

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)	FINDINGS OF FACT,
Clackamas Education Service District)	CONCLUSIONS,
)	AND FINAL ORDER
)	Case No. 25-054-009

I. BACKGROUND

On February 11, 2025, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from an employee of the Clackamas Education Service District (ESD)(Complainant) regarding the special education of students enrolled in classroom operated by the ESD (Program). The Complaint requested that the Department conduct a systemic special education investigation under OAR 581-015-2030. The Department confirmed receipt of the Complaint and forwarded the request to the ESD.

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 Complainant and the ESD agree to the extension to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On February 18, 2025, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the ESD identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of March 4, 2025.

The ESD submitted a *Response* on March 4, 2025, denying the allegations, providing an explanation, and submitting documents in support of the ESD's position. The ESD submitted the following relevant items:

1. ESD's Written *Response* to Complaint, 3/4/25
2. Table of Contents, 3/4/25
3. Special Education Program Overview, undated
4. Local Service Plan, 2024-25 school year
5. List of staff and students, 2023-24 school year
6. List of staff and students, 2024-25 school year
7. Safety Concern Report, 1/13/25
8. ESD Response to Safety Concern Report, 1/13/25

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

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

9. Summary/timeline of support and expectations regarding schedules, 2024-25 school year
10. Admin-created recommended schedules, 1/22/25
11. Behavior Team Meeting Notes, 2023-2025
12. BCBA Student Minutes, 2024-25 school year
13. Behavior Incident Report Communication Flow, undated
14. Time Out vs. Break Space guidance, undated
15. ITM Running Notes, 2024-25 school year
16. Emails between ESD staff, 10/8/24
17. Student Discipline Records, 2024-25 school year
18. Staff Injury Report, 2024-25 school year
19. Educational records for three students enrolled in the Program during the 2023-24 school year
20. Educational records for six students enrolled in the Program during the 2024-25 school year, as follows:

Student #1

21. IEP, 12/11/24
22. Seizure Action Plan, 11/7/24
23. Sensory Plan, 2/17/23, updated 12/2024
24. Written Agreement, 12/3/24
25. Staff Transition Protocol, 11/8/24
26. Behavior Support Plan, 2/21/23, updated 11/8/24
27. Safe Feeding Protocol, 12/11/24
28. Special Education Placement Determination, 12/11/24
29. Meeting Notes, 12/11/24
30. Notice of Team Meeting, 12/9/24
31. Prior Written Notice (PWN), 12/11/24

Student #2

32. IEP, 10/15/24
33. Written Agreement, 9/23/24
34. Safe Feeding Protocol, 9/12/24
35. Consent for Placement on an Abbreviated School Day Program, 10/15/24
36. Student Safety Plan, 10/15/24, revised 10/28/24
37. Step-Up Plan, 10/29/24
38. IEP Progress Report, 12/2/24
39. IEP Amendment, 12/19/24
40. Written Agreement, 1/11/25
41. IEP Progress Report, 1/27/25
42. Special Education Placement Determination, 10/15/24
43. Meeting Notes, 10/15/24
44. Meeting Notes, 12/19/24
45. Notice of Team Meeting, 12/19/24
46. Notice of Team Meeting, 9/6/24
47. Consent for Individual Evaluation, 11/14/24
48. PWN, 12/19/24
49. PWN, 10/15/24

50. PWN, 9/16/24
51. Functional Behavior Assessment, 2/26/25
52. Behavior Strategy Slides, 2/29/25
53. Daily Proactive and Reactive Strategies, 2/5/25
54. FBA/BSP Review Slides, 2/26/25
55. Intake Meeting Notes, undated
56. Statement of Eligibility for Special Education, 4/23/24
57. Consent for Individual Evaluation, 8/29/24
58. Eligibility Summary Statement, 4/23/24
59. IEP, 4/23/24
60. Special Education Placement Determination, 4/23/24
61. PWN of Evaluation, 2/12/24
62. Consent for Initial Provision of Special Education, 4/23/24
63. Student Verification Report, 2023-24 school year
64. Feeding Assessment, 9/12/24

Student #3

65. IEP, 2/5/25
66. Written Agreement, 1/27/25
67. Safe Feeding Protocol, 9/12/23, reviewed 1/31/25
68. Sensory Plan, 10/2024
69. Toileting and Personal Hygiene Procedure, 10/3/24
70. Meeting Notes, 10/3/24
71. Eligibility Summary Statement, 2/5/25
72. Consent for Individual Evaluation, 10/2/24
73. Social Communication Assessment, 2/5/25
74. Occupational Therapy Evaluation, 1/24/25
75. Special Education Placement Determination, 2/5/25
76. Meeting Notes, 2/5/25
77. PWN of Evaluation, 10/2/24
78. Notice of Team Meeting, 9/6/24
79. Notice of Team Meeting, 1/24/25
80. Statement of Eligibility for Special Education, 2/5/25
81. PWN, 2/5/25
82. Behavior Goal Data Sheet, 2024-25 school year
83. Behavior Update, 2/5/25

Student #4

84. IEP, 5/30/24
85. IEP, 10/22/24
86. Written Agreement, 9/23/24
87. Physical Therapy Plan of Care and Motor Program, 10/2024
88. Safe Feeding Protocol, 9/20/24, updated 10/17/24
89. Toileting and Personal Hygiene Procedure, 10/21/24
90. Student Safety Plan, 10/23/24
91. IEP Progress Report, 1/27/25
92. Special Education Placement Determination, 10/22/24

- 93. Meeting Notes, 10/22/24
- 94. Notice of Team Meeting, 9/6/24
- 95. PWN, 10/22/24
- 96. Consent for Initial Provision of Special Education, 5/30/24
- 97. Individualized Family Service Plan (IFSP), 3/22/24
- 98. Special Education Placement Determination, 5/30/24
- 99. Eligibility Summary Statement, 6/6/22
- 100. Meeting Notes, 5/30/24
- 101. Intake Meeting Notes, undated

Student #5

- 102. Triage Form, 2/7/25
- 103. IEP, 10/7/24
- 104. Written Agreement, 10/3/24
- 105. Sensory Plan, 10/2024
- 106. IEP Progress Report, 12/2/24
- 107. Special Education Placement Determination, 10/7/24
- 108. Meeting Notes, 10/7/24
- 109. Notice of Team Meeting, 9/18/24
- 110. PWN, 10/7/24

Student #6

- 111. IEP, 11/6/24
- 112. Written Agreement, 9/23/24
- 113. Toileting and Personal Hygiene Procedure, 11/6/24
- 114. IEP Progress Report, 12/2/24
- 115. Special Education Placement Determination, 11/6/24
- 116. Meeting Notes, 11/6/24
- 117. Notice of Team Meeting, 9/6/24
- 118. PWN, 11/6/24
- 119. PWN, 9/5/24
- 120. Intake Meeting Notes, undated

On March 17, 2025, at the request of the Investigator, the ESD submitted the following additional document:

- 1. Teacher-created schedules, 2/13/25

On March 19, 2025, an ESD employee provided the Investigator with:

- 1. Classroom working schedule, undated
- 2. Email between ESD staff, 1/8/25

On March 19, 20, 21 and 30, 2025 the Complaint Investigator interviewed ESD personnel. The Complaint Investigator interviewed the Complainant on February 17, 2025 and March 19, 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 Complainant's allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from February 12, 2024 to the filing of the Complaint on February 11, 2025.

Allegations	Conclusions
When IEPs Must Be in Effect The Complaint alleged that the ESD violated the IDEA by not providing special education and related services, specifically adult support, to students in the Program in accordance with their IEPs. (OAR 581-015-2220; 34 CFR §300.323)	Not Substantiated The ESD provided the level of adult support required by the IEPs of the students in the Program.
Free Appropriate Public Education (FAPE) The Complaint alleged that the ESD failed to provide the students in the Program with a FAPE by not providing special education and related services in accordance with their IEPs. (OAR 581-015-2040; 34 CFR §300.101)	Not Substantiated There were no findings of procedural or substantive violations of the IDEA, accordingly there was no denial of FAPE to the students in the Program.

REQUESTED CORRECTIVE ACTIONS

The Complainant requests that the ESD have the appropriate staffing in the classroom, move students around, or combine classrooms.

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 February 12, 2024. Any facts listed below relating to circumstances or incidents earlier than that date are

included solely to provide context necessary to understand the students' disabilities and special education histories.

In investigating this Complaint, the Investigator reviewed the records of six students enrolled in the Program during the 2024-25 school year, who are designated throughout this Order as Students #1-6.

1. The Program is one of a series of classrooms operated by the ESD that are designed to serve students from kindergarten through transition with complex disabilities and communication needs. The Program provides students with academic, social-emotional, communication and life skills curriculum and instruction. The Program is located at an elementary school in one of the ESD's member school districts.
2. The Complaint alleged that there was not adequate staff in the Program to provide the level of adult support required by the IEPs of the students enrolled in the Program. When interviewed, the Complainant clarified that the allegation regarding adult support was limited to the time period from January 2025, when school resumed after winter break, until the date of the Complaint. There was no allegation of failure to provide adequate adult support prior to January 2025.
3. A Local Service Plan (LSP) outlines the services that the ESD provides to its member school districts, including the Program. The LSP does not dictate a specific ratio of adults to students in the Program. The ESD's practice is to staff the Program with one classroom-based staff member, including teachers, educational assistants (EA), and/or behavior coaches, for every two students. Additional staff will be assigned to a classroom if circumstances warrant, such as when a student in the class requires one-to-one adult support according to their IEP.
4. When interviewed, both the ESD administrator who supervises the Program (Supervisor) and the Assistant Director of the Program (Assistant Director), shared that the ratio of two students to one staff member is a guideline, or formula, for how staff are allocated to the Program. When one of the ESD's member school districts places a student in the Program, it is the expectation that the classroom will be assigned staff according to that ratio. It is neither an expectation, nor a requirement, that the Program maintain a two-to-one ratio every minute of the school day. It is understood that the student-to-staff ratio may dip below that level during certain parts of the day, such as when staff are taking breaks, or if a student requires individual attention for a period of time such that another staff member is temporarily responsible for more than two students. The specific level of adult support that a student in the Program may require, is dictated by their IEP and not by the staffing formula.
5. The Supervisor and Assistant Director further explained that additional staff may be added to the Program, exceeding the two-to-one ratio, if additional adults are required to meet the individual needs of the students. For instance, if there are five students enrolled in the Program, and one of the students requires one-to-one adult support, then one adult would be assigned for that student and the staffing formula would be applied to the remaining four students, meaning that a total of three staff members would be assigned to the class. The Assistant Director emphasized that the staffing formula is "a starting point" for allocating staff

to a classroom, and that additional staff will be assigned to a classroom if it is determined that more adults are required to meet the needs of the students and/or ensure safety.

6. The students placed in the Program all require varying levels of adult support based on their individual needs and their IEPs. When asked how one-to-one adult support is documented in a student's IEP, the Assistant Director explained that it might vary depending on the preference of that student's home district. It is not the practice of the ESD, however, to use the term "one-to-one" when referring to adult support in an IEP because it can be interpreted in many ways. For instance, some may interpret "one-to-one adult" to mean that a student requires the same adult at all times when, in practice, a variety of staff members can fulfill that role throughout the day. In addition, "one-to-one adult" does not clearly describe the level of support that a student requires from the adult. The ESD prefers to use descriptors such as, "within arms-length" or "in line of sight" so that it is not assumed that the student requires the adult to always be right next to them.
7. Student #1: This Student is eight years old and is eligible for special education under the category of Other Health Impairment (OHI). They have been placed in the Program since April 2024.
 - a. An annual IEP meeting was convened for Student #1 on December 11, 2024 (Student #1's IEP). The IEP includes goals and specially designed instruction (SDI) to address Student #1's needs in the areas of Social Skills, Communication Skills, Behavior, Life Skills, Writing, Mathematics, and Reading.
 - b. Student #1's IEP includes the accommodation of an "Adult maintaining line of sight and arm's length across [their] day from arrival to departure both inside and outside the classroom."
 - c. When asked to further define Student's #1's accommodation for adult support, Program staff, as well as the BCBA, Supervisor, and Assistant Director agree that, due to significant behavior needs, Student #1 requires full time one-to-one support from an adult whose sole responsibility is to supervise and support the Student.
 - d. Student #1 has a Behavior Support Plan (BSP) dated February 21, 2023. The BSP has been updated several times, most recently on November 8, 2024. According to the BSP, Student #1's behaviors of concern include physical aggression (hitting, hair pulling, biting others, throwing objects, scratching, pinching, kicking), verbal aggression, noncompliance, elopement, property damage, self-injurious behavior, disrobing, and climbing. Among the proactive strategies included in the BSP is that "[Student #1's] 1:1 staff needs to always be within an arm's reach away."
8. Student #2: This Student is six years old and is eligible for special education under the category of Autism Spectrum Disorder (ASD). They have been placed in the Program since the start of the 2024-25 school year.

- a. An annual IEP meeting was convened for Student #2 on October 15, 2024 (Student #2's IEP). The IEP includes goals and SDI to address Student #2's needs in the areas of Behavior, Communication Skills, Life Skills, Reading, Mathematics, and Social Skills.
 - b. Student #2's IEP includes the accommodation of "1:1 adult support throughout [their] school day." Student #2 will not enter the classroom, so an additional adult is required to supervise and provide services to Student #2 in the hallway or in another location.
 - c. Student #2 has a Safety Plan dated October 15, 2024 and revised on October 28, 2024. The target behaviors identified in the Safety Plan are physical aggression, elopement, placing non-edibles in mouth, and dropping. According to the Safety Plan, Student #2 "should have an assigned staff who is trained on and proficient in the implementation of [their] safety plan at any time outside the classroom," and "[Student #2's] staff must be able to immediately follow [them] quickly if elopement occurs."
 - d. The ESD completed a Functional Behavior Assessment (FBA) of Student #2 dated February 26, 2025. According to the results of the FBA, Student #2 "requires a designated, trained adult to maintain eyesight and arm's-length distance throughout the school day. This role will not be limited to a single Educational Assistant (EA) or Behavior Coach (BC); instead, multiple staff members will be trained to ensure consistent implementation of [their] Behavior Support Plan (BSP) across all EAs and BCs."
 - e. During the 2024-25 school year, Student #2 has been placed on an abbreviated school day. They started the school year attending school from 8:00 am – 11:00 am each day. As of December 19, 2024, and through the date of the Complaint, the Student attends school from 8:00 am – 1:00 pm each day, except Wednesdays when they stay at school until 1:50 pm.
9. Student #3: This Student is seven years old and is eligible for special education under the category of ASD. They have been placed in the Program since the 2023-24 school year.
- a. An annual IEP meeting was convened for Student #3 on February 5, 2025 (Student #3's IEP). The IEP was "carried over" from an annual IEP convened on October 24, 2024, but updated to reflect the results of the Student's three-year reevaluation. The IEP includes goals and SDI to address Student #3's needs in the areas of Social Skills, Communication Skills, Reading, Mathematics, Written Language, Life Skills, and Behavior. Student #3's IEP does not include an accommodation related to additional adult support.
 - b. Student #3 has a Safe Feeding Protocol dated September 12, 2023 and reviewed on January 31, 2025. According to this protocol, Student #3 requires "staff supervision at a reasonable distance" when eating "to monitor for intake."
 - c. Student #3 has a Toileting and Personal Hygiene Protocol dated October 3, 2024. While the protocol does not specifically dictate that Student #3 requires one-to-one adult support when using the bathroom, the protocol requires some level of adult support for completing each step of the Student's hygiene routine.

- d. According to behavior data from the 2024-25 school year, Student #3 “spends a portion [their] day with 1:1 support from a supervising adult. The rest of [their] day is spent within line-of-sight (LOS) of an adult.” “Data collected from September 3 2024 to September 30, 2024 indicates [Student #3] spent an average of 80 minutes per day (or 20% of the day) with individual support from a supervising adult.”
10. Student #4: This Student is five years old and is eligible for special education under the category of ASD. They have been placed in the Program since the start of the 2024-25 school year.
- a. An annual IEP meeting was convened for Student #4 on October 22, 2024 (Student #4’s IEP). The IEP includes goals and SDI to address Student #4’s needs in the areas of Social Skills, Communication Skills, Motor Skills, Life Skills, Reading, Mathematics, and Behavior. Student #4’s IEP does not include an accommodation related to additional adult support but does have accommodations for both a Toilet/Hygiene Protocol and a Safety Plan.
 - b. Student #4 has a Safe Feeding Protocol dated September 20, 2024 and revised on October 17, 2024. According to this protocol, Student #4 requires “staff supervision at a reasonable distance to monitor for intake.” The protocol also notes that “A sub may supervise [them] during meals.”
 - c. Student #4 has a Toileting and Personal Hygiene Protocol dated October 21, 2024. The protocol requires that “[Student #4] is taken to the bathroom with 1:1 support due to elopement from bathroom if staff is assisting a peer.”
 - d. Student #4 has a Safety Plan dated October 23, 2024. According to the Safety Plan, when outside of the classroom, “An adult staff member should be within arm’s length of [Student #4] during transitions and [they] should be closely supervised on the playground.”
11. Student #5: This Student is six years old and is eligible for special education under the category of ASD. They have been placed in the Program since the 2023-24 school year.
- a. An annual IEP meeting was convened for Student #5 on October 7, 2024 (Student #5’s IEP). The IEP includes goals and SDI to address Student #5’s needs in the areas of Social Skills, Communication Skills, Reading, Mathematics, Writing, and Life Skills. Student #5’s IEP does not include an accommodation related to additional adult support. Student #5 does not have a Safety Plan, BSP, or Toileting and Personal Hygiene Protocol.
12. Student #6: This Student is five years old and is eligible for special education under the category of ASD. They were placed in the Program for the 2024-25 school year but exited the Program due to a change of placement on January 7, 2025, which was the first school day following the winter break.
- a. An annual IEP meeting was convened for Student #6 on November 6, 2024 (Student #6’s IEP). The IEP includes goals and SDI to address Student #6’s needs in the areas of Reading, Writing, Mathematics, Social Skills, Communication Skills, Life Skills, and Behavior.

Student #6's IEP includes an accommodation for, "Extra adult support and monitoring during less structured times to allow for reminders, and reteach in context, when needed." According to the IEP, the accommodation for extra adult support was provided for sixty minutes per day.

13. At the start of the 2024-25 school year, six students (Students #1-6) were enrolled in the Program. The classroom was supported by one teacher, one behavior coach, and three educational assistants (EA #1-3), for a total of five full-time staff members.
14. At Student #6's November 6, 2024 IEP meeting, it was decided that Student #6 would transition to a less restrictive placement in their district of residence. The IEP team projected that Student #6 would transition fully out of the Program by the beginning of January 2025, after the conclusion of winter break.
15. On December 5, 2024, the Teacher was notified that one of the EAs in the Program would also be moved to another classroom after winter break. On December 12, 2024, EA #3 was informed that they would be the staff member that was relocated to another school. The decision to remove an EA from the Program was based on Student #6's planned transition to another placement, reducing the number of students in the Program from six to five. According to the Assistant Director, the Program had been over-staffed by one adult prior to Student #6's transition out of the class. The reduction of staff after winter break brought the Program into alignment with the staffing formula and with other similarly-situated classrooms operated by the ESD.
16. As of January 7, 2025, five students were enrolled in the Program with four full-time staff supporting the classroom including the Teacher, Behavior Coach, EA #1 and EA #2. In addition, students in the Program were supported throughout the week by related service providers including a speech-language pathologist (SLP), SLP assistant (SLPA), occupational therapist (OT), adapted physical education teacher (APE), physical therapist (PT), behavior specialist (BCBA), and teacher mentor (Mentor).
17. On January 8, 2025, the Teacher emailed the Supervisor and Director regarding concerns with the reduction of staff in the Program. The Teacher shared that they were not able to maintain a ratio of two students per one adult during staff lunches and breaks. The Teacher expressed concerns about student safety and described several potentially unsafe incidents from the previous day, including that Student #2 ran into the kitchen where there were hot ovens, Student #5 balanced unsafely on a stool, Student #3 "narrowly missed being kicked in the head" when walking too close to the swings, and Student #5 had "a piece of foam removed from the back of [their] throat."
18. On January 13, 2025, the Behavior Coach submitted a Safety Concern Report with the ESD. The Behavior Coach reported:

"I am deeply concerned about our ability to keep our kids safe. Today alone, [Student #4] eloped from the playground 4x, even with someone giving [them] 1:1 support. [Student #2] eloped from playground as well. [Student #3] aimed and threw [their] iPad at [Student #4] 6x. We have multiple students who have documented pica behaviors and all five of our

students are 1:1 in the bathroom. [Student #1] requires occasional 2:1 support. We have documented several incident reports related to the concerns in our classroom, including elopement out into the street, and hitting a staff member in the head so hard that [they] went home concerned about a concussion.”

“With the staffing we have, we are not in compliance with our students documented IEP minutes. We have two 100% 1:1 students (Student #1 and Student #2), which means that we can either keep two adults with the remaining three students and not take breaks or go out of ratio so we can get breaks. There have been multiple instances of staff being left alone with 3-4 students, including Student #1. I have had to leave a substitute alone in the cafeteria with 3 students to chase after an eloper. Our classroom is not safe, and we need help.”

19. On January 13, 2025, the Director of the Program submitted a response to the Safety Concern Report. According to the response, “Additional staffing is being considered,” but “Staffing alone will not be sufficient to achieve the desired outcomes for the classroom.” The Supervisor listed “several other essential factors that need to be in place to create a supportive, safe, and effective learning environment.” The listed factors included, 1) Robust and differentiated IEPs, 2) Effective scheduling, 3) Clear roles and responsibilities for staff, and 4) Training in complex behaviors.
20. In response to the Safety Concern Report, the ESD provided the following additional staff support to the Program beginning January 14, 2025:
 - a. Full-day on-site administrative support by the Supervisor;
 - b. Full-day on-site support by a retired teacher who previously taught in the Program (Retired Teacher), to include coaching, modeling of instructional practices, assistance with scheduling, and communication strategies.
21. When asked why the ESD provided the Supervisor and Retired Teacher to support the Program, rather than assigning an additional EA, the Assistant Director explained that they did not believe an additional EA was truly going to help the classroom. According to the Assistant Director, the Program staff had struggled with managing the class prior to the reassignment of EA #3. They believed that the Program needed “higher skills staff in there that could help them get a schedule, get some classroom management, get appropriate engagement to practice and teach SDI.” The Assistant Director further shared that none of the itinerant staff who have been deployed to support the Program, including the Supervisor, Retired Teacher, BCBA, or Mentor, have expressed to them that the Program needs an additional staff member.
22. The Supervisor was placed in the Program full-time from January 14, 2025, through the date of the Complaint. Their assigned role was to observe the classroom and take behavioral data to help determine what additional supports may be needed. When interviewed, the Supervisor shared that it became apparent to them during this time that there were systems that needed to be put in place in the classroom to assist staff in successfully addressing student behavior. In particular, the Supervisor observed that the Program needed a

consistent schedule, a system for collecting data, and guidance for substitutes on how to support the Students.

23. The Retired Teacher was assigned to the Program for full days, beginning January 14, 2025. They were included in the staff schedule as an additional EA and directly supported students throughout the day, as well as covered breaks and lunches for other staff. After four to six weeks, the role of the Retired Teacher shifted to primarily support the Teacher with organization, preparation of instructional materials, scheduling and staff management. They continued to be available, however, to assist with students as needed. While the ESD requested that the Retired Teacher be present in the classroom each school day, the Retired Teacher was not willing to work every day. Between January 14, 2025 and January 31, 2025, the Retired Teacher was in the classroom for ten school days. A substitute teacher was provided on two of the days that the Retired Teacher was not present. Beginning in February 2025, the Retired Teacher provided full-day support in the classroom two to three days per week and a substitute teacher or EA, if available, was assigned to the Program on the days that the Retired Teacher was not there.
24. When interviewed, the Retired Teacher shared that they observed many instances when there were not enough regularly-assigned Program staff members present to support the students in the Program, but that it was a result of the Program's "organic staffing system" and ineffective scheduling. They attempted to provide suggestions to the Teacher for how to better manage the classroom, but the Teacher did not appear to want any support and was resistant to making any of the changes suggested by the Retired Teacher. The Teacher wanted the Retired Teacher to spend their time in the classroom supporting students, rather than assist with the Teacher's professional development. The other staff in the Program, however, were often resistant to having the Retired Teacher support the students. They would decline the Retired Teacher's assistance and make comments such as, "[The ESD administrators] think we can do it ourselves, so let's just let it fall apart," in an attempt to prove that the class could not be managed with four staff members. The Retired Teacher added that, over time, the EA's became more open to accepting their assistance, but the Teacher continued to reject the strategies and suggestions that they offered. In the Retired Teacher's opinion, the challenges in the Program are due to "structure and scheduling issues" and not because there are not enough adults in the classroom.
25. In addition to the above, the ESD provided additional support by the APE teacher four days per week, beginning January 27, 2025, support from the Mentor one day per week, and additional support from an SLPA and the BCBA.
26. The Mentor is scheduled to be in the Program once per week for two hours. Their primary role is to support the Teacher with tasks such as completing special education paperwork, creating class schedules, and developing systems for data collection, as well as support the Teacher's "social and emotional well-being." The Mentor has heard staff in the Program express that they would like an additional EA assigned to the classroom. Based on their time in the classroom, the Mentor believes that the Program is "well-staffed" and has not witnessed anything to cause concern about staff or student safety. The Mentor believes that many of the concerns about adequate staffing can be addressed through more thoughtful

scheduling, particularly by scheduling staff breaks during times when the students are engaged in activities, or when there are related service providers in the classroom working with the students.

27. When interviewed, the BCBA shared that they began supporting the Program in November 2024 after the behavior specialist who was previously assigned to the Program left the ESD. They are typically in the classroom for one half-day each week. During those times, they provide behavior skills training and coaching to staff. This includes observation, modeling behavior strategies with the Students, and providing feedback to staff. The BCBA also conducts assessments during their time in the classroom and provides hands-on support to the Students when needed, such as taking Students to the bathroom and accompanying them to the playground. In addition to the weekly classroom visits, the BCBA consults regularly with the Behavior Coach, conducts training with the classroom staff on data collection and implementation of the Students' BSPs, and attends monthly "classroom team meetings" that focus on the specific needs of each individual classroom. The BCBA also conducts Functional Behavioral Assessments and develops and reviews BSPs and Safety Plans.
28. When asked whether the Program has sufficient staff to meet the needs of the Students, the BCBA replied, "Yes and no." They explained that the ratio of four staff to five students "makes sense" but, in reality, there are "a lot of variables" to consider when working with students with this high level of need. While they are not "gravely concerned" about the students' safety, they could imagine a number of scenarios where one staff member is on break, one staff member is in the hallway with Student #2, and another staff member is either taking a student to the bathroom or chasing after a student who has eloped. In those situations, one adult could be left with three students, including Student #1, which causes them concern because Student #1 requires "constant attention and redirection" from a staff member who is focused on them. At the same time, however, they shared that there are a number of strategies that could be used to minimize these concerning scenarios, such as strategic scheduling of staff breaks and modifications to the environment. Given the high needs of the students in the Program, and the fact that one staff member is required to be outside of the classroom to supervise Student #2 for most of the day, the BCBA expressed that the Program "would benefit" from having more than four staff assigned to the classroom. The BCBA noted that, since the return from winter break, the Supervisor and the Retired Teacher were in the classroom to provide additional adult support.
29. When interviewed, the Behavior Coach described the students in the Program as "high needs" with "lots of behaviors" including physical aggression and elopement. They shared that the Program had sufficient staff at the beginning of the 2024-25 school year, but that one of the EAs had been moved to a different school the day before winter break. Since that time, there had been an "alarming number of safety issues" and the remaining Program staff were not able to meet the needs of the students while also taking their required breaks and lunch period. The Behavior Coach noted that the Supervisor had been in the classroom for the previous four weeks and described "multiple times" when they had to leave one of the students who required one-to-one adult support with the Supervisor in the classroom. They expressed concern that students were getting hurt in the Program and described a time when

they left for a break and returned to find one of the students “screaming in the corner and bleeding.”

30. The Behavior Coach shared their understanding that “the appropriate ratio” for the Program is one staff member for two students. If one staff member is designated for Student #1, a second is designated for Student #2, and a third is on a break, then the remaining staff member will be responsible for three students, which puts the class “out of ratio.”
31. During an interview, the Behavior Coach further described an incident referenced in the Safety Concern Report when a substitute teacher had been left in the cafeteria with three students. At that time, one of the EA’s was transitioning Student #1 back to the classroom and another staff member was on a break. Student #4 ran out of the cafeteria and the Behavior Coach ran after them, leaving the substitute with the three remaining students, including Student #2 who requires one-to-one adult support.
32. The Behavior Coach described another incident on or around February 2025 when they were the only adult present with Student #1, Student #2, and Student #3. Student #2 was in the hallway, so the Behavior Coach was “stuck in the doorway” hoping that Student #1 and Student #3, who were in the classroom, weren’t “going to kill each other.” When asked where the other three staff members were, the Behavior Coach replied that one was on a lunch break, one was taking a student to the bathroom, and they could not recall where the other staff member was during that time.
33. The Behavior Coach expressed specific concern about recess time because, in addition to Students #1 and #2 requiring one-to-one support, Student #4 will elope if a staff member is standing more than an arm’s length away from them on the playground. If one of the staff members is on a break during recess, and three of the students require one-to-one support, then there is not an adult to supervise the remaining two students. When asked if staff could arrange their breaks so that all four could be present during recess, they replied that they had tried that at the suggestion of the Supervisor, but the new schedule was “a complete upheaval” of the previous schedule and the students had difficulty adjusting to the changes.
34. In a second interview, when asked how often there were significant safety concerns as a result of staffing levels, the Behavior Coach shared that, “the significant stuff . . . doesn’t happen very frequently.” There is a fear, however, that one staff member will be alone with three students whose behavior escalates at the same time. When asked what the protocol is if such a crisis occurs, the Behavior Coach stated that all staff have walkie talkies that can be used to call one another for assistance.
35. When interviewed, the Assistant Director confirmed that the staff carry radios so that they can be contacted if a situation arises where they are needed. They added that, if a staff member has to return to work during a break, the ESD will compensate them for that time.
36. Other staff also described specific incidents when they felt that the number of adults was not sufficient to meet the needs of the Students in the Program. When interviewed, EA #1 described a day when both the Teacher and EA #2 were out ill. The Behavior Coach was in the hallway with Student #2, and EA #1 described being “solely responsible” for the remaining

four students, although the Supervisor and a substitute were also present in the classroom. Student #1 had a behavioral incident, which triggered Student #3 to become escalated and attack Student #4. EA #1 described the substitute as unhelpful because they were afraid of the students and indicated that the Supervisor did not intervene until the EA requested their assistance.

37. During interviews, when staff were asked whether Student #1 received the adult support required by their IEP during the time period of the Complaint, they responded as follows:

- a. The Behavior Coach shared that Student #1 has received consistent one-to-one adult support “for the most part”. There is “always someone” who is Student #1’s “primary person” who is responsible for them, although “there have been times” when another Student is left with Student #1 and their designated staff member because “there’s no other option right now.”
- b. EA #1 stated that Student #1 “always has somebody” supporting them but they are concerned that the Students #3-#5 don’t receive adequate attention, particularly when a staff member is on a break.
- c. EA #2 described the potential for one staff member to be in the hallway with Student #2, one staff member taking Student #3 to the bathroom, and one staff member on break, which would leave the remaining staff member alone in the classroom with Students #1, #4 and #5. During those times, Student #1 would not be provided with one-to-one adult support. When asked how that would be addressed, EA #2 conceded that in those situations, they would probably wait until a staff member had returned from their break before taking one of the students to use the bathroom.
- d. According to the Teacher, during times when staff are taking students to the bathroom, Student #1 is with one adult and two additional students “probably four days out of five.”
- e. The BCBA confirmed that Student #1 requires one-to-one adult support throughout the day, with frequent staff switches so that adults working with them don’t “get burned out.” During their time in the classroom, the BCBA has observed that Student #1 has received consistent one-to-one adult support.

38. During interviews, when staff were asked whether Student #2 received one-to-one adult support, as required by their IEP, they responded as follows:

- a. Both the Behavior Coach and EA #1 reported that Student #2 consistently has one-to-one support out of necessity because they are almost always outside of the classroom.

39. During interviews, when staff were asked whether Student #4 received the adult support required by their IEP, they responded as follows:

- a. The Behavior Coach shared that staff are typically able to be within arm’s length of Student #4 during transitions and recess. Often this is accomplished by having Student #4

and another student ride in a wagon during transitions, which is a preferred activity for Student #4.

- b. EA #2 reported that Student #4 is not always “closely supervised” on the playground as required by their Safety Plan. When asked under what circumstances Student #4 would not be “closely supervised” EA #2 explained that staff may have to attend to another Student who is having a behavior or, if there is a substitute, Student #4 will often run from the substitute.

- 40. When asked how staff know which students they are responsible for throughout the day, the Behavior Coach shared that they “built kind of an outline of a schedule at the beginning of the year” that is written on a spreadsheet, but that the class has a “very organic routine” rather than a strict schedule. Often staff will switch which student they are working with based on the preference of the student for a particular staff member during any given time. In addition, staff will sometimes need to change assigned roles throughout the day if one of them is unable to continue managing a student’s behavior.
- 41. From the start of the 2024-25 school year through the date of the Complaint, the Supervisor and the Director made frequent and concerted attempts to assist the Teacher in developing a schedule that would allow staff in the Program to both meet the needs of the Students and take required breaks during the day. This included training for teachers on expectations for classroom schedules in August 2024, professional development on schedule development in October 2024, multiple meetings with the Teacher to discuss the importance of having an established classroom schedule, and the provision of a full-day substitute to the Teacher in January 2025 to allow the Teacher to complete development of a classroom schedule.
- 42. On January 22, 2025, the Supervisor provided the Teacher with a suggested classroom schedule that would allow staff to take required breaks while still meeting any requirements for adult support in the student’s IEPs. They asked the Teacher to share the suggested schedule with the Program staff get their input.
- 43. When interviewed, the Supervisor explained that they proposed scheduling staff breaks during times when the students are most successful and engaged, such as when eating in the cafeteria or during “morning meeting.” They made sure not to schedule staff breaks during recess because the Teacher and staff had expressed concern about student elopement on the playground. After providing the proposed schedule, however, staff informed the Supervisor that student safety at recess actually wasn’t a concern and that they “felt fine” taking breaks during that time.
- 44. On January 23, 2025, the Teacher informed the Supervisor that they had consulted with the EAs and the Behavior Coach and decided not to use the sample schedule and would, instead, revert to the Teacher’s previous schedule. The Supervisor offered to work with the Teacher on reducing the number of transitions in the proposed schedule, but the Teacher informed them that the staff had decided to revert to their previous schedule.
- 45. When interviewed, the Behavior Coach shared that they did not utilize the schedule proposed by the Supervisor because “it’s not reasonable” and contains too much information to

process throughout the day.” Similarly, EA #2 shared that the proposed schedule did not have the flexibility that the Program requires, and that it would be challenging to implement something that was “so specific and organized.”

46. The Teacher reported that they attempted to implement the Supervisor’s schedule for one day, but the students had difficulty with all of the changes to their familiar schedule. When they consulted with the BCBA, the BCBA advised that they only make one or two changes to the schedule at a time.
47. When interviewed, the Supervisor explained that, if a schedule is followed with fidelity, there should not be a time when one staff member is left alone with three students. The Supervisor acknowledged that situations could arise when staff would need to deviate from the schedule, such as if a student elopes, and one staff member could be left briefly with three students, but that this should not be a typical occurrence. To mitigate these situations, the Supervisor worked with the Teacher to schedule related service providers to be in the classroom on different days throughout the week, so that there would be an extra adult available should something unexpected occur. The Supervisor also noted that Student #2 leaves early each day, which frees up their designated one-to-one adult to support the other students in the afternoon.
48. On February 11, 2025, the Complainant filed this Complaint.

IV. DISCUSSION

When IEPs Must Be in Effect

The Complainant alleged that the ESD violated the IDEA by not providing special education and related services, specifically adult support, in accordance with the IEPs of students enrolled in the Program.

School districts, including ESDs, must provide special education and related services to a student with a disability in accordance with the student’s IEP.³ The ESD 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.⁴ “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.”⁵

An ESD violates the IDEA when it materially fails to implement an IEP.⁶ “A material failure occurs when the services a school provides to a disabled child fall significantly short of the services required by the child’s IEP. Minor discrepancies between the services provided and the services called for by the IEP do not give rise to an IDEA violation.”⁷

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

⁴ OAR 581-015-2220; 34 CFR §300.323

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

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

⁷ *Id.*

The Complainant's allegation regarding insufficient adult support is specific to the time period from January 7, 2025 to February 11, 2025. To support their allegation, the Complainant and other staff in the Program described several times when a single staff member was responsible for more than two students, putting them "out of ratio" with the two-to-one staffing ratio that is standard for the Program. The Program staff, including the Complainant, also described incidents when a single staff member would be left alone with Student #1 and another student, when Student #1's IEP requires that they have one-to-one adult support. Finally, one staff member reported that Student #4 was not always closely supervised on the playground.

Only three of the students' IEPs mandate a specific level of adult support during the school day. Student #1 and Student #2 require one-to-one adult support for the entirety of their day, and Student #4 requires one-to-one adult support when using the bathroom, an adult within arm's length during transitions, and close supervision on the playground. Student #3's IEP and Student #5's IEP do not require a specific level of adult support. The Complainant's argument that one staff member can never be alone with more than two students because it puts them "out of ratio" is misplaced. The two-to-one staffing ratio is a guideline used by the ESD to allocate staff to the Program. It is not intended as a mandate that there always be no more than two students with one staff member during the school day. The level of support that an individual student requires is dictated by their IEP, not by the ESD's staffing guidelines.

When interviewed, EA #1 reported that Student #2 consistently receives one-to-one support as required by their IEP. At one point during the interview, the Behavior Coach described an incident when they had to stand in the doorway so that they could supervise Student #2 in the hallway and two other students in the classroom. The Behavior Coach had difficulty recalling, however, what other staff were doing during that time and why they were the only adult in the classroom. Later in the interview, the Behavior Coach reported that Student #2 consistently had one-to-one support, out of necessity, because they would not come into the classroom.

Staff gave inconsistent reports regarding Student #4 and whether they received the adult support required by their IEP. Only EA #2 reported that Student #4 did not always receive close supervision during recess. The examples given by EA #2 included non-specific instances when staff might be attending to another student, thus not watching Student #4, and instances when a substitute was supervising Student #4 and they ran from the substitute. The fact that Student #4 ran from a substitute does not establish that they were not closely supervised. EA #2 also gave no more than a vague explanation as why other staff members could not have assisted in supervising Student #4 during the time that one of the staff was assisting another student.

Staff also gave inconsistent reports regarding Student #1 and whether they received the adult support required by their IEP. The Behavior Coach, EA #1, and the BCBA indicated that, in general, Student #1 consistently had one-to-one adult support. The Behavior Coach and EA #2 described occasional brief instances when the adult assigned to Student #1 also had to supervise an additional student, particularly if a staff member needed to take another student to the bathroom. The Teacher, however, reported that one adult was responsible for Student #1 and two additional students "probably four days out of five."

Overall, the Investigator did not find reports that the students in the Program did not receive the adult support required by their IEPs to be credible. There were significant inconsistencies between staff members when describing the level of adult support provided to each student in the Program. Further, the allegations in the Complaint are specific to the time period from January 7, 2025 to February 11, 2025. During almost the entirety of that period, the Supervisor and the Retired Teacher were assigned to the Program, as well as numerous other itinerant support staff who were in the classroom throughout the week. Several of the occasions when staff purported to have supervised multiple students on their own, there were other adults in the classroom. For instance, EA #1 described being “solely responsible” for four students on one occasion, but then acknowledged that the Supervisor and a substitute teacher were also in the room. Similarly, the Behavior Coach complained of numerous occasions when they had to leave a student who required one-to-one support with the Supervisor so that they were able to take a break, but it is unclear how this was a violation of the student’s IEP.

At baseline, the Program has four full-time adults supporting five students. In the afternoons, after Student #2 leaves for the day, there are four adults supporting four students. It is possible that four staff members would not be able to provide the level of adult support required by the Students’ IEPs. The question to be resolved by this investigation, however, is not whether it would be hypothetically possible to implement the Students’ IEPs, but whether the IEPs were, in fact, implemented during the time period relevant to the Complaint. The Program staff suggested that, during the week of January 7, 2025, there may have been occasional and brief incidents when Student #1 did not have one-to-one support, such as when a staff member had to take another student to the bathroom. There was not, however, clear evidence of any specific incident when this actually occurred or that such an incident would amount to more than a minor discrepancy in implementation of Student #1’s IEP. Beginning January 14, 2025, just one day after learning of safety concerns in the Program, the ESD placed the Supervisor in the Program full time and provided significant additional adult support including the Retired Teacher, substitute teachers, the Mentor, and other itinerant staff. Given this level of staffing it is not plausible that, after January 14, 2025, the students in the program failed to receive the adult support required by their IEPs.

The Department does not substantiate this allegation.

Free Appropriate Public Education

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

A school district, including an ESD, is responsible for providing a free appropriate public education to school age children with disabilities for whom the school district is responsible.⁸ 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

⁸ OAR 581-015-2040(1); 34 CFR §300.101(a)

the state educational agency; 3) Include an appropriate preschool, elementary school, or secondary school education; and 4) Are provided in conformity with an IEP.⁹

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.¹⁰ 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.¹¹

In this case there were no findings of procedural or substantive violations of the IDEA, accordingly there was no denial of FAPE.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION

*In the Matter of Clackamas Education Service District
Case No. 025-054-009*

The Department does not order corrective action in this matter.

Dated: this 11th Day of April 2025



Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: April 11, 2025

⁹ OAR 581-015-2040; 34 CFR §300.17

¹⁰ *Endrew F.*, 137 S.Ct. at 999

¹¹ *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992)

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).)