

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of)	FINDINGS OF FACT,
Salem-Keizer School District 24J)	CONCLUSIONS,
)	AND FINAL ORDER
)	Case No. 25-054-014

I. BACKGROUND

On March 6, 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 Salem-Keizer School District 24J (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 complaint.¹ This 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.²

On March 18, 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 April 1, 2025.

The District submitted a *Response* on April 1, 2025. In its *Response*, the District did not contest two allegations, denied the remaining allegations, provided an explanation, and submitted documents in support of the District's position. The District submitted the following relevant items:

1. District's Written *Response* to Complaint, 4/1/25
2. Table of Contents, 4/1/25
3. Individualized Education Program (IEP), 6/2/23
4. Special Education Placement Determination, 6/2/23
5. Notice of Team Meeting, 5/28/23
6. Prior Notice of Special Education Action (PWN), 6/2/23
7. Meeting Notes, 6/2/23
8. Functional Behavior Assessment (FBA) and Behavior Support Plan (BSP), 5/29/24

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. IEP, 1/15/25
10. Comprehensive Behavior Intervention Plan (BIP), 1/15/25
11. Safety Plan, undated
12. IEP, 5/29/24
13. Draft IEP, 5/29/24
14. Authorization to Use and/or Disclose Educational and Protected Health Information, 3/3/24
15. Consent for Individual Evaluation, 1/24/25
16. Authorization to Use and/or Disclose Educational and Protected Health Information, 2/3/25
17. Medical Statement, 4/11/22
18. Notice of Team Meeting, 9/10/24
19. Notice of Team Meeting, 1/7/25
20. Notice of Team Meeting, 1/28/25
21. Notice of Team Meeting, 1/30/25
22. Notice of Team Meeting, 3/4/25
23. Notice of Team Meeting, 11/4/24
24. Special Education Placement Determination, 9/10/24
25. Special Education Placement Determination, 2/5/25
26. Speech/Language, Hearing Screening Results Form, 9/25/24
27. Consent for Assessment and Screening, 9/9/24
28. Notice of Team Meeting, 5/29/24
29. Draft IEP Snapshot, 5/29/24
30. Functional Behavior Assessment Consent Form, 5/3/24
31. Conference Summary, 9/10/24
32. Conference Summary, 1/30/25
33. Conference Summary, 2/5/25
34. Meeting Notes, 5/29/24
35. PWN, 1/15/25
36. PWN, 1/30/25
37. PWN, 2/5/25
38. PWN, 2/12/25
39. PWN, 9/13/24
40. PWN, 9/15/24
41. PWN, 5/30/24
42. Daily Attendance Profile, 2024-25 school year
43. Student's Cumulative File, various dates
44. Emails, 8/2024-3/2025
45. Special Ed Student Contact Log, 3/19/25
46. Observation Notes, 3/7/25-3/19/25
47. Student Discipline Profile, 2024-25 school year
48. IEP Amendment, 3/12/25
49. Conference Summary, 3/12/25
50. Special Education Placement Determination, 3/12/25
51. PWN, 3/12/25

52. Restraint & Seclusion Parental/Guardian Incident Notification, 10/10/24
53. Restraint & Seclusion Parental/Guardian Incident Notification, 10/9/24

On April 16 and 17, 2025 the Complaint Investigator interviewed District personnel. The Complaint Investigator contacted the Parent via email and telephone on March 12, 14 and 17, 2025 requesting an interview with the Parent, but did not receive a response. The Complaint Investigator contacted the Parent again on April 17, 2025 and scheduled an interview for April 21, 2025, but the Parent did not appear at the scheduled time and did not request to reschedule the interview. Virtual interviews were conducted instead of on-site interviews. The Complaint Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The 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 March 7, 2024 to the filing of the Complaint on March 6, 2025.

Allegations	Conclusions
<p>When IEPs Must Be in Effect</p> <p>The Complaint alleged that the District violated the IDEA by not providing special education and related services in accordance with the Student's IEP. Specifically, the Student was not provided with an educational placement for approximately two weeks during a transition between schools. In addition, the District failed to inform the Student's teacher of their specific responsibilities for implementing the Student's IEP.</p> <p>(OAR 581-015-2220; 34 CFR § 300.323)</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>
<p>Least Restrictive Environment</p> <p>The Complaint alleged that the District violated the IDEA by failing to include the Student in the general education setting in accordance with their IEP. Upon transitioning to a new school, the Student was removed from general education for 100% of their school day when their IEP required that they be removed from the general education setting for only 60% of their school day.</p>	<p>Not Contested</p> <p>The District does not contest this allegation.</p>

Allegations	Conclusions
(OAR 581-015-2240; 34 CFR § 300.114)	
<p>Placement</p> <p>The Complaint alleged that the District violated the IDEA when it failed to provide the Student with an educational placement in the least restrictive environment. The District placed the Student in the “EGC Program” when the Student could have appropriately been placed in an “LRC Program.”</p> <p>(OAR 581-015-2250; 34 CFR § 300.116)</p>	<p>Not Substantiated</p> <p>The Student’s placement in the EGC Program is appropriate and is in the least restrictive environment.</p>
<p>Free Appropriate Public Education (FAPE)</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>Not Substantiated, in part Not Contested, in part</p> <p>The District does not contest that it failed to implement the Student’s IEP for a period of time during a transition between schools and removed the Student from general education for more time than is indicated in their IEP.</p> <p>The Student’s placement in the EGC is appropriate, so there is no denial of FAPE as to the Student’s placement.</p>

REQUESTED CORRECTIVE ACTIONS

The Complainant requests that the District:

1. Implement the Student’s IEP correctly without discrimination and hold the school responsible for denial of FAPE.
2. Provide the Student with one-to-one support staff to help the Student make up for the general education content that they missed.

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 March 7, 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 is diagnosed with attention-deficit/hyperactivity disorder (ADHD) and is eligible for special education under the category of Other Health Impairment (OHI).
3. On or around August 14, 2024, the Student was placed by the Oregon Department of Human Services (DHS) in the home of the Parents, within the boundaries of the District, and enrolled at an elementary school in the District.
4. On August 20, 2024, the Student's previous school district provided the District with a copy of the Student's educational records. Although the Student was eligible for special education, the records did not include a copy of the Student's IEP.
5. The Student began attending school in the District on September 4, 2024, which was the first day of the 2024-25 school year. The Parent provided the District with a copy of the Student's IEP from their previous school district on September 5, 2024 and requested an IEP meeting to discuss what supports the Student needs. The IEP provided by the Parent is dated May 29, 2024 and is marked as a "draft" (May 29, 2024 IEP).
6. According to the May 29, 2024 IEP, the Student has academic needs in reading and writing. They exhibit behaviors when completing reading and writing assignments which impede the Student's progress in those areas. In the area of behavior, the Student "shows a need in emotional regulation, being kind to [their] peers, and following instructions." "The challenging behaviors [the Student] most frequently expresses are being verbally aggressive, physically aggressive, and throwing objects." The May 29, 2024 IEP includes goals and specially designed instruction (SDI) to address the Student's needs in the areas of Reading, Written Language, Self-Management, Behavior, and Social Skills.
7. The Parent also provided the District with a copy of a Special Education Placement Determination from their previous school district, dated May 29, 2024 (May 2024 Placement Determination). According to the Placement Determination, the IEP team considered the placement of "General education with push-in support" but rejected that option because it "lacks adequate structure and behavioral support." The IEP team also rejected the placement of "General education with push-in and/or pull-out support" because it "does not fit [the Student's] needs at this time." The IEP team selected the placement option of "General education with program level of support outside of general education classroom" because it will provide the Student with "more intensive individualized instruction," "specific behavior monitoring," and "fewer transitions."

8. The District convened an IEP meeting for the Student on September 10, 2024 to discuss the Student's recent move into the District (September 2024 IEP). According to the Meeting Minutes, the IEP team reviewed the Student's May 2024 IEP and agreed to "accept the IEP" with some revisions. The IEP team revised some of the Student's goals and accommodations, added consultation between the general and special education teachers, and transferred the revised portions of the IEP to the District's IEP forms.
9. The September 10, 2024 IEP includes, among other things:
 - a. Goals:
 - i. Reading/Language Arts: Given a first-grade level reading passage, the Student will read 47 or more correct words per minute with 90% accuracy in 3 out of 4 opportunities.
 - ii. Written Language: Given the support of a graphic organizer, the Student will write or type one full 3-5 sentence paragraph on a preferred topic including a main idea and at least 1 detail and scoring at least 90% on correct word sequences.
 - iii. Self-Regulation: Given a daily schedule, opportunities for breaks and rewards, the Student will follow their schedule and complete their classwork with 80% accuracy in 4 out of 5 school days.
 - iv. Behavior: Given a schedule and clear expectations, the Student will remain in the correct location or request an alternative setting/option and maintain a safe body 100% of the school day in 4 out of 5 school days.
 - v. Social Skills: Given instruction on social skills and relationship building, the Student will implement one strategy to initiate play, ask social questions or make social bids for connection to build relationships with peer[s] in 4 out of 5 social interactions.
 - b. Specially Designed Instruction:
 - i. Behavior for 30 minutes per week;
 - ii. Written Language for 60 minutes per week;
 - iii. Self-Regulation for 60 minutes per week;
 - iv. Social Skills for 30 minutes per week;
 - v. Reading/Language Arts for 60 minutes per week.
 - c. Extended School Year Services (ESY): The Student does not qualify for ESY services.
 - d. Accommodations: Flexible seating; Access to snacks; Flexible breaks for regulation; Preferential seating near positive peer models and away from door; Writing supports (sentence starters, frames and/or graphic organizers); Speech-to-text for final draft written assignments; Scheduled breaks to support regulation; Adult assistance during SDI and transition periods for supervision and instructional support; Behavior intervention plan; Graduated warnings of transitions or changes in schedule/routine; Daily verbal

communication about the Student's day with weekly written review; Sensory tools to support regulation; Alternate methods to demonstrate mastery of materials.

- e. Supports for School Personnel: Consultation between general education and special education staff for 60 minutes per year.
 - f. Non-Participation Justification: "[The Student] may be removed from the general education classroom for up to 240 minutes weekly . . . to receive specially designed instruction in reading, math, self-management, behavior, and social skills."
10. According to a Special Education Placement Determination dated September 10, 2024, the Student's IEP team considered placements in "A combination of general education and special education with services inside of general education 40-79% of the day" and "Access to special education in, or outside of the general education setting for up to 20% of the school day." The first placement was selected, and the placement page further describes that the Student will "participate in the general education classroom 40-79% of the school day with small group instruction from special education staff in a resource room setting and/or across school environments from staff trained in supporting [their] unique needs."
11. In the District, placement in general education with support from the resource room is also referred to as the Learning Resource Center Program (LRC Program).
12. The District provided the Parent with PWN, dated September 13, 2024, which details the decisions made at the September 10, 2024 IEP Meeting. Additionally, it notes that a behavior intervention plan (BIP) was developed by the Student's previous school district but was not attached to the Student's IEP. The PWN further notes that, if the Student's educational records, when received, do not include a copy of that behavior plan, then one will be developed.
13. The District school where the Student attended at the start of the 2024-25 school year has a full-time behavior team that consists of a Behavior Specialist, an instructional assistant known as a "Behavior Cadre," and the School Counselor (Behavior Team).
14. When interviewed, the Student's third grade general education teacher (Teacher) shared that the Student began to exhibit disruptive behaviors on the second day of the 2024-25 school year. They were unable to stay in the classroom for longer than fifteen minutes at a time before running out the door. The Teacher was concerned about the Student's safety when they left the classroom and always carried a radio so that they could call the Behavior Team to find the Student and return them to class. This pattern continued for the entire day. When in the classroom, the Student walked around the classroom talking to other students while the Teacher was attempting to teach. Over time, the Student became physically aggressive, kicking the Behavior Team staff and screaming. It often took multiple staff members to keep the Student in the classroom. During the time that the Student was in their class, the Teacher shared that the Student was so disruptive that they were unable to teach, and the other students were unable to learn.

15. According to the Teacher, the Student was eventually directed to an unused classroom across the hall when they were unable to remain in the general education classroom. When in the vacant classroom, the Student worked with an online math program and played games on the computer with the support of an instructional assistant or a member of the Behavior Team. According to the Teacher, the Student spent less than thirty minutes per day in the general education classroom. When asked about the provision of SDI to the Student, the Teacher recalled that special education staff attempted to provide services to the Student in the LRC, but the Student refused to go. In the Teacher's opinion, the Student required more support than the LRC program could provide.
16. In August 2024, the Behavior Specialist learned that the Student would be enrolling in the District at the start of the school year. According to the Behavior Specialist, the Parents informed staff that the Student had an IEP, but did not have any behavior needs. Upon meeting the Student, the Behavior Specialist quickly realized that "[their] needs were a lot more intense than we had been led to believe." The Student's behavior was so significant that someone from the Behavior Team needed to support the Student for nearly the entire school day. This included always having a staff member outside the door of the classroom due to the frequency that the Student ran from class. When the Student left the classroom, they would "run throughout the school" and engage in unsafe behaviors such as running up and down flights of stairs and "jumping over railings."
17. According to the Behavior Specialist, the Student spent approximately one to two hours in the general education setting at the start of the 2024-25 school year but spent less and less time in the classroom as the year progressed. The Student was taught to use a break card when they needed to leave class and would either go to the LRC, or the vacant classroom across the hall. When in the LRC, the Student was successful if they were working one-to-one with an adult but would become physically or verbally aggressive if another student was in the classroom. The Student spent much of the day in the classroom across the hall with an adult from the Behavior Team. An adult from the Behavior Team also accompanied the Student to recess each day. During recess, the Student was observed to "target" some peers, was aggressive with peers, and engaged in sexualized behavior. As a result, the Student started attending recess with older students, out of concern for the safety of their same-age and younger peers.
18. When asked why the Student's IEP team placed them in the LRC Program at the September 10, 2024 IEP Meeting rather than a placement with more supports, given the intensity of their behavior, the Behavior Specialist recalled that the IEP team did not know the Student well at that point and relied on the information in the IEP from the Student's previous school district when determining an appropriate placement. That IEP, however, did not reflect the significant behavioral needs that the District observed as the school year progressed.
19. Approximately three weeks after the start of the school year, the Behavior Specialist contacted the Student's case manager at their previous school district to learn more about the behaviors the Student exhibited during the prior school year. The previous case manager informed the Behavior Specialist that the Student had significant behavior difficulties,

required an adult with them at all times, “was in fight or flight all day long,” and spent time in a quiet room when escalated due to concern for other students’ safety.

20. Between September 2024 and October 2024, the Student was disciplined for the following incidents:
- a. 9/13/24: Fighting, Physical Attack;
 - b. 9/19/24: Minor Physical Contact/Physical Aggression;
 - c. 9/20/24: Physical Altercation;
 - d. 9/20/24: Physical Attack, Disruptive Behavior;
 - e. 9/24/24: Minor Inappropriate Physical Contact;
 - f. 10/3/24: Minor Property Misuse;
 - g. 10/4/24: Physical Attack, Disruptive Behavior;
 - h. 10/9/24: Disruptive Behavior, Physical Attack, Obscene Language or Behavior;
 - i. 10/10/24: Sexual Harassment, Physical Attack, Obscene Language or Behavior, Unauthorized Entry, Disruptive Behavior;
21. On October 14, 2024, the Behavior Specialist and other District staff met with the Parents, the Student’s outside mental health therapist and the Student’s DHS Case Worker to discuss concerns regarding the Student’s behavior at school. At this meeting, the Student’s Case Worker shared that this was the first time they heard about the Student’s difficulties at their new school. After the meeting, the Behavior Specialist forwarded behavior data to the Case Worker for their review. Another meeting was convened later in October 2024, and the District learned that the Student’s outside mental health therapist referred the Student to a Day Treatment program operated by the District in conjunction with a mental health provider (Day Treatment).
22. The Student started attending Day Treatment on November 12, 2024. While in Day Treatment, the Student was in a classroom with approximately three students and three adults, including both educational and mental health staff. According to the Day Treatment Principal and Case Manager, the Student was able to attend to schoolwork for approximately five minutes before needing a “movement break.” As a result, the Student followed an individualized schedule with frequent breaks to engage in gross motor activities, which helped the Student regulate their behavior. The Student required significant supports, including one-to-one instruction from an adult and modified curriculum due to academic needs.
23. The Student’s IEP team met on January 15, 2025 to update the Student’s IEP to “reflect the level of need” observed at Day Treatment and determine a placement for the Student upon their discharge (January 15, 2025 IEP). According to the Present Levels of Academic Achievement and Functional Performance section of the IEP, the Student “continues to demonstrate lagging skills in several areas of social emotional learning. [The Student is] slow to shift during transitions, struggles to maintain healthy friendships, often misunderstands social situations and does not possess the appropriate coping skills to maintain safety in the school setting.” “Care should be taken when transition is being made to a less structured setting.”

24. When describing how the Student's disability affects their involvement in the general education curriculum, the January 15, 2025 IEP states, "[The Student] requires all academic tasks to be modified for length and complexity. [They] will benefit from an environment with smaller class size, clear expectations, higher staff to student ratios, and SDI in social emotional competencies. Opportunities to practice and slowly push into gen[eral] ed[ucation] with supports will be most successful for [the Student], allowing [them] to build on success." The IEP includes that the Student will receive modified curriculum for English/Language Arts, Math and Writing, as well as modified grading.
25. A BIP was developed for the Student in January 2025, while attending Day Treatment, and is attached to the January 15, 2025 IEP. According to the BIP, the Student's "Target Problem Behaviors" include running from staff, running out of the classroom, pushing/kicking furniture, making noises during instruction, and refusing to participate or complete academic work. Additionally, the Student "can become physically aggressive toward staff and other students when escalated and upset." The BIP includes a Safety Plan that details how to manage the Student should they engage in unsafe behavior, such as "pushing furniture, flipping chairs, destroying classroom/school property," eloping from school, or becoming physically aggressive with other students or staff.
26. According to PWN dated January 15, 2025, the District did not believe that returning to the LRC Program would be appropriate for the Student and proposed to place the Student in the "Life Skills" or "Emotional Growth Center" (EGC) Program to "better support [their] needs." The PWN document notes that the Parent "refused placement" but would visit a Life Skills classroom and a follow-up meeting would be held.
27. When asked to describe the difference between the LRC and EGC Programs, the District's Special Education Coordinator (Coordinator) explained that a case manager of an LRC Program has 30-40 students on their caseload and is supported by one or two instructional assistants. An EGC, however, has approximately 10-12 students and approximately 4 instructional assistants. As a result, the students in the EGC Program have more support. In addition, the EGC Program is highly structured and is designed to provide social/emotional support, while the LRC is designed to primarily address academic needs. Another Special Education Coordinator (Coordinator #2) added that an EGC Program is considered a "more restrictive setting" than the LRC because students in the LRC are assigned to a specific general education teacher, while students in the EGC are not assigned to a particular class and the EGC teacher is considered the "teacher of record."
28. The Student's IEP team met again on January 30, 2025 (January 30, 2025 IEP Meeting) to consider additional assessment of the Student, discuss safety concerns, and determine the Student's educational placement. As reflected in the Meeting Minutes, the IEP team agreed to conduct updated evaluations of the Student in the areas of behavior, occupational therapy, communication, and intellectual functioning.
29. When discussing placement at the January 30, 2025 IEP Meeting, the Student shared that they did not want to be placed in a "separate classroom" because it was "annoying", and they feared being triggered by the behavior of other students in the class. The Parent shared that

the Student had not been successful in the LRC at their previous District school because of a teacher vacancy in the LRC classroom, and that the behaviors observed at Day Treatment were not seen when the Student attended school in the previous school district. The Parents discussed their visit to a Life Skills classroom, but felt it was “too far” and wanted the Student to be placed in the LRC at their school of residence. The IEP team did not determine the Student’s placement at the meeting and agreed to reconvene at a later date.

30. When asked about the “teacher vacancy” in the LRC Program, the Behavior Specialist recalled that there was a short period of time at the start of the 2024-25 school year when there was not a consistent teacher in the LRC. By the end of September, however, there were two consistent LRC teachers that provided SDI to the Student. In their opinion, the lack of a consistent LRC teacher at the start of the school year was not the cause of the Student’s behavior difficulties.
31. When interviewed, the Day Treatment Principal and Case Manager recalled discussing the Student’s placement at the January 30, 2025 meeting. They were concerned that the Student’s academic levels were too low for the EGC Program, which typically serves students who are near grade-level, but that the Student’s social skills were too advanced for the Life Skills Program. They did not believe that the LRC would provide the level of support that the Student required.
32. According to PWN dated January 30, 2025, the Parents requested that the Student be placed at their neighborhood school, but the District “does not believe the proper supports are available at [the] home school to support [the Student].” The IEP team “discussed the pros and cons of Life Skills versus Emotional Growth Center,” and the Coordinator “will look at EGC programs.”
33. The Student’s IEP team reconvened on February 5, 2025 (February 5, 2025 IEP Meeting) to continue discussion about the Student’s placement after discharge from Day Treatment. As reflected in the Meeting Minutes, the Coordinator stated that, “The first discussion will be the percentage of the day that [the Student] will be spending in Gen. Ed. before an actual program is identified.” Day Treatment staff shared that the Student “needs very short work times for focus” and is significantly below grade level. While they had seen some progress during the first six weeks at Day Treatment, they were currently “seeing a significant backslide.” The Student’s behavior continued to increase, engaging in “property destruction” and behavior “requiring holds.” The Student did not show that they had acquired the skills to manage their behavior while at Day Treatment.
34. When asked why they wanted to discuss the percentage of time the Student would spend in general education, prior to identifying a program, the Coordinator explained that a special education placement “is not a place, it’s a service.” They believe that the first step in determining a student’s placement is to identify the amount of time they will spend in general education, and then select a program where the IEP can be implemented.
35. As reflected in the Meeting Minutes from the February 5, 2025 IEP Meeting, the Student’s IEP team reached “an impasse” regarding an appropriate educational program but agreed

that the Student would be placed in the general education setting for 40-79% of their school day. The Day Treatment Case Manager noted that “this percentage in an EGC setting would perhaps set [the Student] apart.” The Coordinator indicated that they would “do [their] best” to locate a placement for the Student and the Parents requested that the EGC at a particular school “not be considered due to an outside conflict.”

36. When interviewed, the Day Treatment Principal and Case Manager recalled that, at the February 5 2025 IEP Meeting, they believed that the Student required the level of support offered by the EGC, and that placement in an LRC would not be appropriate. They noted that students in the EGC are typically in the general education setting for less than 40% of their school day and had reservations that the Student could be successful in general education for 40-79% of their day. The Case Manager indicated that they agreed with the additional time in general education as a compromise with the Parents, and so a program location could be identified prior to the Student’s discharge from Day Treatment.
37. According to a Special Education Placement Determination dated February 5, 2025, the Student’s placement is “A combination of general education and special education with services inside of general education 40-79% of the day.” The Placement Determination further indicates that the Student will “receive support in both gen[eral] ed[ucation] and special ed[ucation]” with “percentages flexible to accommodate [their] tolerance and day to day coping skills with gen[eral] ed[ucation] setting.”
38. The Student was discharged from Day Treatment on February 7, 2025. As of that date, the District had not yet identified which school the Student would attend.
39. The District provided PWN to the Parent, dated February 12, 2025, indicating that the Coordinator notified the Parent via telephone on February 10, 2025 of “a school Emotional Growth Center location” for the Student. Additionally, the PWN included an offer of compensatory education for the Student of Extended School Year (ESY) services “for missed school days during the transition from [Day Treatment] to the community school building,” but noted that the Parents declined the offer of compensatory services.
40. The Student began attending the EGC Program at an elementary school within the District on February 19, 2025.
41. According to the EGC Teacher, the EGC Program is designed to serve students who primarily have behavior and social/emotional needs. Students are placed in the EGC because the general education classroom does not meet their needs, and they are not making progress in that setting. Students in the EGC are included in the general education setting to the extent determined by their IEP team and in accordance with an “inclusion plan.”
42. When the Student started in the EGC, the EGC Teacher recalled that the Student was very anxious with a high activity level and poor impulse control. They were often running through the classroom, while being very loud and disruptive. When the EGC Teacher saw the Student’s IEP, indicating that they were to be in the general education setting for 40-79% of the school day, they described being “confused.” Typically, when a new student joins the EGC, they are placed in the special education setting for more than 60% of their school day and are not

included in general education until they are “settled.” Once that occurs, an IEP meeting is convened to discuss a plan for inclusion.

43. On February 20, 2025, the EGC Teacher sent an email to Coordinator #2 inquiring as to whether an instructional assistant had been approved to assist with the Student’s transition. They noted that the Student “is very appropriately placed” in the EGC, and “has already displayed a significant need for full support (has left the gym without permission, needs full support to understand the schedule, and completely modified curriculum. I see none of the behavioral indicators needed for successful mainstream).” They added that the Student’s “impact on the classroom is huge” and that the EGC Teacher needed “additional resources.”
44. In an interview, when asked to further explain the impact the Student had on their classroom, the EGC Teacher shared that the Student was “becoming escalated, running, making aggressive comments” such that staff had to conduct “room clears.” While they described the Student as challenging, the EGC Teacher shared that the Student “is well served in an EGC” and “fits in my class.” They added that the Student “loved the EGC from day one” and doesn’t want to leave the classroom.
45. When asked how they responded to the EGC Teacher’s concerns about the Student’s ability to be in general education for more than 40% of their day, Coordinator #2 shared that the Student was “significantly dysregulated” when they started in the EGC and that the District’s priority was to make sure the Student was stable in their new placement before introducing them to the general education setting. Accordingly, the Student was not initially included in the general education classroom as described in their IEP.
46. On March 5, 2025, the EGC Teacher exchanged emails with the Coordinator #2 regarding an upcoming IEP meeting for the Student. They shared their opinion that the Student “is an EGC student, totally,” “even brief contact with gen[eral] ed[ucation] peers have been a problem,” and that the Student “needs full adult support, all day long.” The EGC Teacher also expressed, “I am really hoping we don’t get pressured to put the student in mainstream, the longer I have [them], the more I realize how inappropriate that placement would be at this time.”
47. On March 6, 2025, the Parent filed this Complaint.

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 in accordance with the Student’s IEP. Specifically, the Student was not provided with an educational placement for approximately two weeks during a transition between schools. In addition, the District failed to inform the Student’s Teacher of their specific responsibilities for implementing the Student’s IEP.

The District does not contest this allegation.

Least Restrictive Environment

The Parent alleged that the District violated the IDEA by failing to include the Student in the general education setting in accordance with their IEP. Upon transitioning to a new school, the Student was removed from general education for 100% of their school day when their IEP required that they be removed from the general education setting for no more than 60% of their school day.

The District does not contest this allegation.

Placement

The Parent alleged that the District violated the IDEA when it failed to provide the Student with an educational placement in the least restrictive environment. The District placed the Student in the “EGC Program” when the Student could have appropriately been placed in an “LRC Program.”

School districts must ensure that, to the maximum extent appropriate, students with disabilities are educated with students who do not have a disability. The IDEA requires that education in special classes, separate schooling, or other removal of students with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes, even with the use of supplementary aids and services, cannot be achieved satisfactorily.³ This mandate is referred to as the requirement that a student be placed in the Least Restrictive Environment (LRE).

Each school district must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services. The continuum of placements must include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. Further, the continuum of placements must allow for the provision of supplementary aids and services to be provided in conjunction placement in a regular classroom.⁴

The educational placement of a student with a disability shall be determined by a group of persons, including the parents and other persons knowledgeable about the student, the meaning of the evaluation data and the placement options. The decision regarding placement must be based on the student’s IEP, determined at least once per year, and be as close as possible to the student’s home. Unless the student’s IEP requires some other arrangement, the student must be educated in the school that they would attend if not disabled.⁵

In considering the LRE for a student, placement teams may apply a four-factor balancing test which considers: 1) the educational benefit to the student of placement in a regular education

³ OAR 581-15-2240; 34 CFR § 300.114

⁴ OAR 581-015-2245; 34 CFR § 300.115

⁵ OAR 581-015-2250; 34 CFR § 300.116

setting, 2) the non-academic benefit to the student of such a placement, 3) the impact of the placement on the teacher and the other students in the regular education setting, and 4) the costs associated with the placement.⁶

In this case, after three IEP meetings, the District and the Parents were at an impasse as to the appropriate placement for the Student following their discharge from Day Treatment. The Parents believed that the Student's needs could be met in the LRC Program at their school of residence, while the District did not believe that the LRC provided sufficient special education supports to meet the Student's needs. Instead, the District proposed placement in the EGC Program as it would provide the Student with a smaller setting, a higher ratio of staff to students, and more robust behavioral supports than the LRC. Notably, the EGC placement that the District proposed for the Student included 40-79% of the Student's day in general education. This is the same percentage of time in general education that was part of the Student's placement in the LRC at the start of the 2024-25 school year. Thus, the only factor that makes the EGC placement "more restrictive" is that the proposed class is located at a school that is not the Student's school of residence.

While the Parents asserted that the Student had previously been successful in the LRC, the evidence does not support that claim. When the Student was placed in the LRC at the start of the 2024-25 school year, the Student had significant behavior difficulties that prevented them from staying in the general education classroom and accessing the curriculum. There was no evidence that the Student received either academic or other educational benefit from the LRC placement. In addition, the Student's presence significantly and negatively impacted both the teacher and the other students in the general education classroom, making it difficult for any learning to take place. The Student was also disruptive in the LRC classroom and across campus, demanding a remarkable amount of attention from the Behavior Team and other school staff.

When the Student was placed in Day Treatment, they had difficulty regulating their behavior so that they could remain in the classroom even with the intensive special education supports that are included in a Day Treatment setting. Neither District staff nor the Day Treatment staff believed that the LRC would provide the social/emotional and behavioral supports that the Student required to successfully transition back to a regular elementary school. Given the Student's well-documented difficulties in the LRC Program at the start of the 2024-25 school year, and the Student's continued need for intensive behavioral supports as they transitioned out of Day Treatment, the EGC Program was an appropriate placement for the Student. The Student's continued behavior challenges since being discharged from Day Treatment confirm that the EGC Program is an appropriate placement for the Student.

The Department does not substantiate this allegation.

Free Appropriate Public Education

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

⁶ *Sacramento City Sch. Dist. Bd. Of Educ. V. Holland*, 14 F.3d 1398 (9th Cir. 1994)

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.⁷ 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.⁸

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.⁹ 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.¹⁰

The District did not contest that the Student's IEP was not in effect for a portion of time or that the Student's placement was not in accordance with the placement determined by the IEP team. Accordingly, the Department does not make a substantive determination as to those allegations. However, a district violates the IDEA when it materially fails to implement a student's IEP. "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." The court noted further that, "[t]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been a significant shortfall in the services provided. For instance, if the child is not provided the reading instruction called for and there is a shortfall in 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."¹¹

In the current matter, the investigation determined the EGC Program to be an appropriate placement. Although the Student spent more time outside of the general education environment than the IEP team had originally contemplated, this resulted from the Student's ongoing needs. Therefore, although not in accordance with the placement determination, this failure to implement the placement determination does not constitute a material breach of the IDEA nor a denial of FAPE in this matter.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION

⁷ OAR 581-015-2040(1); 34 CFR §300.101(a)

⁸ OAR 581-015-2040; 34 CFR §300.17

⁹ *Endrew F.*, 137 S.Ct. at 999

¹⁰ *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992)

¹¹ *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9th Cir. 2007)

In the Matter of Salem-Keizer School District 24J
Case No. 025-054-014

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

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 implementing IEPs on: a. The District's responsibility to implement the IEPs of special education students; and b. The District's responsibility to include students in general education as required by their IEPs.	Training agenda and materials to ODE for review and approval. Sign-in sheet from training.	June 30, 2025 October 31, 2025
2. The District will convene an IEP meeting with the Parent to determine appropriate compensatory education services for the time that the Student's IEP was not implemented from the date of the Student's discharge from Day Treatment until the date the Complaint was filed.	A written plan for delivery of compensatory education developed at an IEP meeting with the Parent. Evidence showing that compensatory services were provided.	June 30, 2025 October 31, 2025

Dated: this 5th Day of May 2025

Ramonda Olaloye

Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: May 5, 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).)