030 (14).)