

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of
Scappoose School District

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 25-054-024

I. BACKGROUND

On April 29, 2025, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Scappoose School District (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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

On May 2, 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 May 16, 2025.

The District submitted a *Response* on May 15, 2025, denying the allegations, providing an explanation, and submitting documents in support of the District's position. The District submitted the following relevant items:

1. District's Written *Response* to Complaint, 5/15/25
2. Table of Contents, 5/15/25
3. District's Timeline, 3/12/24 – 4/29/25
4. Staff Contact Information, 5/15/25
5. Prior Written Notice (PWN), 3/12/24
6. Statement of Eligibility (OI), 3/12/24
7. Physical Therapy Assessment Report, 3/6/24
8. Consent for Evaluation, 3/12/24 (signed 3/21/24)
9. IEP Meeting Notes, 3/12/25

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

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

10. Notice of Team Meeting on 3/12/24, 2/12/24
11. PWN, 6/6/24
12. IEP Meeting Notes, 6/6/24
13. Statement of Eligibility (DHH), 6/6/24
14. Statement of Eligibility (OHI), 6/6/24
15. Statement of Eligibility (VI), 6/6/24
16. Statement of Eligibility (DD), 6/6/24
17. Occupational Therapy Evaluation Report, 6/6/24
18. Psychoeducational Evaluation Report, 5/30/24
19. Functional Vision and Learning Media Assessment Report, 5/30/24
20. Individualized Education Program (IEP), Amended 6/6/24
21. Email exchange between Parent and District, 8/30/24
22. PWN, 9/30/24
23. Special Education Placement Determination, 9/30/24
24. IEP, 9/30/24
25. IEP Meeting Notes, 9/30/24
26. Notice of Team Meeting on 9/30/24, 8/30/24
27. Email from Case Manager to Parent, 9/30/24
28. Email exchange between Parent and District, 3/18/25 – 4/10/25
29. PWN, 4/10/25
30. IEP Meeting Notes, 4/10/25
31. Service Log (OT), 9/26/24 – 1/23/25
32. Service Log (Vision), 10/9/23 – 6/6/24
33. Service Log (SLP), 9/26/24 – 3/17/25
34. Service Log (AAC), 10/9/23 – 4/17/25
35. Service Log (PT), 9/26/24 – 2/28/25
36. Home instruction Attendance and Service Log, 9/3/24 – 4/4/25
37. 10-Day Drop email, 4/24/25
38. Attendance Records, 9/3/24 – 4/22/25
39. School Calendar, 2024-25 school year
40. Email exchanges between Parent and District, 9/5/23 – 4/10/25

The District provided the following additional documents on June 13, 2025:

1. IEP Progress Report, 2/3/25
2. Report Card, January 2025

The Complaint Investigator interviewed the Parent, other family members, and the Student's County Caseworker on May 29, 2025. On June 6, 2025, the Complaint Investigator interviewed District personnel. 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 April 30, 2024, to the filing of this Complaint on April 29, 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.</p> <p>(OAR 581-015-2220; 34 CFR § 300.323)</p>	<p>Not Substantiated</p> <p>There was no material failure to implement the Student’s IEPs.</p> <p>The District was required to drop the Student from enrollment after ten days of consecutive non-attendance. The District had no obligation to provide services to the Student while on vacation or after the Student was unenrolled.</p>
<p>Free Appropriate Public Education (FAPE)</p> <p>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</p> <p>There is no evidence that the District failed to provide the Student with a free appropriate public education while the Student was enrolled in the District.</p>

REQUESTED CORRECTIVE ACTION
<ul style="list-style-type: none"> • Continue to receive online education until the Student moves in June. • Compensatory services to make up for services missed.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department’s receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before April 30, 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 six years old and attended first grade during the 2024-25 school year.
2. The Student is currently eligible for special education services under the eligibility categories of Other Health Impairment (OHI), Deaf or Hard of Hearing (DHH), Vision Impairment (VI), and Orthopedic Impairment (OI).
3. The Student has a complex medical history, including diagnoses of spastic quadriplegic cerebral palsy, genetic abnormality, gastrostomy tube dependence, global developmental delay, seizure disorder, glaucoma, and hearing loss, among others.
4. The Student received Early Childhood Special Education Services starting in July 2021.
5. The Parent and the Student moved to the District in August 2023, living with the Student's Grandparent. The Student's other Parent (Parent 2) and Step-Parent live in eastern Oregon, several hours away.
6. The Parent reported the Student is medically fragile and has always had home instruction. The Student never attended a District school in-person.
7. The District reported the Parent requested home instruction when they moved to the District. The Parent declined all the District's offers for the Student to attend school in-person for any portion of the school day.
8. In an October 16, 2023 email exchange with the District, the Parent stated they "prefer people to work hands on with [the Student] as [the Student] really doesn't get much from a virtual tutor or therapies. So we prefer in person as long as they are aware to take precautions and not come over on days where they have respiratory [*sic*] illnesses or knowingly been exposed to such."
9. The Student had the same District tutor (the Tutor) during the 2023-24 and 2024-25 school years. The Student received approximately five hours of home instruction per week. The Student's services were primarily provided in-person by the Tutor. Other service providers occasionally worked with the Student in the home setting or virtually.
10. The Parent and the Tutor developed the schedule for the Student's home instruction together. Both the Parent and the Tutor reported the schedule varied depending on the Student's health, alertness, and engagement level. Occasionally, a session was postponed because the Student was asleep, or cut short because the Student was unable to focus or participate. If the Tutor was sick, or had been exposed to someone who was sick, the Parent asked the Tutor not to come. The Tutor made up missed instruction time whenever their schedule allowed.
11. The Student lived with Parent 2, out of district, for approximately one to two weeks per month. Depending on the weather, some months the Student missed parenting time with

Parent 2 and would make up the time the following month. The Tutor provided the Student with virtual home instruction during the time they lived with Parent 2.

The Parent reported they never had a problem getting the Student's services moved to virtual instruction while staying with Parent 2.

12. In a December 5, 2023 email exchange with the District, the Parent reported, "[The Student] does visit [Parent 2] for a week or so at a time when weather is safe over the pass. During these time [*sic*] the ONLY availability [their Step-Parent] would have would be at 9am to 10am Monday through Friday. Again with that being said virtual learning is not engaging or well received by [the Student] and it may be something [the Student] will be unwilling to do in the future." The Parent reported the Student "has been able to stay engaged for about 1.5 hours at a time" recently with the District Tutor.
13. The Tutor reported virtual instruction was more difficult and the length of time the Student remained engaged was much shorter than with in-person instruction.
14. On June 6, 2024, the District convened a meeting to discuss the Student's three-year reevaluation and continued eligibility. The IEP team determined the Student was eligible for special education services under the categories of OHI, VI, and DHH.
15. The Student's June 6, 2024 Amended IEP (the June 2024 Amended IEP) included the following, among other things:
 - a. Special Factors: The Student is blind or visually impaired, has communication needs, is deaf or hard of hearing, needs assistive technology devices or services, and requires one or more specialized formats of educational materials because blindness or other disability prevents effective use of standard print materials.
 - b. Parent Concerns: The Parent prefers services to be provided at home, outside of the school setting, due to the Student's medical and health needs. "[The Student] uses an AAC device, [the Student] wears hearing aids... for mild to moderate hearing loss... has access to a gait trainer and [the Student] can take a few steps with support, [the Student] uses a wheelchair and is beginning to yes [*sic*] an eye gazer for communication."
 - c. Present Levels: all present levels "[t]aken from 8/31/22 IFSP."
 - d. Annual Goals: one goal each in the areas of Pre-academic (identify and differentiate between multiple options using multimodal communication); OT Fine Motor (demonstrate immature pincer grasp); Gross Motor (increase functional mobility); Expressive Communication (use a multimodal communication approach to communicate); and Receptive Communication (follow one-step directions using basic concepts).

"Progress reports will be sent out at regular primary report card grading times."

- e. SDI: Pre-academic (120 minutes per week) and Communication (90 minutes per month), all provided off campus.
- f. Related services: Physical Therapy (180 minutes per year), Audiology Service, (120 minutes per year), Occupational Therapy (260 minutes per year), all provided off campus. Under "Role Responsible for Monitoring," PT stated "Physical Therapy Consult" and OT stated "Occupational Therapy Consult."
- g. Consults: Speech Consult (30 minutes per month), AAC Consult (120 minutes per year), and Vision Consult (180 minutes per year).
- h. Accommodations/Modifications: none included.
- i. Non-Participation Justification: "[The Student] will received [sic] specially designed instruction for pre-academic goals for 120 minutes per week, expressive and receptive communication 45 minutes each per month provided by a virtual tutor or in person tutor for five hours per week under the direction of a special education teacher and the specialists outlined in this IEP."

"[The Parent] would like to have [the Student] remain at home and have [the Student] access home instruction through a home bound tutor. The district will provide tutoring in person if possible and provide a virtual option as a secondary provision of FAPE."

16. The District submitted a service log for vision services provided to the Student from September 9, 2023 to June 6, 2024. One entry, dated March 12, 2024, was for a 60 minute "In home consultation with team to discuss strategies the team can use with vision." A May 30, 2024 entry was for a 60 minute "In home Functional Vision Assessment." The remaining entries were for time attending IEP meetings (10/9/23, 90 minutes; 1/11/24, 60 minutes; and 6/6/24, 60 minutes).

The service log did not include any services for the 2024-25 school year.

2024-25 School Year

17. The Student started the 2024-25 school year as a first grader, with a new case manager (the Case Manager), physical therapist (the PT), occupational therapist (the OT), and speech language pathologist (the SLP).
18. A service log for the Augmentative and Alternative Communication (AAC) Specialist indicated approximately 275 minutes of consultation minutes were provided for the Student during the 2024-25 school year, not counting IEP meeting attendance. This included in-home, email, and virtual consultation time.

19. An August 29, 2024 AAC service note stated, “Teleconsult with [SLP]... briefed [SLP] on what speech looked like last year – consult-based, AAC specialist home visits 3-3x for the year, coordination with private SLP... [SLP] and I plan to advocate for [the Student] to attend in person speech services at school or provide a consult model if [the Parent] is not comfortable bringing [the Student] to the school environment. [SLP] to follow up with [Director]... to discuss what speech/AAC services will look like until [the Student’s] IEP meeting (9/30/24) as SDI minutes in communication were left on the IEP despite team agreeing to a consult model at prior IEP.”
20. On August 30, 2024, the case manager from the previous school year emailed the Parent and the rest of the Student’s IEP team to provide information about what services looked like the previous school year. “[The Tutor] went in person for 5 hours with hours that were more flexible to [the Student’s] needs. I would go monthly for home visits and check in as well as check in by email and cover time when [the Student] was with [Parent 2] out of the county.”
21. Although the first day of school was on September 3, 2024, the Student’s home instruction started on September 9, 2024.
22. The tutoring service log for the 2024-25 school year indicated approximately five hours of tutoring was provided to the Student per week from September 9, 2024 through April 4, 2025. The tutoring service log noted the following, in relevant part:
 - a. “[The Parent] reported that [the Student] will be with [Parent 2] in Eastern Oregon (Sept 2- 6th, 10/20-10/31, 11/24-12/31).”
 - b. The Student was “unavailable” during the first week of school because the Student was “At [Parent 2’s] house, tutor unavailable to offer services.” (D46)
 - c. From October 21 to November 1, 2024, services were “offered via Zoom at [Parent 2’s] (email noting that [the Student] can’t sustain longer).”
 - d. For the week of November 11 to 15, 2024, “[The Parent] requested no services this week due to student illness.”
 - e. For the week of March 10 to 14, 2025, “Zoom hours (at [Parent 2’s]) (3/12, 3/13 [Parent 2] had no access to Zoom- fewer tutor hrs [sic].”
 - f. For the week of March 17 to 21, 2025, “3/17 no access to Zoom at [Parent 2’s]” and “3/20 student asleep during the schedule[d] Zoom time.”
23. The District provided a service log for the SLP with entries dated September 12, 2024 to March 17, 2025, but it did not include the number of service minutes provided. The service log indicated the SLP consulted with the Tutor and the AAC Specialist, as well as one home visit.

24. The District provided a service log for the OT. It included three sessions listed as direct services provided to Student during the 2024-25 school year. These occurred on September 26, 2024 (45 minutes); October 17, 2024 (30 minutes); and January 23, 2025 (60 minutes). In addition, one entry was included as “consult” (30 minutes) for the September 30, 2024 IEP meeting. Not including the IEP meeting, the service log indicated the OT provided 135 of the 260 service minutes required by the Student’s IEP.
25. The District provided a service log for the PT with entries dated September 26, 2024 to February 28, 2025, all labeled as consult minutes. These occurred on September 26, 2024 (30 minutes, in-person co-visit with the OT, consulted with the Parent about current gross motor concerns and equipment needs); October 17, 2024 (30 minutes, in-person co-visit with the OT); October 31, 2024 (15 minutes, researched equipment); January 23, 2025 (45 minutes, in-person visit); January 30 (5 minutes, returned and checked out equipment); February 3, 2025 (15 minutes, updated progress notes); and February 28, 2025 (45 minutes, in-person visit). The service log indicated the PT provided all 180 service minutes required by the Student’s IEP.
26. On September 30, 2024, the District convened the Student’s annual IEP meeting.
27. The September 30, 2024 IEP (September 2024 IEP) included the following changes, in relevant part:
- a. Present Levels: updated information replaced the existing August 2022 IFSP information.
 - i. “[Director] asked about in person services for speech, music, etc[.] – parent declined. 9-30-24.”
 - ii. OT: “Services are provided in the home as opposed to in the public school setting due to medical fragility. Still getting to know [the Student] and [the Student’s] family... has a medical diagnosis of spastic quadriplegic cerebral palsy impacting global motor function.”
 - iii. PT: “[The Student] is currently a 1st grade student who is attending homeschooling with special education supports and is receiving physical therapy service as part of [their] IEP... continues to require total assistance for transfers from wheelchair to standing in gait trainer. Physical therapy service is recommended to continue for [the Student] for the next IEP cycle to continue to assist [the Student] in [their] homeschool environment and to address safety, access or participation concerns that may arise.”
 - b. Annual Goals: included new Preacademic, OT Fine Motor, Gross motor, and Expressive Communication goals. Receptive communication was no longer included as a goal area.
 - c. Accommodations: added black background behind working area; allow extra time for visual processing; use of back lighting, or light shown onto working surface; use high contrast or bright materials to gain visual attention.

- d. Modifications: added modified curriculum “100% of the time.”
- e. Support for School Personnel: added Hearing Consult (120 minutes per year).
- j. Non-Participation Justification: “[The Student] will received specially designed instruction for pre-academic goals for 120 minutes per week, expressive communication 90 minutes each per month provided by a virtual tutor for five hours per week under the direction of a special education teacher and the specialists outlined in this IEP. [The Student] will also receive 180 minutes yearly in physical therapy, 120 minutes yearly in audiology services, and 260 minutes yearly in occupational therapy.”

“[The Parent] would like to have [the Student] remain at home and have [the Student] access home instruction through a home bound tutor. The district will provide tutoring in person if possible and provide a virtual option as a secondary provision of FAPE.”

- 28. The District’s September 30, 2024 IEP meeting notes (“documentation of team meeting from – IEP”) included the following, in relevant part:
 - a. “Placement Reviewed... Homebound tutor - virtual and in-person.”
 - b. “[The Tutor] will work out schedule for when [the Student] is out of town... will meet with [the Student] on Zoom while [the Student] is with [Parent 2].”
- 29. The September 30, 2024 special education placement determination indicated that the IEP team selected “Homebound tutor to access specially designed instruction per the IEP, Virtual and or In person.” The benefits were listed as, “Placement in a setting that has worked in the past, may be less stressful for [the Student] and provide the best setting to receive services.” Possible harmful effects included, “No access to non-disabled peers and no access to the school environment.”
- 30. The District reported the Tutor worked with the Student on the pre-academic goal, as well as the communication goal, in consultation with the SLP and the AAC Specialist.
- 31. When asked about how they tracked progress data, the Case Manager reported they talked regularly with the Tutor about the Student’s pre-academic and communication goal. The Case Manager was not involved in the Student’s OT or PT services. The OT and PT communicated with the Case Manager about progress, but not as frequently. The Case Manager wrote the Student’s IEP Progress Report at the end of January, 2025.
- 32. The IEP Progress Report, dated January 30, 2025, included progress notes describing what the Student was working on but did not contain any measurable data, information corresponding with the goal criteria, or progress codes. The notes included the following information about the Student’s services, among other things:

- a. “[The Student] currently receives in-home school based PT services to support [their] Gross motor skill progression and to collaborate with [their] family, caregivers and educational assistant. [The Student] benefits from 1:1 adult support to assist [the Student] with [their] safety and mobility needs throughout [their] day and when performing school related activities.”
- b. “[The Student] receives SLP services in a consultative model, in which [the Student’s] SLP consults with [the Student’s] family members, tutor, school team, and AAC specialist to support [the Student’s] communication.”

33. On February 5, 2025, the Case Manager emailed the IEP Progress Report to the Parent.

34. In a February 7, 2025 email to the Parent, the Case Manager wrote, “I also wanted to clarify some details that have been pointed out or corrected on our end regarding home tutoring. Home tutoring is offered up to five hours a week. The provision of FAPE is offered through tutoring at a pre-scheduled and mutually agreeable time between you and the tutor. If [the Student] is sick or unable to participate in one of the scheduled times the tutor can try to make up that time within that week, if there is a mutually agreeable time on the school day. We are not obligated to make up the lost time if a scheduled session is missed due to the needs of the student. We can not [*sic*] tutor on non-school days and we can not [*sic*] tutor more than five hours a week.”

35. In a March 10, 2025 email to the Case Manager, the Tutor wrote, “[The Step-Parent] doesn’t have [Z]oom anymore.”

The Case Manager replied, “we can send them a link, it’s free to use.”

36. Parent 2 and the Step-Parent reported virtual services were provided through Zoom. At the beginning of the school year, the Step-Parent set up the virtual sessions through their work Zoom account. When Step-Parent no longer had access to a paid Zoom account, the Tutor started scheduling sessions with a free version of Zoom which limited the length of meetings to 40 minutes. Subsequently, while staying with Parent 2, the Student received 40 minutes of instruction, five days a week, rather than the full five hours per week.

The Step-Parent reported there were days when the Student could not attend all or part of a scheduled session because the Student or unable to engage for the full 40 minutes.

37. The Tutor reported they provided 40 minute sessions, five days a week, during this time because that was all they could do due to the limitations of Parent 2’s Zoom account.

The Tutor later stated 40 minutes was essentially equivalent to the maximum amount of time that the Student could handle for virtual sessions. The Tutor reported that when they used the Step-Parent’s unlimited Zoom account, the Student was usually able to participate for about 45 minutes.

38. In March the Parent made plans to move to Central Oregon, to a city in a different school district (the New District). The Parent contacted the New District to start the process of enrolling the Student for the 2025-26 school year and transferring the Student's IEP.
39. In a March 18, 2025 email to the Case Manager, the Parent notified the District that they would be "moving to a different county in June or July" and "need to start the process" of getting the Student's IEP transferred to the new district. The Parent noted, "[The Student] is at [Parent 2's] the next week and the last week of March [sic] [the Student] will be home, however all of April we will be on vacation in [another location] and be needing to do online with [the Tutor] that whole month. I know a meeting needs to happen for the transfer of [the Student's] IFSP [sic] so just trying to pre-plan everything.
40. The Case Manager emailed the Parent on March 19, 2025, stating, "Thank you for starting this conversation early so we can support a smooth transition for [the Student]. Once you register [the Student] at the new school, which likely can be done now for fall enrollment, they will contact us for records."
41. The Case Manager covered the Student's virtual services for one week in March while the Student was with Parent 2 and the Tutor was on vacation. In a March 21, 2025 email to the Tutor, the Case Manager reported the Student missed services on March 20, 2025 because the Student was napping during the scheduled time and the Case Manager was not able to reschedule. On March 21, 2025, the session ended early as "[t]hat was the amount of time that [the Student] could handle today. [Step-Parent] requested to end after 30 minutes today."
- The Tutor replied, "Yes sometimes [the Student] is just not feeling it... working with [the Student] for 2 years I know to switch to something [the Student] really likes. Sometimes I repeat a favorite book or video... [The Step-Parent] told me [the Student] will be going to [Parent 2's] 2 weeks a month."
42. The Student was with Parent 2 through spring break, then went on vacation with the Parent. The Student's virtual instruction continued while the Student was on vacation.
43. The Parent reported the purpose of the vacation was partially to be closer to the home they were buying in the New District while it was under construction. It was difficult to make the five-hour drive between their home in the District and the new home, especially given the Student's medical needs.
- The Tutor reported it was their understanding that the Parent could no longer stay with the Grandparent, therefore, the Parent was planning to stay in the town where the new home is located until they could move into the new home.
44. The Tutor reported receiving a text message from the Grandparent on March 29, 2025, asking the Tutor to come pick up the home instruction supplies because the Parent and the Student moved to the New District.

45. In a March 31, 2025 email to District staff, labeled as "***URGENT**," the Case Manager wrote, "[The Student] is moving... please make plans to pick up ANY ESD or [District] materials from their home ASAP. All physical equipment needs to be picked up ASAP."
46. In a March 31, 2025 email to the Case Manager, the Tutor reported the Director instructed them to "finish up this week" and "[the Director] will speak with [the Parent]."
47. The District continued to provide the Student with virtual home instruction through April 4, 2025.
48. The Parent reported they were not notified that virtual services were going to end. The Parent was not aware until April 4, 2025, when the Tutor mentioned it was their last day.
49. On April 4, 2025, the Parent emailed the Case Manager, the Tutor, the SLP, and the Director, writing, "[J]ust to confirm we are moving to [the New District] at the beginning of June, not before. We are currently on a vacation at [location] and will be back the last week of May to pack up the last of our stuff to move to [the New District] after our house closes. We will not be transferring school districts until June or until this coming school year in the fall."
50. An April 7, 2025 email exchange between the Parent, the Case Manager, the Tutor, and the Director, including the following information, among other things:
- a. The Director wrote, "I heard that you have moved out of the district and living [sic] in [location]. We received a records request from [the New District]. I wanted to let you know that [the District] no longer is able to provide tutoring services for [the Student] as [the Student] no longer lives in our attendance area. [The New District] has a school that could provide services for [the Student] in the interim. They may even consider hiring [the Tutor]."
 - b. The Parent responded, "We are not moving to [the New District] until June 2025[.] [The New District] sent the request in preparation for next year as transferring is a long process... We are still part of [the District] and [the County] even though we are on vacation. [The Student] does virtual when [the Student] goes to [Parent 2] for two weeks. I don't see any difference why [the Student] can't do it with us."
 - c. The Director wrote, "Once a student has not attended for 10 days, they are unenrolled; it is a state law, so there is no workaround for any of us on that one. When you return the last week in May, you can re-enroll [the Student] and [they] can attend during that time that you are residing in our district. It is a simple online process, so it should be relatively easy to take care of after your vacation."
 - d. The Parent responded, "[The Student] attended last Friday and has been doing school virtually so [the Student] has not missed more than 10 days yet." "The only way [the Student] is going to miss more than 10 days is if you guys do not schedule [the Student's]

online classes, which [the Student] is entitled to 5 hours a week. Right now the lasg [sic] few years [the Student] has done virtual and in-home tutoring. Virtual when [the Student] is away from home.” The Parent maintained that taking a vacation did not change their residency and their residence continue to be in the District until the Parent’s new home “finalizes in June.” “[The Student] is entitled to services thru [the District] until we move to [the New District] in June... all forms and records request for transfer to [the New District] are for next school year[.]”

- e. The Parent wrote, “[The District] is declining to continue education services for [the Student] for the rest of the school year... because we will be on vacation for approximately two months? We are willing to continue virtual lessons through the year as [the Student] always has when [the Student] goes to [Parent 2] for two weeks out of the month... I don’t understand at all why you guys are pulling [the Student’s] education services from [them] this week with no warning except from the tutor on Friday afternoon 4/4/25 right after our last class session.... All of our transfer paperwork to [the New District] specifies [the Student] will be transferring school districts in August for the 25-26 school year[.]”
- f. The Director reported they allowed the Tutor to “finish out the week.” The Tutor “brought all [their] supplies from [the Parent’s home] early last week and dropped them off in my office, stating that [the Student] was no longer living with [the Grandparent].”
- g. The Director suggested they convene an IEP meeting to discuss the issue and stated, “[I]t was my understanding from all of the information I received that you had moved. We do not typically provide school to students while they’re on vacation, and we do not provide education to students once they move out of our attendance area per state law.”

51. In an April 7, 2025 email, the Student’s County Coordinator for the Intellectual/Development Disabilities Program (the Coordinator) also replied to the Director, stating, “There seems to possible [sic] be some miscommunication somewhere. It is my understanding that [the Student] received and attended [their] homebound tutoring on Wednesday the 2nd, Thursday the 3rd and Friday the 4th. Is there some sort of tracking to confirm this with the person who does the homebound services before [the Student] is unenrolled while still actively attending class and needing [their] education through homebound services?”

Another County Coordinator also emailed the Director, stating the Student’s current IEP “clearly states that [the Student’s] SDI is to be provided by an in-home tutor at the home or virtually to provide Fape [sic].”

52. The Coordinator reported they were always told the Parent would be moving and changing residency in June. The Student’s county services would not be transferred to the new county until June.
53. The Case Manager emailed the Director on April 7, 2025, reporting they would “start marking [the Student] absent[.]”

54. In an April 8, 2025 email exchange between the Director and the District's Attorney, the District's Attorney wrote:

"You asked me about whether a school district is considered the resident district for situations where a parent is no longer residing at a home as a primary domicile/residence but maybe returning briefly to a home to wind up matters such as moving, collecting belongings etc. The answer is no: A Parent and student are considered resident at the home that is the parent's primary residence. If, for example, a parent has already purchased a property or has been asked to leave a prior property but may be returning briefly to wind up affairs or pick up personal belongings, that would not be the student/parent residence. Rather, the new home where the parent will be residing long-term (and the School district where that home is located) are considered the residence and resident school district for purposes of providing education.

Relatedly, a school district may but it's not obligated to provide educational services during holidays or breaks..."

55. In an April 10, 2025 email to the Parent, the Director sent the April 8, 2025 email response from the District's Attorney regarding residency and services.

56. On April 10, 2025, the District convened an IEP meeting to discuss the Student's services.

57. The District's April 10, 2025 meeting notes included the following:

- a. The April 8, 2025 email response from the District's Attorney regarding residency and services was copied into the notes.
- b. "[The Department] was also consulted and they instructed [the District] to follow guidance from [the District's] attorney."
- c. "Some members of the team were dissatisfied with the information presented."

58. The District issued Prior Written Notice (PWN) dated April 10, 2025, proposing to change the Student's provision of FAPE. The PWN stated, "[The Parent] is currently staying in [another location] and is on vacation for the months of April and May and the family will be moving to [the New District] next school year. [The Student] is not currently in [the District]... Email communications indicate they will only be returning to gather their belongings at the end of May." This action was based on "Residency Laws that dictate the provision of FAPE are the responsibility of the resident school district, which is located in [the new city]. Legal guidance provided to the district on this matter: if a parent has already purchased a property, the new home where the parent will be residing long-term (and the school district where the home is located) is considered the residence and the resident school district of the purposes of providing education." "[The District] is not legally responsible for the provision of FAPE based on residency laws... In addition, the district has been advised that they are not responsible for providing services while the family is on vacation."

59. The District reported the Student's last day of enrollment in the District was April 22, 2025. The Student was unenrolled after ten consecutive absences.
60. The District's attendance records for the Student listed "Absent Excused" and "Vacation" for April 7 to April 22, 2025.
61. On April 29, 2025, the Parent filed this Complaint.
62. The Director reported the following:
- a. The District's enrollment policy requires two pieces of mail to confirm a parent's address for proof of residency.
 - b. The District does not provide services when a student is on vacation. If a student is on vacation for ten days, the District is required by state law to drop the Student.
 - c. The Parent never made any attempt to reenroll the Student.
63. The Parent reported they were told by the District they needed to enroll for school in the district where they were on vacation or in the New District. However, the Parent could not enroll in either district because the Parent did not have residency.
64. The website for the New District stated proof of residency is required to register a student.
65. The Parent reported the following about their move to the New District:
- a. The house they were buying in the New District was gutted and being remodeled. The Parent was not allowed to move into the house until the sale closed on May 29, 2025.
 - b. The vacation home in the other location was owned by a distant family member. The Parent did not pay to stay there.
 - c. The Parent obtained a post office box in the New District at the end of May, 2025.
 - d. The Parent was planning on moving out of the Grandparent's home on June 6, 2025.

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.

School districts must provide special education and related services to a student with a disability in accordance with the student's IEP.³ The district must ensure that each staff member, including service providers, has access to a student's IEP and is informed of their specific responsibilities for implementing the IEP and the specific accommodations, modifications, and supports in accordance with 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

"IEP Teams must implement policies, procedures, and practices relating to... how a child's progress towards meeting annual goals will be measured and reported," to ensure that the district offers "an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."⁶ "IEP Teams should use the periodic progress reporting required [by the IDEA] to inform parents of their child's progress."⁷

There is no expectation that IEPs be implemented with perfection under the IDEA. "[A] district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided... and those required by the IEP."⁸

The IDEA defers to state law in establishing the educational responsibilities of school districts, such as determining residency.⁹ Under Oregon law, students are considered resident for school purposes in the school district in which their parents reside, even if the student is living outside the geographic area of the school district temporarily for reasons such as attending school, college, military service, hospital confinement, or employment away from home.¹⁰ The one exception is for legally emancipated students, who are considered residents in the district in which they actually reside, irrespective of the residence of their parents.¹¹ While this statute does not define "reside" or "resident," it indicates that the temporary presence in a different school district does not change the resident district.

"Resident" is defined in other areas of Oregon law. Under ORS 316.027 (personal income tax), a resident of the state means an individual who is domiciled in the state. OAR 150-316-0025 defines "domicile" as:

"[T]he place an individual considers to be the individual's true, fixed, permanent home. Domicile is the place a person intends to return to after an absence. A person can only have one domicile at a given time. It continues as the domicile until the person demonstrates an intent to abandon it, to acquire a new domicile, and actually resides in

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 Case Decision *Endrew F. v. Douglas County Sch. Dist.*, Re-1, 71 IDELR 68 (EDU 2017).

⁶ Q&A on U.S. Supreme Court Case Decision *Endrew F.*, 71 IDELR 68.

⁷ *Id.*

⁸ *Van Duyn v. Baker Sch. Dist.* 5J, 502 F3d 811, 815 (9th Cir. 2007).

⁹ *Los Angeles Unified School District v. Michael Garcia*, 741 F.3d 922, 928 (9th Cir. 2014).

¹⁰ ORS 339.133(2).

¹¹ ORS 339.133(3).

the new domicile. Factors that contribute to determining domicile include family, business activities and social connections.”

OAR 150-316-0025 further states, “A person is deemed to have a permanent place of abode even in rented premises, which he or she is free to leave at will, but from which the person has no present intent or desire to change.”

In this case there are two issues related to this allegation: (1) whether the District implemented the Student’s IEP during the time that the Student was enrolled in the District; and (2) whether the District was required to continue providing virtual services to the Student while they were at the other location.

(1) Whether the District implemented the Student’s IEP during the time that the Student was enrolled in the District.

There were two IEPs implemented during the complaint period, the June 2024 Amended IEP and the September 2024 IEP. The Student’s IEPs stated the Student would receive home instruction through a home bound tutor for five hours per week. It was unclear from the IEPs whether it was intended that virtual instruction be available exclusively when the Student was with Parent 2. Both IEPs stated, “The District would provide tutoring in person if possible and provide a virtual option as a secondary provision of FAPE.” While the nonparticipation justification in the June 2024 Amended IEP said SDI would be provided by a “virtual tutor or in person tutor,” the September 2024 IEP was changed to state SDI would be provided by a “virtual tutor.” However, the September 30, 2024 placement determination stated SDI would be provide by a tutor “Virtual and or In person.”

The District emailed an IEP Progress Report to the Parent on February 5, 2025. The Report described what the Student worked on for the annual goals but lacked measurable progress data. The District reported it sent an IEP Progress Report to the Parent in June 2024, however, a copy of the Report was not provided when requested.

While the District provided service logs, it is unclear to what extent service minutes were provided to the Student. Except for the speech consult (30 minutes per month), all related services and consultation services in the Student’s IEPs listed the total number of minutes to be provided for the year. Several service logs listed attendance at IEP meetings as consult minutes. The SLP’s service log did not record the number of minutes for any of the service entries. Some service logs indicated that the total number of related service and consultation minutes for the 2024-25 school year were not provided. However, because the Student was on vacation following spring break, was unenrolled on April 22, 2025, and did not complete the 2024-25 school year with the District, it is impossible to conclude that the Student’s service minutes would not have been completed by the end of the school year.

For part of March 2025, the Tutor did not provide the Student with the full five hours of tutoring per week because the Tutor was unable to schedule sessions over 40 minutes using a free Zoom account. However, the Tutor reported the Student was often unable to stay engaged

more than 40 to 45 minutes during virtual sessions. At times the family cancelled scheduled tutoring sessions or asked the Tutor to end sessions early. Regardless, during this time the District only offered the Student 3.3 hours of instruction per week instead of five. It is unclear why the District did not provide the Tutor with access to a paid Zoom account or other virtual meeting platform. Because this occurred for one or two weeks, the failure to offer the full five hours of instruction did not constitute a material failure to implement the Student's IEP. Likewise, while the District did not include measurable data in the progress report, this procedural failure does not constitute a material failure to implement the IEP.

A district violates the IDEA when it materially fails to implement an 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." As further explained by the court in *Van Duyn*:

"The materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been a significant shortfall in the services provided. For instance, if the child is not provided the reading instruction called for and there is a shortfall in the child's reading achievement, that would certainly tend to show that the failure to implement the IEP was material. On the other hand, if the child performed at or above the anticipated level, that would tend to show that the shortfall in instruction was not material."¹²

The Department does not substantiate this portion of the allegation.

(2) Whether the District was required to continue providing virtual services to the Student while they were in the other location.

The Parent stated the Student would be on vacation in another county through the end of May 2025, after spending spring break with Parent 2. The Parent had no intention of remaining in that location after the vacation. At the time, the Parent could not legally inhabit the house they were purchasing in the New District.

It is understandable that the Parent assumed the District would provide virtual services while on vacation in the same manner that services were provided when the Student stayed with Parent 2. However, the District (1) is not required to provide to provide students with services while a student is on vacation, and (2) is required by state law to unenroll a student after ten consecutive absences. Because the District had no obligation to provide the Student with services during this time and appropriately unenrolled the Student on April 22, 2025 as required, the issue of the Parent's residency while on vacation is moot.

The Department does not substantiate this portion of the allegation.

Free Appropriate Public Education (FAPE)

¹² *Van Duyn v. Baker Sch. District*, 5J, 502 F3d 811 (9th Cir. 2007) ("Van Duyn")

The Parent alleged that that the District failed to provide the Student with a free appropriate public education.

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.¹³ In order to determine whether a student has been denied a FAPE, the courts review a district's compliance with the procedural and substantive components of the student's education. Reviewing courts must inquire whether the school district complied with the procedural requirements of the IDEA, and whether the school district met the substantive requirement to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.¹⁴

Not every procedural error is sufficient to rise to a denial of FAPE.¹⁵ The procedural test consists of three pivotal procedural errors: (1) whether the student suffers a loss of educational opportunity;¹⁶ (2) whether the parent's right to participate in the IEP process was infringed;¹⁷ or (3) whether the procedural error caused a "deprivation of educational benefit."¹⁸ Procedural errors rise to the level of a denial of FAPE where, absent the errors, there is a "strong likelihood" that alternative educational possibilities for the student "would have been better considered."¹⁹

There is no evidence that the Student suffered any loss of educational opportunity while enrolled with the District during the 2024-25 school year. While school districts cannot place a limit on homebound instruction hours irrespective of the individualized needs of a student, there is no evidence that this caused a denial of FAPE in the present case. The District was not obligated to provide the Student with services while on vacation and was legally required to unenroll the Student after ten days of non-attendance.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION
In the Matter Scappoose School District
Case No. 25-054-024

The Department does not order corrective action in this matter.

Dated: this 25th Day of June 2025

¹³ OAR 581-015-2040(1); 34 CFR § 300.101(a).

¹⁴ *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 999 (2017).

¹⁵ *Amanda J. v. Clark Co. Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001) (citing *Roland M. v. Concord 13684 Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990)).

¹⁶ *W.G. v. Bd. of Trustees of Target Range Sch. Dist.*, 969 F.2d 1479, 1484 (9th Cir. 1992).

¹⁷ *Id.*

¹⁸ *Amanda J.*, 267 F.3d at 892 (citing *Roland M.*, F.2d at 994).

¹⁹ *M.L. v. Federal Way Sch. Dist.*, 394 F.3d 634, 657 (9th Cir. 2005)

Ramonda Olaloye

Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: June 25th, 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).)