

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of	)	FINDINGS OF FACT,
Lake Oswego School District 7J	)	CONCLUSIONS,
	)	AND FINAL ORDER
	)	Case No. 25-054-004

I. BACKGROUND

On January 16, 2025, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Lake Oswego School District 7J (District). The Complaint requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of the Complaint and forwarded the request to the District.

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 <sup>1</sup> timeline may be extended if the Parent and the District agree to the extension to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On January 29, 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 February 12, 2025.

The District submitted a *Response* on February 11, 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, 2/11/25
2. Table of Contents, 2/11/25
3. List of Staff Members Knowledgeable about the Complaint, 2/11/25
4. Supplemental Judgment re Modification of Parenting Time, 8/29/21
5. Kaufman Test of Educational Achievement, Third Edition, 1/10/24
6. Occupational Therapy Evaluation, 1/30/24
7. Physical Therapy Evaluation, 2/26/24
8. Initial Psychoeducational Evaluation/Reevaluation for Orthopedic Impairment, 3/13/24
9. Notice of Team Meeting, 3/21/24

<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)

10. IEP Meeting Minutes, 3/21/24
11. Statement of Eligibility for Special Education: Orthopedic Impairment, 3/21/24
12. Statement of Eligibility for Special Education: Other Health Impairment, 3/21/24
13. Statement of Eligibility for Special Education: Emotional Behavior Disability, 3/21/24
14. Statement of Eligibility for Special Education: Specific Learning Disability, 3/21/24
15. Eligibility Summary Statement, 3/21/24
16. Notice of Team Meeting, 4/17/24
17. IEP Meeting Minutes, 4/17/24
18. Special Education Placement Determination, 4/17/24
19. Individualized Healthcare Plan, 8/20/21, updated 5/31/24
20. IEP, 4/17/24, amended 12/4/24
21. Prior Written Notice (PWN), 4/17/24
22. Notice of Team Meeting, 4/24/24
23. IEP Meeting Minutes, 4/24/24
24. Prior Notice and Consent for Initial Provision of Special Education Services, 4/30/24
25. Physical Therapy Progress Notes, 8/28/24
26. Notice of Team Meeting, 12/4/24
27. Parent Meeting Minutes, 12/4/24
28. PWN, 12/4/24
29. IEP Progress Report, 1/24/25
30. 15 Minute Interval Classroom Observation, 1/29/25
31. Student's Cumulative File, 2021-2025
32. Occupational Therapy Data, 2024-25 school year
33. Frequency of Falls Data, 2024-25 school year
34. ESY Data Collection, 2024-25 school year
35. Call Logs, 10/2024-12/2024
36. Emails and Direct Messages, 8/2023-2/2025
37. Assistive Technology Informational Assessment, undated

The Parent submitted a *Reply* to the District's *Response* on February 19, 2025 along with the following additional items:

1. Frequency of Falls Data, 2024-25 school year
2. Emails, 10/2024-1/2025
3. Meeting Minutes, 4/24/24
4. Meeting Minutes, 12/4/24
5. Audio recording, 12/4/24

On February 20, 21 and 25, 2025, at the request of the Investigator, the District submitted the following additional document:

1. IEP, 10/19/23
2. Classroom Visuals, 2024-25 school year
3. Emails between District staff and Parent 2, 1/2024-1/2025

On February 24, 25 and 26, 2025 the Complaint Investigator interviewed District personnel. The Complaint Investigator interviewed the Parent on February 7, 21 and 27, 2025. Virtual interviews were conducted instead of on-site interviews. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

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

Allegations	Conclusions
<p><b>When IEPs Must Be in Effect</b></p> <p>The Complaint alleged that the District violated the IDEA by not providing special education and related services and not implementing accommodations in accordance with the Student’s IEP. Specifically, the District did not implement the use of a visual timer, a checklist that breaks down multistep assignments, or adult support for physical transitions and movement within and outside the classroom.</p> <p>(OAR 581-015-2220; 34 CFR §300.323)</p>	<p><b>Not Substantiated</b></p> <p>The District implemented the Student’s accommodations in accordance with their IEP. Any discrepancies in implementation of adult support were not material and did not create an IDEA violation.</p>
<p><b>Review and Revision of IEPs</b></p> <p>The Complaint alleged that the District violated the IDEA by unreasonably delaying an IEP meeting to review and revise the Student’s IEP.</p> <p>(OAR 581-015-2225; 34 CFR §300.324)</p>	<p><b>Not Substantiated</b></p> <p>The District did not unreasonably delay an IEP meeting to review and revise the Student’s IEP.</p>
<p><b>Parent Participation</b></p> <p>The Complaint alleged that the District violated the IDEA by interfering with the Parent’s ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the Student, and the provision of a free appropriate public education to the Student. Specifically, the District invited a non-custodial</p>	<p><b>Substantiated, in Part</b></p> <p>Although the Parent’s ability to participate effectively in the meeting was not negatively impacted by the presence of the non-custodial parent at the meeting, the District failed to</p>

<p>parent without the Parent’s consent and failed to provide a copy of the Student’s IEP to the Parent.</p> <p>(OAR 581-015-2190; OAR 581-015-2195(5); 34 CFR §300.501)</p>	<p>provide the Parent with a Notice of Meeting in advance of the December 4, 2024 meeting.</p>
<p><b>Prior Written Notice</b></p> <p>The Complaint alleged that the District violated the IDEA by not providing PWN to the Parent regarding amendments to the Student’s IEP.</p> <p>(OAR 581-015-2310(2)(a); 34 CFR §300.503)</p>	<p><b>Not Substantiated</b></p> <p>The District provided PWN to the Parent in a reasonable amount of time before it proposed to change anything related to the identification, evaluation, educational placement, or the provision of FAPE to the Student.</p>
<p><b>Free Appropriate Public Education (FAPE)</b></p> <p>Due to the alleged IDEA violations detailed above, the Complaint alleged that the District failed to provide the Student with a free appropriate public education.</p> <p>(OAR 581-015-2040; 34 CFR §300.101)</p>	<p><b>Not Substantiated</b></p> <p>The District’s failure to provide a Notice of IEP Meeting to the Parent did not result in a denial of FAPE to the Student.</p>

## REQUESTED CORRECTIVE ACTIONS

The Complainant requests that the District:

- Provide consistent adult support as written in the Student’s IEP and similar to the access the Student was receiving during the 2023-2024 school year;
- Provide training to the special education team and general education teacher to make sure they are able to implement the Student’s IEP;
- Provide training to the special education team and general education teacher about the Student’s disability so they are able to understand the Student’s needs;
- Provide training to district staff on best practices for scheduling an IEP meeting and responding to parent requests to schedule an IEP meeting;
- Ensure that only the parent with educational rights is invited by the district team to special education meetings and any participants outside of the district team are only invited to attend by the custodial parent with educational rights;
- Provide training to district staff on procedures for non-custodial parent participation in IEP meetings and make sure educational rights for parents are accurately documented;
- Follow through with agreed-upon amendments to the Student’s IEP from the 12/4/24 IEP meeting and provide the Parent with prior written notice for the meeting;

- Provide training to the special education team on best practices for IEP amendments and prior written notices.

### III. FINDINGS OF FACT

IDEA regulations limit complaint investigations to alleged violations occurring no more than one year before the Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before January 17, 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 eight years old and is in third grade. The Student attends school within the District.
2. The Student has current diagnoses of cerebral palsy, attention-deficit/hyperactivity disorder (ADHD), and generalized anxiety disorder (GAD).
3. Since March 21, 2024, the Student has been eligible for special education under the category of Other Health Impairment (OHI). Prior to that, the Student was eligible for special education under the category of Orthopedic Impairment (OI).
4. The Parent and the Student's non-custodial parent (Parent 2) are divorced, and the Student lives part of the time in each household. According to a Supplemental Judgment re Modification of Parenting Time (Parenting Plan) dated August 29, 2021, the Parent has sole legal custody of the Student. The Parent must "consult with [Parent 2] on all major medical and academic decision and the parties will work together to make joint decisions when possible. If the parties are unable to agree on a major decision after making best efforts to reach consensus, [the Parent] will have the final decision regarding the child's medical and academic welfare." The Parenting Plan further provides that, "Unless otherwise ordered by the court, an order of sole custody to one parent shall not deprive the other parent of the following authority: (1) To inspect and receive school records and to consult with school staff concerning the child's welfare and education, to the same extent as the custodial parent may inspect and receive such records and consult with such staff." The Parent Plan does not specifically address whether Parent 2 is entitled to attend IEP meetings.
5. The District convened an annual IEP meeting for the Student on October 19, 2023 when the Student was in second grade (October 19, 2023 IEP). The October 19, 2023 IEP includes, among other things:
  - a. Strengths of Student: The Student "is kind and incredibly polite," "is creative in art," and "likes to follow rules." The Student "likes to challenge [themselves] physically by running, doing yoga, hiking, and swimming."
  - b. Concerns of Parent: The Parent noted that they would like to add a goal for the Student to safely use their walker in the hallways and around other students. The Parent also

shared that they would like to see the Student performing “mainly at grade level throughout the year.” Parent 2 expressed concern that the Student “will be removed from the classroom too often” and “gets too much help and is becoming dependent on it.”

- c. Present Levels of Performance: In the area of Reading, according to the iReady Reading Diagnostic, the Student scored at the kindergarten level in phonics and comprehension/literature and at the first-grade level in high-frequency words, vocabulary, and comprehension/informational text. The Student’s Lexile score was 220, or mid-second grade. In Math, per the iReady Math Diagnostic, the Student scored at the first-grade level in numbers and operations and algebraic thinking, and the second-grade level in measurement and data. According to the Student’s teacher, the Student was “struggling with math this year.” In Writing, the Student “is willing to write, but struggles to get started.”

In the area of Gross Motor, the Student “has made great improvements in overall strength, endurance, and core stability.” They are “able to independently ambulate to and from the school carrying [their] backpack, including multiple steps.” They do “still require stand-by assistance by an adult, as [they] sometimes reach out for balance support when [their] backpack is extra heavy, or [they are] tired.” The Student “loves to run on the bark chips at recess and is able to navigate the entire playground structure independently.” The Student “averages 1-2 falls per week when running on the bark chips but is able to get up and continue on independently.” According to the Student’s teacher, the Student “seems to keep up with [their] peers,” but “there are days though, following late nights, where [they do] struggle more physically and requests more assistance to get places.”

The Student’s teacher also shared that, “focus is an issue all day long and affects all areas of the classroom, including classroom discussions.” “There are times when [the Student] seems not to be aware of what [their] peers are doing, [they are] sitting up and staring off into space.”

- d. How the Student’s disability affects involvement and progress in the general education curriculum: “Because of [the Student’s] needs in the areas of fine and gross motor, [they] would benefit from related services in this area and specially designed instruction in classroom skills to help [their] on-task behavior.”
- e. Special Factors: The Student needs assistive technology devices or services. No other special factors were identified for further consideration by the IEP team.
- f. Goals:
  - i. Classroom/School Skills: The Student will follow the classroom routine and complete academic tasks with 85% accuracy in 2 out of 3 observations. The Student will meet the following short-term objectives:
    - (1) Shift from one activity to another within two minutes with two prompts from an adult.

- (2) Begin shifting from one activity to another within one minute.
    - (3) Independently follow multi-step directions to complete an assignment using a checklist as a guide.
    - (4) Check over an activity to make sure it is correct.
  - ii. Classroom/School Skills: The Student will increase their strength, coordination, and motor planning to independently navigate their school and classroom environments 100% of the time, including keeping pace with classroom peers in the hallways, and walking in a straight line with their class. The Student will meet the following short-term objectives:
    - (1) Independently ascend and descend the concrete hill outside to recess.
    - (2) Independently transition with their class throughout the school staying within one second of the person in front of them, and within the class line.
  - g. Specially Designed Instruction: Classroom/School Skills for 180 minutes per week.
  - h. Related Services:
    - i. Physical Therapy for 90 minutes per month;
    - ii. Occupational Therapy for 90 minutes per month.
  - i. Extended School Year Services (ESY): "Available data do not demonstrate the need for ESY services."
  - j. Accommodations: Support for evacuating the school building for activities such as fire drills; Extra time to allow the Student to process; Warning before transitions; Walker for transitions as needed or requested; Appropriate size classroom furniture; Pencil grips; Support when sitting on the carpet; Visual schedule; Adult support for physical transitions and movement within and outside the classroom; Ability to have a break with juice and snacks after physical activity such as PE or recess; Support for opening heavy doors; Visual timer; A checklist that breaks down multistep assignments; A checklist that breaks down multistep assignments, Preferential seating close to instruction and facing forward; Using a book mark when reading; Home/school communication; and Access to a walker for transitions as needed.
  - k. Supports for School Personnel:
    - i. Physical Therapist consult for 120 minutes per year;
    - ii. Occupational Therapist consult for 120 minutes per year;
    - iii. Learning Specialist consult for 120 minutes per year.
6. Non-Participation Justification: "[The Student] will be removed from the regular education curriculum for no more than 90 minutes a month. . . so that [they] can receive related services in occupational therapy."

7. Between January and March 2024, the District completed the Student's three-year reevaluation to determine their continued eligibility for special education. The reevaluation included an academic assessment, occupational therapy evaluation, physical therapy evaluation and psychoeducational evaluation.
8. The District assessed the Student's academic skills between January 5 and 10, 2024 using the Kaufman Test of Educational Achievement, Third Edition (KTEA-3). According to the results of the KTEA-3, the Student's reading, math and written language composite scores were all in the average range.
9. The District completed an Occupational Therapy Evaluation of the Student between January 26 and 30, 2024 (2024 Occupational Therapy Evaluation) for the purpose of determining the Student's continued need for occupational therapy as a related service. The results of the evaluation included, but were not limited to, the following:
  - a. Beery-Buktenica Developmental Test of Visual-Motor Integration (Beery VMI):
    - i. Beery VMI: Standard Score 85, 16<sup>th</sup> percentile, Below Average;
    - ii. Visual-Perception: Standard Score 81, 12<sup>th</sup> percentile, Below Average;
    - iii. Motor Coordination: Standard Score 85, 16<sup>th</sup> percentile, Below Average.
  - b. Bruininks-Oseretsky Test of Motor Proficiency (BOT-2)
    - i. Fine Motor Composite: Standard Score 35, below average.
  - c. The Sensory Profile School Companion (SPSC)
    - i. The Student scored "much more than others" in the categories of "Registration/Bystander" and "Movement Processing". These results indicate that the Student experiences more sensory processing challenges than peers of the same age.
  - d. Testing Observations: When sitting at the table, the Student demonstrated appropriate postural control and a functional tripod grasp on their pencil.
  - e. Summary and Recommendations: The Student has sensory processing challenges in the areas of visual processing and movement processing. As a result, they both require more sensory input than others their age and tend to avoid sensory input more than same-aged peers. The Student's fine motor, visual perception, and visual motor integration skills are below average when compared to their peers and the Student would benefit from continued occupational therapy services in the school setting.
10. The District completed a Physical Therapy Evaluation of the Student on February 26, 2024 (2024 Physical Therapy Evaluation). The results of the evaluation included, but were not limited to, the following:
  - a. Background Information: The Student has a diagnosis of spastic diplegic cerebral palsy, which affects their bilateral lower extremities. They wear ankle-foot orthoses (AFOs) and have access to a posterior walker at both home and school to use for long distances and

balance support, if needed. They receive both outpatient and school-based physical therapy services.

b. Test of Gross Motor Development-3<sup>rd</sup> Edition (TGMD-3)

i. Locomotor Subtest: Scaled Score 5, 5<sup>th</sup> percentile;

(1) “[The Student] is able to walk independently without the use of an assistive device or adult support. [The Student] occasionally needs assistance for balance on uneven surfaces. [They have] access to a posterior walker at school for long distances and balance support if needed.

ii. Ball Skills Subtest: Scaled Score 10, 50<sup>th</sup> percentile;

(1) “[The Student] has excellent coordination skills, and score in the 50<sup>th</sup> percentile for ball skills compared to peers of the same age.” “[The Student] takes direction well, and can implement corrections from PT or PE teachers to immediately improve when learning or practicing a new skill.”

iii. Gross Motor Index (Composite): Standard Score 85, 16<sup>th</sup> percentile.

c. Summary/Conclusions: The Student “benefits from access to a posterior walker for energy conservation, safety, and balance support as needed.” “[The Student] demonstrates excellent overall coordination and is able to follow along with directions and participate in gross motor activities with [their] peers at recess and PE.”

11. The District completed an Initial Psychoeducational Evaluation/Reevaluation of Orthopedic Impairment on March 13, 2024 (2024 Psychoeducational Evaluation). The results of the evaluation included, but were not limited to, the following:

a. Reason for referral: The Student is currently eligible for special education under the category of OI and the District is reevaluating them for continued eligibility. In addition, the District is evaluating the Student to determine if they qualify under the categories of Specific Learning Disability (SLD), Emotional Behavior Disorder (EBD), and OHI.

b. Progress Monitoring Assessments:

i. iReady Reading: as of Winter 2024, the Student received an overall score of “At Grade 2”;

ii. iReady Math: as of Winter 2024, the Student received an overall score of “Approaching Grade 2”;

iii. DIBELS Diagnostic Reading Assessment: As of Winter 2024, the Student was able to read a 2<sup>nd</sup> grade passage with 39 correct words per minute and 89% accuracy.

c. Medical Statement: The Student’s physician provided a medical statement with diagnoses of ADHD, GAD, cerebral palsy, seasonal allergies, and intermittent asthma.

d. Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V)

- i. Verbal Comprehension: Standard Score 130, 98<sup>th</sup> percentile, Extremely High;
  - ii. Visual-Spatial Processing: Standard Score 114, 82<sup>nd</sup> percentile, High Average;
  - iii. Fluid Reasoning: Standard Score 115, 84<sup>th</sup> percentile, High Average;
  - iv. Short-Term/Working Memory: Standard Score 100, 50<sup>th</sup> percentile, Average;
  - v. Processing Speed: Standard Score 86, 18<sup>th</sup> percentile, Low Average;
  - vi. Full Scale IQ: Standard Score 116, 86<sup>th</sup> percentile, High Average.
- e. Behavior Rating Inventory for Executive Functioning, Second Edition (BRIEF 2)
- i. On the Parent Rating Scale-Parent, the Student was rated in the “Clinically Elevated” range for all areas, including Inhibit, Self-Monitor, Behavior Regulation Index, Shift, Emotional Control, Emotion Regulation Index, Initiate, Working Memory, Plan/Organize, Task-Monitor, Organization of Materials, Cognitive Regulation Index and Global Executive Composite.
  - ii. On the Parent Rating Scale-Parent 2, the Student was rated in the “Clinically Elevated” range for Initiate only.
  - iii. On the Teacher Rating Scale, the Student was rated in the “Clinically Elevated” range for Initiate, Working Memory, Plan/Organize, and Cognitive Regulation Index, with the Global Executive Composite Index falling in the “Potentially Elevated” range.
- f. Behavior Assessment System for Children, Third Edition (BASC-3)
- i. On the Parent Rating Scale-Parent, the Student was rated in the “Clinically Significant” range for Behavioral Symptoms Index, Atypicality, Withdrawal, Leadership, Activities of Daily Living, Functional Communication and Overall Adaptive Skills.
  - ii. On the Parent Rating Scale-Parent 2, the Student was not rated in the “Clinically Significant” range for any area but was rated in the “At-Risk” range for Somatization.
  - iii. On the Teacher Rating Scale, the Student was rated in the “Clinically Significant” range for Atypicality and Withdrawal.
- g. Summary: On a cognitive assessment, the Student performed between low average and extremely high in all areas. The Student’s lowest score (low average) in the area of processing speed, may be impacted by their diagnosis of cerebral palsy as these tasks require more motor planning and movement. In the area of executive functioning, shared areas of concern between school and home include: Initiate, Working Memory, Plan/Organize, Cognitive Regulation Index, Organization of Materials and Self-Monitor. “These areas of executive functioning are typically elevated with a diagnosis of ADHD.”
- The shared areas of behavior concern between school and home include: Atypicality, Withdrawal and Attention Problems. “In terms of Anxiety, the areas that are typically elevated are under the Internalizing Problems Index (anxiety, depression, somatization). For [the Student], in the school setting, [their] scores fall within the average range on

those particular scales. Attention Problems were elevated in the school setting, which is common in students with an ADHD diagnosis.”

“As discussed at the evaluation planning meeting, the Autism Specialist observed and met with [the Student],” but “the team did not find it necessary to evaluate [the Student] for Autism Spectrum Disorder as [they] would not meeting the criteria necessary for this eligibility.”

12. On March 21, 2024, the District convened a meeting to determine the Student’s continued eligibility for special education and to develop a new annual IEP for the Student (2024 Eligibility Meeting). Both of the Student’s parents attended the meeting. At this meeting, the District’s physical therapist (2<sup>nd</sup> Grade Physical Therapist) reviewed the results of the 2024 Physical Therapy Evaluation. According to the Meeting Minutes, the 2<sup>nd</sup> Grade Physical Therapist shared that the Student’s gross motor skills had “improved significantly, that the Student made “huge gains,” “has incredible coordination,” and displayed motor planning abilities in the average range. When asked how often the Student was using their walker at school, the Student’s general education teacher (2<sup>nd</sup> Grade Teacher) reported that the Student used it “very occasionally . . . once or twice in the last few weeks.” The 2<sup>nd</sup> Grade Physical Therapist explained that the Student had not been using their walker at all when wearing their old AFO’s but had been using it more recently while adjusting to their new AFO’s.
13. At the 2024 Eligibility Meeting, District staff also reviewed the results of the 2024 Occupational Therapy Evaluation, 2024 Psychoeducational Evaluation, and KTEA-3. After review evaluation results, the team considered the Student’s eligibility for special education under the categories of OI, OHI, SLD and EBD. It was determined that the Student met the eligibility criteria for the category of OHI, related to their diagnosis of ADHD, but did not meet the criteria for eligibility under the other three categories considered. All District staff in attendance at the 2024 Eligibility Meeting and the Parent signed the Eligibility Summary Statement indicating their agreement with the determination of special education eligibility for the Student.
14. On April 8, 2024, the Student’s case manager (2<sup>nd</sup> Grade Case Manager) emailed the Parent and inquired as to whether the Parent would sign the Eligibility Summary Statement. They informed the Parent that, should they disagree with the finding of eligibility, they “should write a statement that we will include with the eligibility form.” The Parent signed the Eligibility Summary Statement indicating that they agreed with the findings regarding the Student’s eligibility for special education.
15. On April 17, 2024, the Student’s IEP team reconvened to develop the Student’s annual IEP (April 17, 2024 IEP). Both of the Student’s parents and the Parent’s Advocate attended the meeting. The April 17, 2024 IEP includes, among other things:
  - a. Strengths of Student: The Student is “very capable of 2<sup>nd</sup>-grade work, with support and time” and “works well with most of [their] peers with very little conflict.” They “continually challenge [themselves] with tasks that are not easy for them” and “will persevere when given the chance and the right environment to do [their] best work.”

- b. Concerns of Parent: The Student is “a capable student interested in learning and needs guidance in the classroom from [their] teacher and aides that meets [their] processing and ADHD needs,” “consistent routines for skill-building,” and “visuals for staying organized.” The Student continues to need “an accessible walker for extra physical support for walking in between classes, managing [their] energy levels, and during times of medical interventions.” “Breaking down assignments and classwork into steps helps [the Student] access math and writing instruction.” Academically, the Student “is struggling to learn basic math facts . . . is also behind in reading comprehension and opinion writing,” and “sometimes fails to immediately recognize teacher instruction due to low muscle tone and processing.”

- c. Present Levels of Performance: In the area of Reading, the Student’s skills are at expected levels for their grade according to the KTEA-3, DIBELS reading assessment, and iReady diagnostic assessment. In the area of Math, the Student performs at grade level according to the KTEA-3 but is having difficulty with math fluency and multi-step problems in the classroom. In the area of Writing, the Student is performing at grade level based on the results of the KTEA-3. In the classroom, they have a “wonderful imagination” and are “a terrific storyteller.”

In the area of Gross Motor, the Student “benefits from access to a posterior walker for energy conservation, safety, and balance support as needed.” They demonstrate “excellent overall coordination and is able to follow along with directions and participate in gross motor activities with [their] peers at recess and PE.” In the area of Fine Motor, the Student “demonstrates age-appropriate bilateral hand use when completing table top tasks” but “requires increased time when these tasks require increased fine motor precision and control.”

The Student has no social/emotional/behavioral needs or independent living skills needs. In the area of self-advocacy, the Student “is able to initiate transitions independently” but “does need the accommodation of . . . extra time.”

- d. How the Student’s disability affects involvement and progress in the general education curriculum: “Because of [the Student’s] needs in the areas of executive functioning and attention, [they] would benefit from specially designed instruction in classroom skills to help [their] on-task behavior. [The Student] also needs extra time to process the information.”
- e. Special Factors: The Student needs assistive technology devices or services. No other special factors were identified for further consideration by the IEP team.
- f. Goals:
- i. Classroom/School Skills #1: The Student will follow the classroom routine and complete academic tasks with 85% accuracy in 2 out of 3 observations. The Student will meet the following short-term objectives:

- (1) Shift from one activity to another within two minutes with two prompts from an adult.
  - (2) Begin shifting from one activity to another within one minute. (Baseline: transitions from one activity to another within one minute in 51% of opportunities, needing an extra prompt in 48% of opportunities).
  - (3) Independently follow multi-step directions to complete an assignment using a checklist as a guide. (Baseline: 16% of the time complete the assignment and individually used checklist, 14% of the time completed the assignment and was prompted to use the checklist, 71% of the time completed the assignment and did not use the checklist).
  - (4) Check over an activity to make sure it is correct. (Baseline: 22.4% of the time independently checked over work, 25.9% of the time prompted and then independently checked over work, 51.9% of the time did not check over work).
- ii. Classroom/School Skills #2: The Student will independently transition with their class throughout the school staying within 3 seconds of the person in front of them and staying within the class line in 85% of opportunities. (Baseline: the Student is currently at 75.6%). The Student will meet the following short-term objectives:
- (1) Complete the goal with adult supervision and verbal cueing.
  - (2) Complete the goal independently.
- g. Specially Designed Instruction: Classroom/School Skills for 120 minutes per week.
- h. Related Services: Occupational Therapy for 30 minutes per month.
- i. Extended School Year Services (ESY): "Available data do not demonstrate the need for ESY services."
- j. Accommodations: Visual timer; Warning before transitions; Support for opening heavy doors; Visual schedule at desk; Extra time to allow the Student to process; Visuals to support classroom material organization; Adult support for physical transitions and movement within and outside the classroom; Adapted paper; Preferential seating close to instruction and facing forward; Staff responds to parent initiated emails; Walker for transitions as needed or requested; Ability to have a break with juice and snacks after physical activity such as PE or recess; Supportive classroom seating with backrest and armrest; Support for evacuating the school building for activities such as fire drills; Support when sitting on the carpet; A checklist that breaks down multistep assignments; Using a book mark when reading.
- k. Supports for School Personnel:
- i. Learning Specialist consult for 120 minutes per year;
  - ii. Physical Therapist consult for 300 minutes per year;

iii. Occupational Therapist consult for 180 minutes per year.

16. Non-Participation Justification: “[The Student] will be removed from the regular education curriculum for no more than 30 minutes a month. . . so that [they] can receive related services in occupational therapy.”
17. According to the Meeting Minutes from the April 17, 2024 IEP Meeting, the 2<sup>nd</sup> Grade Occupational Therapist began the meeting by reviewing the results of an informal Assistive Technology Information Assessment (Assistive Technology Evaluation). According to the results of the Assistive Technology Evaluation, possible areas where the Student needed support included: attention to task, initiating tasks, packing their backpack, and additional time to organize materials, complete tasks, and transition between activities. The evaluation recommended that the Student’s accommodations include “visuals to support classroom management,” “a copy of the classroom schedule at [their] desk,” and “adapted paper for writing and math.”
18. As reflected in the Meeting Minutes, the Parent indicated that they would send an email with their input about the Student’s strengths and the Parent’s concerns. The IEP team reviewed the Student’s present levels of academic performance, proposed goals and objectives, specially designed instruction (SDI), and related services. During the discussion of the Student’s IEP goals, the Parent shared that their belief that the Student “would benefit from visual cues.” The 2<sup>nd</sup> Grade Teacher responded that the Student “does not need visual cues to participate.” When asked to describe the adult support that the Student received in class, the 2<sup>nd</sup> Grade Teacher shared that the Student “has adult support who helps [them] and other students. It is more about [the Student] needing more time. Help with a specific example.” They also noted that the individuals who provide adult support “are not there with [the Student] all the time.”
19. The Meeting Minutes also detail a discussion about the SDI and related services that the Student requires. The 2<sup>nd</sup> Grade Case Manager noted that the Student was making progress on their goals and proposed reducing the Student’s SDI from 180 minutes per week to 90 minutes per week. The Parent noted that the Student had not yet met their goals, and the 2<sup>nd</sup> Grade Case Manager offered to keep the Student’s SDI at 180 minutes per week. The 2<sup>nd</sup> Grade Physical Therapist shared that the Student “is doing extremely well in PE” and that they “would like to spend [their] time consulting with staff” as it would be “more beneficial to [the Student].” The IEP team agreed to meet again on April 24, 2024 to review the Student’s accommodations and complete their annual IEP.
20. The Student’s IEP team reconvened on April 24, 2024 (April 24, 2024 IEP Meeting) to continue development of the Student’s annual IEP. According to the Meeting Minutes, the IEP team reviewed the Student’s proposed accommodations and discussed how they were implemented in the classroom. The Parent asked questions about the accommodations, which were answered by District staff, and accommodations were revised based on the Parent’s input. The Parent shared that the Student would be undergoing “medical interventions” and “it will be important to have the walker and additional adult support during those times.” The Parent also expressed a desire to “track more on breaking down

assignments.” The Parent suggested visual supports “for what’s happening and what is the next step,” and the 2<sup>nd</sup> Grade Teacher explained that visual supports could be helpful for writing prompts, but for some other assignments “it’s another thing for [the Student] to attend to.” When discussing the Student’s need for prompting to stay on task in the classroom, the 2<sup>nd</sup> Grade Teacher shared that “physical prompting seems to work better” because the Student had to attend to visual cues.

21. In addition to discussing the Student’s accommodations at the April 24, 2024 IEP Meeting, the IEP team discussed the extent that SDI and related services would be provided outside of the classroom and determined the Student’s placement. According to the Meeting Minutes, the Parent intended to request another IEP meeting in the fall to review the Student’s special education supports.
22. When interviewed, District staff who attended the Student’s IEP meetings during the 2023-24 school year reported that the Parent was an active participant in each of these meetings. While Parent 2 could be “loud” and “forceful with [their] opinion sometimes,” no staff observed that Parent 2’s presence at IEP meetings appeared to impede the Parent’s ability to participate. No staff could recall an occasion when a decision regarding the Student’s education was made based on Parent 2’s input, at the expense of the Parent’s input. The 2<sup>nd</sup> Grade Teacher recalled that it was typically Parent 2 who expressed frustration that their “voice was not being heard” in IEP meetings.
23. On April 30, 2024, the 2<sup>nd</sup> Grade Case Manager emailed the Parent and shared that a Consent for Initial Provision of Special Education Services (Consent) was not included in the records that were provided by Early Childhood Special Education when the Student transitioned to kindergarten. The 2<sup>nd</sup> Grade Case Manager provided a Consent to the Parent, which the Parent signed on May 7, 2024.
24. During an interview, when asked how they implemented the Student’s accommodations during the 2023-24 school year, the 2<sup>nd</sup> Grade Teacher shared the following:
  - a. Visual Timer: There was a digital clock on the wall that was available for the whole class to use.
  - b. Checklist that breaks down multistep assignments: Checklists were utilized at the request of the Parent, although these were not a successful intervention for the Student because they were not able to attend to the checklist and complete it independently. Generally, the checklist would be a laminated page on the Student’s desk with a list of steps that the Student could track with a marker. The 2<sup>nd</sup> Grade Teacher shared that physical prompts, such as a hand on the shoulder or touching the Student’s paper, were more effective for the Student than visual cues.
  - c. Adult support for physical transitions and movement within and outside the classroom: The Student is “reluctant to be assisted” and “really fights to be independent.” Implementation of this accommodation consisted of an adult following behind the Student when transitioning from one location in the building to another, “to be there for [them] if [they] needed support,” but that the Student was encouraged to be

independent. There was an educational assistant (EA) in the classroom for most of the day who would assist the Student as needed, but that the EA's primary responsibility was to provide support to another student in the class and was not specifically assigned to the Student.

25. When interviewed, the 2<sup>nd</sup> Grade Case Manager further described how the Student's accommodations were implemented in the classroom. They shared that the classroom had a timer that was placed on the board. In addition, the 2<sup>nd</sup> Grade Teacher would often project a timer on the television screen in the classroom. When asked how assignments were broken down for the Student, the 2<sup>nd</sup> Grade Case Manager explained that this was primarily done by the 2<sup>nd</sup> Grade Teacher who would split larger assignments into smaller portions that needed to be completed each day. In addition, they would use Post-it notes to let the Student know what steps the Student needed to accomplish.
26. Regarding adult support for the Student during the 2023-24 school year, the 2<sup>nd</sup> Grade Case Manager explained that an adult was present to assist the Student during arrival and dismissal, PE, recess, and any transitions throughout the day. This looked like an adult "walking a little bit behind [the Student]" to provide physical assistance if needed. This adult support was typically provided by either themselves or one of two EAs. While there was always an additional adult in the general education classroom, that adult was not assigned specifically to the Student and was responsible for assisting other students as well. They recalled that the Student did not require adult assistance navigating the classroom.
27. When asked how often the Student fell during the 2023-24 school year, the 2<sup>nd</sup> Grade Teacher recalled that the Student fell less than once per week when outside. On one occasion, the Student fell on the asphalt and skinned their knee, but otherwise did not sustain any injuries as a result of falling. They did not recall the Student falling in the classroom. They noted that it is typical for students in second grade to trip and fall on occasion. While the Student fell more frequently than their peers, it was not at a frequency that the 2<sup>nd</sup> Grade Teacher was concerned about the Student's safety.
28. When asked what kind of adult support the Student required during the 2023-24 school year, the 2<sup>nd</sup> Grade Physical Therapist stated that the Student did not need an adult with them for the entire day. In the classroom, they needed an adult to set up the environment so that the Student could move about independently without things in the way that they could trip over. In the hallways, it was "helpful for the Student to sometimes have an adult" for support, particularly for long distances. The support the Student required was primarily an adult nearby to cue them "take big steps" or "walk heel toe". This could be provided by the classroom teacher, and did not necessarily require the presence of an additional adult. The Student also sometimes needed adult support during arrival and dismissal when getting in and out of the car. They shared that they trained staff who worked with the Student to "not be right next to [them], but to have an eye on [them]" to make sure they were using stairs safely and holding onto the handrail. They stated that the Student did not need an adult to hold their hand and emphasized the importance of promoting independence while also keeping the Student safe.

29. According to the Student's Report Card at the end of the 2023-24 school year, the Student received the following grades:
- "Consistently" met all behavior learning targets;
  - "Proficient" in all Language Arts (reading, writing, language, speaking and listening) learning targets;
  - "Proficient" or "Highly Proficient" in all Math learning targets, except for math fluency where they ended the year "Nearly Proficient";
  - "Proficient" in all remaining learning targets, including social studies, science, health, innovation/STEM, physical education, and music.
30. When interviewed, the 2<sup>nd</sup> Grade Teacher shared that the Student "made great progress, both physically and academically," during the 2023-24 school year.
31. The Student began the 2024-25 school year at the same school, but was assigned several new staff members, including a new case manager (Case Manager), occupational therapist (Occupational Therapist), and physical therapist (Physical Therapist).
32. Near the start of the 2024-25 school year, the Case Manager created a spreadsheet for staff to keep track of how often the Student falls at school (Fall Log). According to the Fall Log, the Student fell eight times between September 12, 2024 and the date of the Complaint. Two of these falls occurred in the classroom and six occurred outside of the classroom. None of the eight falls resulted in injury.
33. On September 5, 2024, the Physical Therapist emailed the Parent with a Release of Information to speak with the Student's private physical therapist. The Physical Therapist shared that they had just returned from observing the Student at recess and, "despite not wearing [their] ankle braces, [the Student] demonstrated good safe gait (walking) mechanics on the level cement and when running on the bark chips at recess." They also observed the Student go "up the stairs while holding onto the rail to get back to class with no problems." The Physical Therapist concluded that the Student did not need to use their walker at that time because they were "doing well."
34. On September 25, 2024, the Physical Therapist emailed the Student's PE Teacher with a link to the Fall Log and asked that they record any falls that the Student might experience during PE class. The Physical Therapist also noted that the Student was unable to wear their ankle braces due to fit issues, so may be "a little more unstable this year." They shared that they had observed the Student walking, running, and going up stairs and that the Student "seems to be doing well with [their] gait as long as [they get their] toes up."
35. When interviewed, the Physical Therapist expressed concern that the frequency that the Student was falling had increased as the school year progressed, particularly since the start of 2025. When asked if the Student required additional adult support to address the increase in falls, they explained that it is "challenging for a care provider to prevent a fall" even if in close proximity to a student. An adult would have to be "holding onto [the Student] all the time" which they did not believe would be appropriate for the Student. In the alternative, the

Physical Therapist recommended that the Student utilize their walker more often during transitions around campus, at least so long as they were not wearing braces.

36. On October 7, 2024, the Parent emailed the Case Manager and requested an IEP meeting to “talk about current school supports.” They asked that the Case Manager provide three dates and times that would work for District staff.
37. On October 9, 2024, the Case Manager replied via email and offered a meeting on October 16, 2024 with another learning specialist and the School Psychologist to discuss the Student’s progress at school and iReady diagnostic results.
38. The Parent emailed the Case Manager on October 11, 2024, indicating that they were not available to meet on the offered date and stating that they “wanted to confirm that the purpose of this meeting is to discuss [the Student’s] current support with the full IEP team.” The Parent also requested an explanation of how the Student’s accommodations of a visual timer, checklist that breaks down multistep assignments, and adult support were implemented in the classroom.
39. On October 15, 2024, the Case Manager replied to the Parent, stating “It sounds like you’d like to schedule a check-in meeting,” and offered to either schedule a meeting with a learning specialist, the School Psychologist, Occupational Therapist and Physical Therapist, or attend the upcoming parent/teacher conference with Parent and 3<sup>rd</sup> Grade Teacher. They shared that the Student was “being supported by staff during high traffic times” and suggested that the Parent discuss implementation of the timer and checklist during the parent/teacher conference.
40. The Parent replied to the Case Manager on October 17, 2024 reiterating that they were requesting an IEP meeting.
41. When asked why they did not schedule an IEP meeting when the Parent requested one, the Case Manager explained that they had already had two informal meetings with the Parent in September 2024 to review the Student’s accommodations and discuss how the Student was doing in class. When the Parent requested another meeting to review the Student’s supports, the Case Manager assumed that they were asking for the same type of informal check-in meeting. When the Parent asked that the full IEP team be present at the meeting, the Case Manager believed that the Parent wanted to meet all of the new team members, but not that they wanted to convene a formal IEP meeting. The Case Manager based this belief on the fact that the Student’s annual IEP had just been held in April 2024, that the articulated purpose of the meeting was for the Parent to meet the new team members and make sure that the Student’s accommodations were being implemented, and that the Parent did not request any changes or amendments to the current IEP.
42. The Parent spoke with the District’s Executive Director of Student Services (Director) on October 25, 2024. During this conversation, the Parent requested that the Director assist in getting an IEP meeting scheduled for the Student, rather than an informal check-in meeting. After the conversation, the Director recalled having a short conversation with either the TOSA or the Case Manager and advising them to schedule an IEP meeting if a parent requests an

IEP meeting. Neither the Case Manager nor the TOSA recalled having this specific conversation with the Director.

43. On October 25, 2024, the Case Manager emailed the Parent to let them know that they had called the Parent “a couple of times” but had not heard back. They wanted to confirm that the Parent had received their message “regarding a full hour booked for the IEP meeting you requested” on November 13, 2024. The Parent replied that they thought the meeting was scheduled for November 6, 2024.
44. The same day, the Case Manager emailed the Parent and Parent 2 to clarify that they could only schedule a forty-five minute meeting on November 6<sup>th</sup> and, given the Parent’s request for a full hour, had identified November 13<sup>th</sup> as a date when the requested team members could meet for an hour. In addition, they had learned that Parent 2 was not available for a meeting on November 6, 2024.
45. The Case Manager, the Parent, and Parent 2 exchanged several emails and voicemails between October 18, 2024 and October 30, 2024 attempting to identify a mutually agreeable date and time for the Student’s IEP meeting. The Case Manager offered November 6, 2024, November 13, 2024, and December 4, 2024 as potential meeting dates. On October 30, 2024, both the Parent and Parent 2 replied that they were both available to meet on December 4, 2024.
46. On October 31, 2024, the Case Manager emailed a calendar invitation to the Parent, Parent 2, and District staff for a meeting about the Student on December 4, 2024. The calendar invitation indicated that the title of the meeting had been updated to “IEP Meeting.” The District did not provide the Parent with a Notice of Team Meeting in advance of the December 4, 2024 meeting.
47. When interviewed, the Case Manager shared that they continued to believe they were scheduling an informal check-in meeting. When asked why they referred to the meeting as an “IEP Meeting” if they did not intend for the meeting to be an official IEP Meeting, the Case Manager explained that this is their first year as a teacher in the United States and that they changed the title of the meeting at the Parent’s request. It did not occur to them that calling the meeting an “IEP Meeting” meant that they needed to complete procedural requirements, such as sending a Notice of Meeting.
48. A meeting was convened for the Student on December 4, 2024 (December 4, 2024 Meeting). Attending the meeting were, the Parent, the Parent’s advocate, Parent 2, Principal, 3<sup>rd</sup> Grade Teacher, Case Manager, Physical Therapist, Occupational Therapist, and the Student Services Teacher on Special Assignment (TOSA), who served as the District representative. The Meeting Minutes are titled “Parent Meeting Minutes” and identify the purpose of the meeting as “Check In Meeting”. When interviewed, both the Case Manager and the TOSA stated that, going into the meeting, they believed the meeting was an informal check-in meeting and not an IEP meeting. The Parent, however, believed it was an IEP Meeting based on the Case Manager’s calendar invitation.

49. The Meeting Minutes from the December 4, 2024 Meeting indicate that the attendees discussed the Student's academic progress and the results of the most recent iReady diagnostic assessment. The Parent requested "ESY be a part of the IEP." The TOSA discussed the difference between ESY and summer school and explained how data is collected before and after school breaks to determine a student's eligibility for ESY. The TOSA offered, "We can change the IEP to check the box for data to be taken. We would then come back together in April, once data has been collected."
50. The Meeting Minutes also reflect that the attendees discussed the physical supports that the Student required at school. District staff shared that the Student was not using their walker to get to the playground and "most of the time [they are] not receiving assistance." The Physical Therapist reported that, according to the Fall Log, the Student had fallen seven times so far during the school year but had not been injured. They noted that the Student had not worn leg braces that year and questioned whether they would start wearing them again. While the Student was "doing well" the 2<sup>nd</sup> Grade Physical Therapist had reported that the Student did better with their leg braces on. The Parent shared that they would provide an update on the leg braces when information was available.
51. According to the Meeting Minutes, there was a discussion about the Student's IEP goals and how special education supports were implemented in the classroom. The 3<sup>rd</sup> Grade Teacher shared the Student was following the classroom routine with the use of timer as support. When asked about adult support in the classroom, the 3<sup>rd</sup> Grade Teacher reported that the Student did not need help getting to and from the carpet and was able to line up with their classmates, and that they were able to provide the adult support that the Student needed within the classroom. Parent 2 noted that a staff member assisted the Student with their backpack when getting out of the car in the morning.
52. At the conclusion of the meeting, as reflected in the Meeting Minutes, the TOSA shared that they could change the meeting to an IEP amendment. When interviewed, the TOSA explained that they believed the meeting was intended to be an informal check-in meeting. District staff had no indication that the Parent wanted to make changes to the IEP prior to the meeting. When the District agreed to take data and consider the Student's eligibility for ESY services prior the end of the school year, the TOSA noted that all required IEP team members were present at the meeting so the IEP could be amended to reflect that decision without needing to schedule another meeting.
53. When interviewed, District staff who attended the December 4, 2024 Meeting reported that the Parent was an active participant in the meeting. None of the staff present at the meeting recalled that the Parent's input was given less deference than Parent 2's input. Review of an audio recording from the meeting confirmed that the Parent provided significant input during the meeting, which was considered by District staff. The one change made to the Student's IEP during this meeting, that ESY services would be considered prior to the end of the school year, was based solely on Parent request.
54. The Parent shared during an interview that they did not feel that they had enough time to discuss their concerns during the December 4, 2024 Meeting and did not get "a full

clarification” of how supports were being implemented. The Parent ended the meeting “very confused.” After the meeting, the Parent did speak with the Physical Therapist to get more information about how the Student is supported at school.

55. An IEP Amendment was developed as a result of the December 4, 2024 Meeting. The only change made to the Student’s IEP was checking a box related to ESY that stated “A decision has not been reached and the District will continue to collect ESY data.”
56. On December 4, 2024, the TOSA emailed the Parent “to clarify a few things following our meeting today.” Following the meeting, the TOSA and the Case Manager reviewed the Student’s IEP and noted that both of the Student’s goals were in the area of “Classroom Skills”. They explained that the goals were “classroom based,” meaning they are taught in a classroom environment, while ESY is delivered through an “individualized teaching structure.” They also stated that the purpose of ESY “is to recoup lost skill attainment on IEP goals,” and that “ESY typically doesn’t offer support beyond the IEP goals.” Concluding that “we wouldn’t be moving in the direction of data collection for ESY,” the TOSA proposed that the December 4, 2024 meeting be considered a “parent meeting,” “and avoid shifting the meeting to an IEP amendment meeting.”
57. On December 6, 2024, the Parent responded to the TOSA via email, requesting that the December 4, 2024 be designated as an IEP meeting and that the Student’s IEP be amended to reflect that the District would collect ESY data and “determine appropriate ESY supports before the end of the school year.”
58. When interviewed, the TOSA explained that during the December 24, 2024 Meeting, the Parent requested ESY services for the Student in the context of a conversation about iReady data and the Parent’s desire for “targeted support” for academics, particularly for reading. After the meeting, the TOSA realized that the Student’s goals were related to classroom skills, and that the Student did not have academic goals in their IEP. The TOSA sent the email following the meeting to clarify for the Parent that ESY would only address goals in the Student’s IEP, which would not include other areas such as reading instruction and clear up any misperception the Parent may have had regarding the purpose of ESY. Assuming that the Parent would no longer want to pursue ESY services, the TOSA suggested leaving the meeting as an informal check-in meeting “for simplicity.” When the Parent responded that they still wanted the District to consider ESY for the Student, the TOSA agreed to designate the meeting as an IEP amendment.
59. After receiving the Parent’s response, the District created a Notice of Team Meeting for the December 4, 2024 Meeting. According to the Notice, the purpose of the meeting was to develop or review the Student’s IEP and that, “Today’s Parent meeting was transitioned to an IEP Amendment meeting in order to make a change to [the Student’s] IEP and honor the parent request for ESY data collection.”
60. The TOSA also generated a PWN, dated December 4, 2024, regarding the outcome of the meeting. According to the PWN, the Student’s IEP team “has checked the ‘A decision has not been reached and the district will continue to take ESY data’ box on the service summary of

[their] IEP.” The PWN further indicates that the District will collect data to determine if the Student qualifies for ESY.

61. There was confusion between the Case Manager and the TOSA regarding who was responsible for sending the December 4, 2024 PWN to the Parent and the PWN was not provided to the Parent at that time.
62. On December 6, 2024, the Case Manager emailed the Parent with a copy of the Meeting Minutes and a recording of the December 4, 2024 Meeting.
63. The District collected data on the Student’s goals and objectives in December 2024 and January 2025, before and after winter break, to determine if the Student qualifies for ESY services. According to the collected data, the Student did not show regression on any of their goals or objectives over the break.
64. During an interview, when asked how they implemented the Student’s accommodations during the 2024-25 school year, the 3<sup>rd</sup> Grade Teacher shared the following:
  - a. Visual Timer: The 3<sup>rd</sup> Grade Teacher uses a website called Classroom Screen that allows a timer to be projected on a TV screen in the classroom. The timer is on the screen for the entire day and is set for whatever task the class is completing.
  - b. Checklist that breaks down multistep assignments: The 3<sup>rd</sup> Grade Teacher reviews multi-step assignments and will “number out” each step of the assignment and the order in which they should be completed. Sometimes this is done on a whiteboard for the whole class or on the TV screen next to the visual timer. If the Student needs an assignment broken down further, the 3<sup>rd</sup> Grade Teacher works with the Student individually to break the assignment into steps and will typically create the checklist on the assignment itself.
  - c. Adult support for physical transitions and movement within and outside the classroom: An EA will accompany the Student during transitions around campus to assist if needed and often will serve to “block” other children from running into the Student as they go outside to recess. The 3<sup>rd</sup> Grade Teacher explained that the EA is only in the classroom for approximately thirty minutes per day but comes back to the classroom during transition times to support the Student. When the EA is not in the classroom, the 3<sup>rd</sup> Grade Teacher provides any necessary support to the Student, although they report that the Student rarely needs physical assistance in the classroom. They did share that the Student will walk to the restroom on their own if they need to during class. They explained that the restroom is close to the classroom and that they had never observed the Student to have a problem transitioning to and from the restroom independently. They could not identify any other times when the Student is traveling outside of the classroom without adult support. The 3<sup>rd</sup> Grade Teacher believes that the adult support provided to the Student is sufficient to allow the Student to access the general education setting.
65. The 3<sup>rd</sup> Grade Teacher also shared that they discussed the use of the visual timer and the checklists with the Parent at a parent-teacher conference on October 31, 2024 and that the Parent “seemed happy” with how these accommodations were implemented.

66. When interviewed, the Parent recalled discussing the Student's accommodations during the conference. The Parent did not recall seeing any checklists, however, and observed that there was a timer in the classroom, but not one on the Student's desk. When asked why the Parent did not believe the accommodations of a timer and checklist were being implemented, the Parent explained that they had not heard anything about these accommodations from the Student and had not seen any evidence of their use. When asked why they did not believe the accommodation of adult support was being implemented, the Parent shared that the level of adult support this school year appeared different than what was provided during the 2023-24 school year. Specifically, there was an EA present in the classroom for the majority of the day during the 2023-24 school who frequently assisted the Student with staying on task and completing classwork. This year, however, the EA is only present in the classroom for approximately twenty minutes per day. Additionally, they do not believe that the Student has adult support when transitioning around campus because the Student seemed to be falling more frequently. The Parent did acknowledge that an EA walks the Student out to the car at dismissal each day.
67. The Occupational Therapist shared during an interview that they were working with the Student to develop their own checklists for multistep assignments. The Student is able to write down the steps that they need to complete on a whiteboard and is gaining independence with that skill.
68. According to the Case Manager, they have consulted with the 3<sup>rd</sup> Grade Teacher to ensure that the Student's accommodations are implemented. They described where a visual timer was present in the classroom. They communicated with the 2<sup>nd</sup> Grade Teacher for ideas on creating checklists for multistep assignments and they suggested that a graphic organizer be utilized as a checklist. When in the classroom, the Case Manager has observed that the 3<sup>rd</sup> Grade Teacher ensures that the Student has some kind of checklist or graphic organizer whenever an assignment is given out to the class. Typically, this is a support provided to all students in the class and is often posted on the screen at the front of the classroom where all students can see it. The Case Manager shared that an EA pushes in to the Student's general education classroom for a portion of each day to provide SDI to the Student. In addition, the EA (or another staff member) assists the Student from the car into the building in the morning, provides support to the Student during PE, recess, and dismissal, and assists the Student in transitioning between different locations on campus.
69. On January 16, 2025, the Parent filed this Complaint.
70. On January 24, 2025, the 3<sup>rd</sup> Grade Case Manager completed a Progress Report for the goals and objectives from the April 17, 2024 IEP. The Progress Report describes the Student's progress on their IEP goals as follows:
- a. Classroom/School Skills #1: During recent classroom observations, the Student 1) completed transitions without adult support, 2) transitioned from their seat to the carpet, back to their seat, and began working on their assignment within one minute with no additional prompting from an adult, and 3) using a graphic organizer, successfully worked

on a fairy tale assignment independently. According to the classroom teacher, the Student requires adult prompting to check over their work.

- b. Classroom/School Skills #2: “[The Student] independently transitions within the classroom (to the carpet, back to [their] seat, to [their] backpack) without any prompting or adult support. Around the school, [the Student] receives adult support during transitions, but an adult no longer needs to provide verbal cues for [them] to stay within 3 seconds of the person in front of [them].”

71. When asked to describe the progress that the Student has made since the start of the 2024-25 school year, the Case Manager described observing the Student in the general education classroom on multiple occasions to collect data for the Progress Report. Each time, the Case Manager observed the Student immediately start working when given a prompt by the 3<sup>rd</sup> Grade Teacher and, when the class was directed to move to the carpet, the Student complied independently. The 3<sup>rd</sup> Grade Teacher added that the Student has met their goal related to transitioning with the class throughout the school and has made significant academic progress, particularly in the areas of reading fluency and writing.

72. On January 24, 2025, the Director emailed the Parent with finalized documents from the December 4, 2024 meeting, including the IEP Amendment, Notice of Meeting, PWN and Meeting Minutes.

#### IV. DISCUSSION

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

The Parent alleged that the District violated the IDEA by not providing special education and related services and not implementing accommodations in accordance with the Student’s IEP. Specifically, the Parent alleged that the District did not implement the use of a visual timer, a checklist that breaks down multistep assignments, or adult support for physical transitions and movement within and outside the classroom.

School districts must provide special education and related services to a student with a disability in accordance with the student’s IEP.<sup>3</sup> The school district must ensure that each staff member, including service providers, has access to a student’s IEP and is informed of their specific responsibilities for implementing the IEP.<sup>4</sup> “IEP Teams and other school personnel should be able to demonstrate that, consistent with the provisions in the child’s IEP, they are providing special education and related services and supplementary aids and services.”<sup>5</sup>

A district violates the IDEA when it materially fails to implement an IEP.<sup>6</sup> “A material failure occurs when the services a school provides to a disabled child fall significantly short of the services required by the child’s IEP. Minor discrepancies between the services provided and the

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<sup>3</sup> OAR 581-015-2220(1)(a); 34 CFR §300.323(c)

<sup>4</sup> OAR 581-015-2220; 34 CFR §300.323

<sup>5</sup> Questions and Answers on *U.S. Supreme Court Decision Endrew F. v. Douglas County Sch. Dist.* Re-1, 71 IDELR 68 (EDU 2017)

<sup>6</sup> *Van Duyn v. Baker Sch. Dist.* 5J, 502 F3d 811 (9<sup>th</sup> Cir. 2007) (“Van Duyn”)

services called for by the IEP do not give rise to an IDEA violation.”<sup>7</sup> As further explained by the court in *Van Duyn*:

“The materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child’s educational progress, or lack of it, may be probative of whether there has been a significant shortfall in the services provided. For instance, if the child is not provided the reading instruction called for and there is a shortfall in the child’s reading achievement, that would certainly tend to 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.”<sup>8</sup>

The components of the Student’s IEP that the Parent alleged were not implemented were accommodations for 1) Visual timer; 2) Checklist that breaks down multistep assignments; and 3) Adult support for physical transitions and movement within and outside the classroom.

#### Visual timer and checklist that breaks down multistep assignments

The Student’s teachers and both case managers described in detail how the accommodations of a visual timer and a checklist that breaks down multistep assignments were implemented. The Parent expressed concern that the Student did not have an individual timer on their desk, but an individual timer is not required by the Student’s IEP. Implementing an individual student’s accommodation as a whole-class support can be an appropriate and valid way of implementing the accommodation. The evidence supports that, while both of these accommodations were often implemented for the whole class, they were generally implemented in accordance with the Student’s IEP. On occasions when a checklist that was used by the whole class did not meet the Student’s individual needs, the Student’s teachers created separate checklists specifically designed for the Student.

#### Adult support for physical transitions and movement within and outside the classroom

The Parent’s allegation that the District failed to implement the Student’s accommodation in accordance with their IEP is specific to the 2024-25 school year. As reflected in the Complaint, and during interviews, the Parent’s primary issue with the implementation of adult support is that the Student had more consistent adult support during the previous school year when there was an EA in the classroom for the entire day. While there may have been an additional adult available to assist the Student for the full school day during the 2023-24 school year, that is not what is required by the Student’s IEP. The Student’s IEP requires “adult support” during specific times of the day. This does not mandate that the Student have an additional adult dedicated to support them for the full day. An EA provided support to the Student during transitions around campus, PE, arrival, dismissal, and recess. The 3<sup>rd</sup> Grade Teacher credibly described how they were able to provide support to the Student during times when the EA was not in the classroom.

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

The only times that the Student did not have adult support for “movement outside the classroom” was when they used the restroom during class time.

The question then turns to whether failure to provide adult support to the Student when they traveled to the restroom rose to the level of a material failure to implement the IEP. The restroom is a short distance from the classroom and the Student has demonstrated they are capable of visiting the restroom independently. Notably, none of the falls on the Fall Log occurred while the Student was using the restroom. These brief periods when the Student did not have adult support were a “minor discrepancy” between the way the accommodation is written and the way it was implemented. Additionally, the Student met their goal related to transitioning with the class throughout the school, suggesting that the District’s failure to provide adult support during transitions to the restroom did not amount to a significant shortfall of services to the Student. Given all of the above, the failure to provide adult support to the Student when they traveled to the restroom during class time was not a material failure to implement the Student’s IEP.

The Department does not substantiate this allegation.

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

The Parent alleged that the District violated the IDEA by unreasonably delaying an IEP meeting to review and revise the Student’s IEP. This allegation is specific to the Parent’s request to convene an IEP meeting on October 7, 2024.

The IDEA does not require a school district to schedule an IEP meeting anytime one is requested by a parent. The IDEA requires school districts to ensure that IEP teams review every IEP at least once per year to: (a) determine whether a student with a disability is achieving their IEP goals, and (b) to revise the IEP as appropriate.<sup>9</sup> The IEP team must also review and revise a student’s IEP at any time to address:

1. A lack of expected progress toward the annual goals and in the general education curriculum;
2. The results of any reevaluation;
3. Information about the student provided to, or by, the student’s parents;
4. The student’s anticipated needs; or
5. Other matters.<sup>10</sup>

When the Parent requested an IEP meeting on October 7, 2024, it was for the purpose of reviewing the Student’s current special education supports and how they were implemented. The Student’s IEP team met three times between March and April 2024 to establish the Student’s eligibility for special education and develop a new annual IEP. The Parent did not indicate a desire to amend the IEP when they requested the meeting and there was no evidence that the Student’s IEP needed to be revised for any reason at that time. Arguably, the District

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<sup>9</sup> OAR 581-015-2225(1); 34 CFR §300.324(b)

<sup>10</sup> OAR 581-015-2225(1)(b)(A)-(E)

did not have an obligation to schedule an IEP meeting when the Parent requested one but, as articulated by the Director, it likely would have been best practice to do so.

The Case Manager certainly created confusion by referring to the meeting as an IEP meeting when they were, in fact, scheduling an informal check-in meeting. The meeting ultimately became an IEP meeting when the Parent requested, for the first time during the meeting, that the District consider ESY services for the Student. Since the required members of the IEP team were present at the meeting, the Student's IEP was amended to adjust the IEP team's decision regarding collection of data for the purpose of determining future ESY eligibility.

The allegation in the Complaint, however, is not whether the meeting was originally understood to be an IEP meeting or not, but whether there was an unreasonable delay in scheduling the meeting. The Parent requested the meeting on October 7, 2024. Between that date and October 25, 2024, the Case Manager made frequent and diligent attempts to schedule a meeting with the Parent and Parent 2. The Case Manager offered two potential dates in November, but the Parent and Parent 2 were not able to agree on one of them. The next time that District staff were available was after Thanksgiving break, on December 4, 2024. The Parent agreed that this was a mutually agreeable date for the meeting.

The Department does not substantiate this allegation.

### **Parent Participation**

The Parent alleged that the District violated the IDEA by interfering with the Parent's ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the Student, and the provision of a FAPE to the Student. Specifically, the District invited a non-custodial parent without the Parent's consent and failed to provide a copy of the Student's IEP to the Parent.

A school district must provide one or both parents the opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child.<sup>11</sup> School districts must consider the concerns of the parents for enhancing the education of their child, among other indicators of the student's academic, developmental, and functional needs.<sup>12</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>13</sup>

Providing a parent with an opportunity to participate in IEP meetings includes a duty to notify the parent about the meeting early enough to ensure they have an opportunity to attend.<sup>14</sup> The IEP meeting notice must, at a minimum, 1) indicate the purpose, time, and location of the meeting and who will be in attendance; 2) inform the parent about their right to invite individuals who have knowledge or special expertise about the student; 3) inform the parent

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<sup>11</sup> OAR 581-015-2190(1); 34 CFR §300.501(b)

<sup>12</sup> OAR 581-015-2205(1)(b) and (d); 34 CFR §300.324(a)(1)

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

<sup>14</sup> OAR 581-015-2190(2)(a) ; 34 CFR §300.321(a)(1)

that the IEP team may provide with the meeting even if the parent is not in attendance; and 4) inform the parent of whom to contact before the meeting to provide information if they are unable to attend.<sup>15</sup>

A school district must also give a parent a copy of their child's IEP at no cost to the parent. If the parent does not attend the IEP meeting, the school district must ensure that a copy is provided to the parent.<sup>16</sup>

#### Inviting non-custodial parent to IEP meetings

While the Parent has sole legal custody of the Student, and the right to make final decisions regarding the Student's education, according to the Parenting Plan, Parent 2 continues to have the right to consult with school staff concerning the Student's education "to the same extent" as the Parent. The District reasonably interpreted the Parenting Plan to mean that Parent 2 maintains the right to participate in IEP meetings, regardless of whether the Parent consents. While the Parent and Parent 2 clearly have divergent views on how to best approach certain aspects of the Student's education, there is ample evidence that the Parent was an active participant in each of the Student's IEP meetings and no indication that District staff favored Parent 2's input over the Parent's when making decisions regarding an appropriate educational program for the Student.

#### Providing a copy of the Student's IEP to the Parent

Due to confusion as to whether the Case Manager or the TOSA was responsible for sending a copy of the December 4, 2024 IEP Amendment to the Parent, a copy was not provided to the Parent directly after the meeting. The Case Manager did, however, send the Parent an audio recording of the meeting and the Meeting Minutes on December 6, 2024 and the Director sent a copy of the IEP amendment to the Parent via email on January 24, 2025. There is no specific timeline by when a copy of an IEP must be provided to a parent following an IEP meeting. The Parent did have a copy of the Student's April 17, 2024 Annual IEP, which was identical to the December 4, 2024 amendment, with the exception of the decision that the IEP team would continue to collect data to determine the Student's future eligibility for ESY.

#### Failure to Provide the Parent with a Notice of Meeting<sup>17</sup>

While the Case Manager intended the December 4, 2024 meeting to be an informal check-in meeting, they repeatedly referred to the meeting as an IEP meeting in emails with the Parent and titled it an "IEP Meeting" in their calendar invitation to the Parent. Coupled with the fact that the Parent specifically requested an IEP meeting, the Parent reasonably believed that the meeting was, indeed, an IEP meeting. The Case Manager failed, however, to provide the Parent with a Notice of Meeting in advance of the December 4, 2024 meeting. It is understood that the District did not intend the December 4, 2024 Meeting to be an IEP meeting until part way through the meeting. Nevertheless, the confusion around the characterization of the meeting

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<sup>15</sup> OAR 581-015-2190(2)

<sup>16</sup> OAR 581-015-2195(5)

<sup>17</sup> This was not specifically alleged in the Complaint and is an additional finding by the Department.

raises the issue of whether the Parent had adequate notice of the purpose of the meeting to meaningfully participate. Creating a Notice of Meeting *after the fact* does not cure the District's failure to provide proper notice of the IEP meeting in advance.

The Department substantiates this allegation, in part, as it relates to the District's failure to provide the Parent with a Notice of Meeting in advance of the December 4, 2024 meeting.

### **Prior Written Notice**

The Parent alleged that the District violated the IDEA by not providing PWN to the Parent regarding amendments to the Student's IEP.

The IDEA requires school districts to give parents PWN "a reasonable time" before it proposes or refuses to initiate or change anything related to the identification, evaluation, educational placement, or the provision of FAPE to a child with a disability.<sup>18</sup> PWN must be both specific and explanatory, including:

- a. A description of the action the school proposed or refused;
- b. An explanation of why the school proposes or refuses to take the action;
- c. A description of each evaluation procedure, assessment, record, or report the school used as a basis for the proposed or refused action;
- d. A statement that the parents of a child with a disability have procedural safeguards under IDEA and how parents can obtain a copy of the procedural safeguards notice;
- e. Sources for parents to contact to obtain assistance in understanding the IDEA;
- f. A description of other options considered and the reasons why those options were rejected; and
- g. A description of other factors that are relevant to the school's proposal or refusal.

The PWN must be provided early enough that parents have time to fully consider any proposed change and respond to the action before it is implemented.<sup>19</sup>

The Student's IEP was amended on December 4, 2024. The only change to the IEP at this time was changing the decision that the Student did not demonstrate the need for ESY services to "A decision has not been reached and the District will continue to collect ESY data." There was no proposal to change anything in the IEP related to the "identification, evaluation, educational placement, or the provision of FAPE" to the Student. At most, the change was a commitment to meet in the future to determine if the Student requires ESY services. Nevertheless, the Director did send a PWN to the Parent reflecting the change to the Student's IEP on January 24, 2025, well before there would be any potential change to the Student's educational program.

The Department does not substantiate this allegation.

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<sup>18</sup> OAR 581-015-2310; 34 CFR §300.503(a).

<sup>19</sup> *Letter to Chandler* (OSEP 2012)

## **Free Appropriate Public Education**

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

Each school district is responsible for providing a free appropriate public education to school age children with disabilities for whom the school district is responsible.<sup>20</sup> The IDEA defines FAPE as special education and related services that: 1) Are provided at public expense, under public supervision and direction, and without charge; 2) Meet the standards of the state educational agency; 3) Include an appropriate preschool, elementary school, or secondary school education; and 4) Are provided in conformity with an IEP.<sup>21</sup>

To determine if a student has been denied a FAPE, courts must consider whether the school district complied with the procedural requirements of the IDEA, and whether the school district met the substantive requirement to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.<sup>22</sup> Not all procedural violations amount to a denial of FAPE. A school district's procedural violation denies FAPE to a student if it results in a loss of educational opportunity or if it seriously infringes on the parents' opportunity to participate in the development of the IEP.<sup>23</sup>

The District committed a procedural violation by failing to provide the Parent with notice of an IEP meeting in advance of the December 4, 2024 Meeting. To determine whether this resulted in a denial of FAPE, one must consider whether it seriously infringed on the Parent's opportunity to participate in the development of the IEP. As discussed above, the Parent had the opportunity to participate in each of the Student's IEP meetings. When considering the December 4, 2024 Meeting in particular, the Parent was an active participant in the meeting with District staff answering the Parent's questions about implementation of the Student's accommodations and amending the IEP based on the Parent's request that the District consider the Student's eligibility for ESY services. Accordingly, failure to provide proper notice to the Parent in advance of the meeting did not result in a denial of FAPE to the Student.

The Department does not substantiate this allegation.

## **V. CORRECTIVE ACTION**

*In the Matter of Lake Oswego School District 7J*  
*Case No. 025-054-004*

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

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<sup>20</sup> OAR 581-015-2040(1); 34 CFR §300.101(a)

<sup>21</sup> OAR 581-015-2040; 34 CFR §300.17

<sup>22</sup> *Endrew F.*, 137 S.Ct. at 999

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

Action Required	Submissions	Due As Soon As Possible But Not Later Than
1. The District will develop and conduct training for all staff responsible for scheduling IEP meetings on the District's responsibility to provide parents with notice of IEP meetings.	Training agenda and materials to ODE for review and approval.  Sign-in sheet from training.	May 31, 2025  September 30, 2025

Dated: this 17th Day of March 2025




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Ramonda Olaloye  
Assistant Superintendent  
Office of Enhancing Student Opportunities

E-mailing Date: March 17th, 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).)