

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of	)	FINDINGS OF FACT,
Hermiston School District 8	)	CONCLUSIONS,
	)	AND FINAL ORDER
	)	Case No. 25-054-025

I. BACKGROUND

On April 29, 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 Hermiston School District 8 (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.<sup>1</sup> 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.<sup>2</sup>

On May 12, 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 27, 2025.

The District submitted a *Response* on May 27, 2025. In its *Response*, the District denied two allegations, partially denied one allegation, 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, 5/27/25
2. Table of Contents, 5/27/25
3. List of Knowledgeable Staff, 5/27/25
4. IEP, 1/12/24
5. Special Education Placement Determination, 1/12/24
6. IEP Amendment, 10/22/24
7. Special Education Placement Determination, 10/22/24
8. Functional Behavioral Assessment, 12/18/24
9. Functional Behavioral Assessment, 1/25/25

<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

10. Behavior Intervention Plan, 12/18/24, updated 5/19/25
11. Prior Written Notice (PWN), 2/2/24
12. PWN, 9/13/24
13. PWN #1, 9/16/24
14. PWN #2, 9/16/24
15. PWN #3, 9/16/24
16. PWN, 10/21/24
17. PWN, 11/4/24
18. PWN, 12/27/23
19. PWN, 3/5/25
20. PWN, 4/17/25
21. PWN #1, 4/28/25
22. PWN #2, 4/28/25
23. PWN, 5/1/25
24. PWN #1, 5/2/25
25. PWN #2, 5/2/25
26. PWN #3, 5/2/25
27. PWN #1, 5/21/25
28. PWN #2, 5/21/25
29. Manifestation Determination, 4/17/25
30. Meeting Notes, 4/17/25
31. Manifestation Determination #1, 4/29/25
32. Manifestation Determination #2, 4/29/25
33. Manifestation Determination #3, 4/29/25
34. Meeting Notes, 4/29/25
35. Manifestation Determination #1, 5/19/25
36. Manifestation Determination #2, 5/19/25
37. Meeting Notes, 5/19/25
38. Notice of Team Meeting, 1/8/24
39. Notice of Team Meeting, 10/31/24
40. Notice of Team Meeting, 3/24/25
41. Notice of Team Meeting, 4/16/25
42. Notice of Team Meeting, 4/24/25
43. Notice of Team Meeting, 5/13/25
44. Evaluation Planning Meeting, 9/26/23
45. Consent for Individual Evaluation, 10/22/24
46. PWN of Evaluation, 4/28/25
47. Psychoeducational Evaluation Report, 11/21/23
48. Speech and Language Evaluation Review, 12/6/23
49. Statement of Eligibility for Special Education, Specific Learning Disability, 12/7/23
50. Statement of Eligibility for Special Education, Speech or Language Impairment, 12/7/23
51. Consent for Individual Evaluation, 4/28/25
52. Risk Assessment Screening Permission, 4/28/25
53. Eligibility Summary Statement, 12/7/23
54. Special Education Placement Determination, 1/28/25

55. Annual IEP Notes, 12/7/23 & 1/12/24
56. Meeting Notes, 10/22/24
57. Meeting Notes, 1/28/25
58. Meeting Notes, 3/31/25
59. IEP Progress Report, 1/22/25
60. Meeting Participants Page, 3/31/25
61. Authorization to Use and/or Disclose Educational Information, 10/22/24
62. Student Discipline Profile, 2024-25 School Year
63. Student Discipline Profile, 2023-24 School Year
64. Disciplinary Data, 2023-2025
65. PWN, 5/16/25
66. Compensatory Education Plan, 5/14/25
67. Special Ed Student Contact Log, 2024-25 School Year
68. Parent Contact Log, 2024-25 School Year
69. Student Attendance Profile, 2024-25 School Year
70. Student Check Out Sheets, 2024-25 School Year
71. Parent Square Messages, 2024-25 School Year
72. Disciplinary Action Forms, 2024-25 School Year
73. Parent Appeal of Suspension and Response, 4/2025
74. SB 819 Complaint Documents, 4/2025-5/2025
75. Student Strategies, 2024-25 School Year
76. De-escalation Plan, 1/13/25
77. Emotional Rating Scale, undated
78. Schedule Change, Adult Check-Ins, and Point Sheet Summary, undated
79. Student Risk/Threat Assessment Team Summary, 4/28/25
80. Student Schedule, 2024-25 School Year
81. Student Schedule, 2023-24 School Year
82. Communication Service Log, 2024-25 School Year
83. Facilitated IEP Request Form, 5/16/25
84. ODE Manifestation Determination Guidance, undated
85. Cumulative Records, various dates
86. Emails, 4/2024-5/2025
87. IEP Amendment, 3/31/25
88. PWN, 4/18/25

On June 10, 2025, at the request of the Investigator, the District submitted the following additional document:

1. IEP, 1/28/25

The Parent did not submit a *Reply* to the District's *Response*.

On June 10, 2025 the Complaint Investigator interviewed District personnel. The Complaint Investigator interviewed the Parent on May 8, 2025 and June 12, 2025. Due to time constraints that limited the Parent's interview, the Investigator allowed the Complainant to provide a written

response to some questions. The Complainant provided this written response to the Investigator on June 15, 2025 (June 15, 2025 Written Response).

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 April 30, 2024 to the filing of the Complaint on April 29, 2025.

Allegations	Conclusions
<p><b>When IEPs Must Be in Effect</b></p> <p>The Complaint alleged that the District violated the IDEA by not providing special education and related services in accordance with the Student's IEP. Specifically, the District failed to provide the Student with the accommodations in their IEP and failed to implement their Behavior Intervention Plan.</p> <p>(OAR 581-015-2220; 34 CFR § 300.323)</p>	<p><b>Not Substantiated</b></p> <p>The District provided the Student with the accommodations required by their IEP, including implementation of the Behavior Intervention Plan.</p>
<p><b>Discipline</b></p> <p>The Complaint alleged that the District violated the IDEA by:</p> <ul style="list-style-type: none"> <li>a) Removing the Student from school for more than ten (10) school days, either consecutively or cumulatively, constituting a pattern of exclusion, and by failing to conduct a manifestation determination review to determine whether the Student's behavior was a manifestation of their disability after each consecutive removal over ten days;</li> <li>b) Once determining that the Student's behavior was a manifestation of their disability, the District failed to return the Student to the placement from which they were removed;</li> <li>c) After determining that the Student's behavior was</li> </ul>	<p><b>Substantiated, in part</b></p> <p>The District conducted a timely manifestation determination review when the Student's disciplinary removals exceeded ten days.</p> <p>Once determining that the Student's behavior was a manifestation of their disability, the District returned the Student to the placement from which they were removed the following day.</p>

Allegations	Conclusions
<p>a manifestation of their disability, the District failed to conduct a functional behavioral assessment of the Student and/or review and modify the Student's BIP as necessary;</p> <p>d) The District failed to provide educational services to the Student during their removal from school. <sup>3</sup></p> <p>(OAR 581-015-2215 &amp; 2410; 34 CFR § 300.530)</p>	<p>The District was not required to conduct another FBA after determining that the Student's behavior was a manifestation of their disability. The District was not given the opportunity to modify the Student's BIP, if necessary, before this Complaint was filed.</p> <p>The District failed to provide the Student with required educational services during removals from school in excess of ten school days.</p>
<p><b>Free Appropriate Public Education (FAPE)</b></p> <p>Due to the alleged IDEA violations detailed above, the Complaint alleged that the District failed to provide the Student with a free appropriate public education.</p> <p>(OAR 581-015-2040; 34 CFR § 300.101)</p>	<p><b>Substantiated, in part</b></p> <p>The District denied the Student a FAPE by not providing educational services, to which the Student was entitled, between April 18, 2025 and April 29, 2025.</p>

## REQUESTED CORRECTIVE ACTIONS

The Complainant requests that the District:

1. Retrain staff on the Student's current IEP and BIP, focusing on trauma-informed practices and escalation prevention. Implement monitoring and daily communication logs verifying implementation of the Student's supports. Designate a trauma-trained staff member to work with the Student consistently.
2. Provide compensatory education services for all days removed beyond 10 without proper MDR procedure. Require administrator and staff re-training on disciplinary safeguards for students with disabilities under IDEA.
3. Immediately return the Student to full-day instruction with appropriate supports. Conduct a full IEP meeting to develop a revised behavior plan with meaningful academic and social-emotional goals. Require written parental consent for any future abbreviated

<sup>3</sup> In their Complaint, as part of their general allegation of a denial of a Free Appropriate Public Education, the Complainant included that the District failed to provide the Student with educational services during disciplinary removals. In its *Response*, the District responded to this specific allegation and provided evidence in support of its position.

schedule consideration.

4. Provide make-up instructional services and tutoring for academic loss due to missed instruction time. Require school staff to deliver academic materials on every day of removal going forward. Establish accountability protocols for staff compliance.
5. Conduct a new Functional Behavioral Assessment with parental input. Convene the IEP team to develop a revised BIP based on current needs and data. Include outside behavioral or mental health supports if necessary.

### 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 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 fourteen years old and is the eighth grade. The Student attends school within the District.
2. On December 7, 2023, after a comprehensive re-evaluation, the Student was determined to meet eligibility requirements for special education under the categories of Speech or Language Impairment (SLI) and Specific Learning Disability (SLD). The Student was found to no longer qualify under their previous eligibility category of Emotional Behavior Disability (EBD) because they had "displayed significant improvement in [their] ability to manage [their] emotionality" and "it is no longer displaying an impact on [their] learning."
3. The District convened an annual IEP meeting for the Student on January 12, 2024 when the Student was in seventh grade (January 12, 2024 IEP). The January 12, 2024 IEP includes, among other things:
  - a. Strengths of Student: The Student "has demonstrated great growth over the last year," "is a problem solver," and "has a great work ethic."
  - b. Concerns of Parent: The Parent "expressed concern that [the Student's] IEP accommodations were not being implemented" and "discussed an email that they had sent to [the teacher] in regard to [the Student's] experience in math skills." "The team discussed that [the Student's] accommodations are given in [their] math skills class."
  - c. Present Levels of Performance: In Fall 2023, on District curriculum-based measures, the Student scored in the 1<sup>st</sup> percentile in Reading with a Lexile level of 320 and the 4<sup>th</sup> percentile in Math with grade-level equivalency of 4<sup>th</sup> grade. Behaviorally, the Student "struggles socially and would prefer to socialize with adults." According to some of the Student's teachers, the Student "is often in conflict with other students," which "leads to [them] asking to sit at the back of the classroom away from all of [their] peers" and "when

[they get] upset or frustrated, [they] will shut down or be aggressive in [their] intentions or actions.” Other teachers report that the Student “doesn’t show that [they have] conflicts with other students, [they] just prefer to be independent,” “does a great job interacting with [the teacher],” and “does a good job being respectful to [their] peers.”

d. Goals:

- i. Communication: When given structured communication activities, the Student will generate complete sentences using four or more elements of the main idea in a story, social situation, or classroom assignment.
- ii. Reading: Given specific comprehension skills and strategy instruction with a focus on key inferences and points of view, the Student will increase reading comprehension proficiency from a 1<sup>st</sup>-grade level at 70% proficiency to a 3<sup>rd</sup>-grade level with 70% proficiency.
- iii. Math: Given SDI in solving two-step equations in algebra, the Student will increase their accuracy in solving equations involving variables and integers from 0% to 70% accuracy in 2/3 opportunities.
- iv. Writing: Given specially designed writing instruction, the Student will independently write a response, improving from scoring 2’s to 3’s in evidence/elaboration on the CSS or other similar rubric in 2/3 opportunities.

e. Specially Designed Instruction (SDI):

- i. Language Arts for 1,920 minutes per year;
- ii. Math for 2,400 minutes per year;
- iii. Communication for 800 minutes per year.
- iv. The anticipated location for all SDI is “School Wide (All sites).”

f. Accommodations: Chunking of all classroom-based assessments; Extra response time for verbal responses; Frequent check and daily staff check-in during independent or group work and after instructions have been given, one to two times per assignment; Front loading of known changes in daily schedule; Positive Behavior Supports, Preferential Seating, Text to Speech, Visual supports (i.e., guided notes, teacher provided notes, steps for solving word problems, place value chart, multiplication chart, etc.).

g. Non-Participation Justification: The Student will be removed for approximately thirty (30) minutes a week to receive SDI in communication.

4. According to the Special Education Placement Determination dated January 12, 2024, the Student’s IEP team considered placements in a “Regular classroom more than 80% with specially designed instruction (pull-out or push-in delivery) in the areas of need,” and “Resource Room (21%-60%) for specially designed instruction (pull-out or push-in) in the areas of need with 40-79% in the regular class.” The first placement was selected because the

Student's SDI is "minimal in areas of need" and it is the "least restrictive placement for the student to make progress at this time.

5. According to the Meeting Minutes, dated January 12, 2024, the Student's IEP team determined that they no longer required SDI in the area of Social/Emotional Learning, but did benefit from the accommodations to address communication needs.
6. Several of the Student's teachers during the 2023-24 school year submitted statements via email, dated May 20-23, 2025 regarding implementation of the accommodations in the Student's IEP when the Student was enrolled in their classes. The teachers reported the following:
  - a. The Student's 7<sup>th</sup> Grade Social Studies Teacher states that the Student was enrolled in their class during the 2023-24 school year. They explain that they provided the Student with the accommodations in their IEP, including "frequent checks with the teacher," "preferential seating," the Student was "allowed to leave for breaks whenever [they] desired," "had unlimited teacher time," "text to speech was available upon request," and "classroom notes were provided to assist in [their] learning."
  - b. The Student's 7<sup>th</sup> Grade Science Teacher confirms that the Student was enrolled in their class during the 2023-24 school year. They state that, "While [the Student] was in attendance, a range of supports and accommodations were consistently implemented . . . in alignment with [their] IEP," followed by a list of the accommodations in the Student's January 12, 2024 IEP.
  - c. The Student's 7<sup>th</sup> Grade Language Arts Teacher shares that the Student was enrolled in their class during the portion of the 2023-24 school year that is relevant to the Complaint. They describe how the Student received SDI during class from the 7<sup>th</sup> Grade Case Manager and lists the accommodations that were implemented for the Student, including "preferential seating and strategic grouping," "front loading changes," "positive behavior reinforcement on a post-it note and verbally," "check-ins," "appropriate/designated use of cool down card whenever they needed," "graphic organizers," and "visual supports" that included advance roster of group assignments and a list of materials that the Student needed each day.
  - d. The Student's 7<sup>th</sup> Grade Math Teacher states that the Student was enrolled in their class during the 2023-24 school year. They describe how they implemented the accommodations in the Student's IEP, including "preferential seating," "strategic grouping or the lack of as [they] would prefer to work independently on most days," front loading of changes to the routine, "verbal positive behavior reinforcement," and check-ins with the Student "for understanding and for emotional/behavioral support." In addition, "[the Student] was able to take breaks," and the teacher "would read instructions or mathematical story problems to [the Student], as well as provide [them] with notes or graphic organizers."
  - e. The Student's 7<sup>th</sup> Grade Case Manager states that the Student was enrolled in their class for the 2023-24 and 2024-25 school years. They explain that, during the 2023-24 school



year, the Student received their reading and writing SDI in a class that was co-taught by the 7<sup>th</sup> Grade Case Manager and the 7<sup>th</sup> Grade Language Arts Teacher and that the Student “received and participated in [their] SDI when [they were] in attendance for class.” They continued that, “[The Student] was provided all accommodations in [their] IEP, including chunking of assessments, frequent check-ins, positive behavior supports, text-to-speech or read aloud when requested by [the Student], additional response time when being asked a question, front-loading of changes and/or lesson plans, changes in schedules, when subs were going to be in, etc. [They were] given preferential seating when requested, strategic groupings were used, visual supports such as graphic organizers routines, guided notes, teacher-provided notes, multiplication charts, and any other visual supports requested by the student.”

- f. The Student’s 7<sup>th</sup> Grade Physical Education Teacher confirms that the Student was enrolled in their class during the portion of the 2023-24 school year that is relevant to the Complaint. They share that, during that time, the Student was “given preferential seating including allowing [them] to sit in the bleachers farther away from [their] peers,” “given additional time to respond verbally, frequent checks for understanding and opportunities to use [their] cool down cards whenever necessary.” In addition, the Student “was given strategic grouping opportunities with [the Student] many times asking to work independently or with much smaller group sizes,” and “advance notice when there as going to be a change in the routine.” Finally, the teacher shares that “Whenever [the Student] was succeeding in class and meeting expectations, or just having a good day, I made sure to praise [them] and thank [them] for [their] efforts.”
7. During the portion of the 2023-24 School Year that is within the time period of the Complaint, the Student was involved in the following disciplinary incidents:
  - a. May 30, 2024: The Student engaged in “insubordination” by saying “rude things” to a staff member.
  - b. May 31, 2024: The Student engaged in “insubordination” by “leaving rude comments” for a staff member and yelling at the staff member “for being stupid.”
  - c. May 31, 2024: The Student engaged in “insubordination” when they “refused to do [their] student app,” called a staff member “a jerk and annoying” and “called other students annoying.”
  - d. June 4, 2024: The Student engaged in “insubordination” when they were “asked multiple times to leave the office and refused” and “argued continuously with office staff.”
  - e. June 4, 2024: The Student engaged in “insubordination” when they were “told several times that [they] could not be in the office anymore because [they do] not behave appropriately while in there.”
8. When the Student returned to school at the start of the 2024-25 school year, the Student quickly began to engage in disruptive behavior, including the following documented disciplinary incidents:

- a. September 4, 2024: "Unexcused Absences, Skipping, Leaving Without Permission." The Student "is not to leave class when the bell rings as per [their] safety plan . . . this is [their] 3<sup>rd</sup> time leaving before [they are] allowed to go."
  - b. September 4, 2024: "Harassment, Intimidation, Bullying." The Student was "grabbing the arm" of a teacher "trying to look at [their] name badge" and "would not listen to go sit down in the lunchroom."
  - c. September 4, 2024: "Insubordination." The Student "has been asked to leave the office" but "continues to argue and refuses to go the class." The Student was reminded that they are "not allowed in the front office."
  - d. September 5 2024: "Harassment, Intimidation, Bullying." The Student was "harassing front office staff and not attending classes," and was reported to "on purpose bug office staff, say mean things, and talk negative towards adults in the office." As a result, the Student received an out-of-school suspension for the remainder of the day (one hour).
  - e. September 6, 2024: "Trespassing, Unexcused Absences, Skipping, Leaving Without Permission." The Student was "refusing to go to class" and when "given the options of going to class or home after calling mom [they] still refused." The Student was told to walk home because they were suspended for the rest of the day. The Student Resource Officer (SRO) was called to escort the Student off campus. The Student threw a binder at the SRO and "pinched and hit" them. The Student was then arrested and left campus.
  - f. September 6, 2024: "Harassment, Intimidation, Bullying." The Student was "caught bullying."
  - g. September 10, 2024: "Harassment, Intimidation, Bullying, Unexcused Absences, Skipping, Leaving Without Permission." The Student "has been skipping class periods" and "has not been to a complete class period all day." The Student also sent a staff member and another student a "bullying/harassment email."
  - h. September 11, 2024: "Harassment, Intimidation, Bullying, Unexcused Absences, Skipping, Leaving Without Permission." The Student "was caught skipping 6 & 7 period" and "is constantly harassing" another student.
  - i. September 12, 2024: "Unexcused Absences, Skipping, Leaving Without Permission." The Student "was skipping classes again" and received an out-of-school suspension for the remainder of the day (two hours) and the following day.
9. In an email dated September 12, 2024, the Parent requested that the District convene a Manifestation Determination Review (MDR) to "review the cumulative suspensions and determine if [the Student's] behaviors are linked to [their] disability." According to the Parent's calculations, the Student had been suspended more than ten days during the current and previous school years.

10. On or about September 13, 2024, the District's Special Education Facilitator (Facilitator) spoke with the Parent regarding the Parent's request for an MDR. During that conversation, which is memorialized in an email on the same date, the Facilitator explained that the "clock for removal" restarts each school year and that an MDR would typically be held "around 8-10 days of cumulative removal." In addition, they discussed the Parent's request for an IEP meeting and agreed to convene the meeting on October 22, 2024, which was the Parent's preferred date. Finally, the Facilitator and the Parent discussed the Student's recent behavioral difficulties and agreed that the Student would be moved from the general education setting to the resource room as "an intervention" to "provide less stimulus, and decreased demands socially, communicatively, and academically."
11. On September 13, 2024, the District sent Prior Written Notice (PWN) to the Parent denying their request for an MDR because the Student had not been removed from school for more than ten days.
12. On September 16, 2024, the District sent PWN to the Parent proposing "an intervention in a more restrictive setting, moving from general education to resource room," and indicating the Parent's agreement to this proposal in a previous phone call. The reason for the proposal is documented as, "[The Student's] behaviors of refusal, elopement, and verbal aggression have significantly increased over since January of 24'" and "The team feels that a more restrictive environment will decrease the sensory environment, reduce the number of transitions, and decrease the overall cognitive load of the day allowing [the Student] to more fully access [their] educational environment." The PWN further notes that "The intervention will conclude on 10/22/2024" when "an IEP meeting will be held to make a formal recommendation for placement moving forward."
13. On or about September 16, 2024, the Student's schedule was adjusted so that they were placed for four of seven periods in the Resource Room setting, spread out across the day so that the Student would alternate between the special education and general education settings. Three of those periods would be spent in the CREW classroom. When interviewed, the Facilitator explained that the CREW classroom is "one of our District programs for our students with the most intensive behaviors." The CREW classroom has "supports to maintain regulation," "provides access to a space that's open throughout . . . the entirety of the day, where [students] can return if they're feeling dysregulated," as well as a "higher staff-to-student ratio" than the typical Resource Room setting.
14. The District convened an IEP amendment meeting for the Student on October 22, 2024 (October 22, 2024 IEP). According to the Meeting Minutes, the "team reviewed that the increased time in the special education setting with intentional breaks and specially designed instruction in social-emotional learning has been beneficial to [the Student] allowing [them] increased access to [their] educational setting." The Student is "lashing out less and displaying less frustration overall." It was determined that "the increased services have been successful, especially in spreading out [their] core classes."
15. The following revisions were made to the Student's IEP at the October 22, 2024 Meeting:

- a. Goals: Addition of two goals for Social Emotional Learning.
    - i. When given a personal social scenario, the Student will identify the conflict, their response and outcome, a different solution and outcome, and then determine if their response should have been different in 4/5 opportunities over three consecutive weeks.
    - ii. When provided real-life images, the Student will mimic pictures, accurately identify the complex emotion (frustration, trust, anxiety, pride, anger, sadness, joy, fear, disgust, and shame) and an example of when each emotion is experienced in 3/5 opportunities over three consecutive weeks.
  - b. SDI:
    - i. Added "Social Emotional" SDI for 12,800 minutes per year;
    - ii. Increased Language Arts SDI from 1,920 to 5,920 minutes per year.
  - c. Accommodations: Added the following:
    - i. Strategic scheduling: Spread out core classes;
    - ii. Small group, individualized instruction in core academic standards within the special education setting;
    - iii. Explain the reasoning (why) of directives and instructions verbally or written (email), this helps the Student feel heard and allows for insight into their thought patterns;
    - iv. Explicit and routine practice of essential academic skills as identified by special education teacher, in special education setting.
  - d. Non-Participation Justification: The Student is removed from the educational setting for four academic periods to receive SDI in social-emotional learning, math, language arts, and communication. The Student also receives 70 minutes of breaks, small group instruction and explicit practice of essential academic skills daily, outside of general education.
16. According to a Special Education Placement Determination, dated October 22, 2024, the Student's placement was changed to "Separate classroom (60%+) for specially designed instruction." The benefits of this placement were described as, "Intensive specially designed instruction in multiple areas of need at student's instructional level and ability level, increased adult support and structure."
17. The Student's IEP team also conducted evaluation planning at the October 22, 2024 IEP and proposed conducting a Functional Behavioral Assessment (FBA) of the Student. The Consent for Individual Evaluation included an observation, psychoeducational assessment, social/emotional/behavioral assessment and an assessment of adaptive behavior. The Parent provided consent to the FBA at the meeting.
18. The Student had no documented disciplinary incidents during October 2024. They had one documented incident of "Disruption of Class MINOR" on November 7, 2024. During this

incident, the Student “continually disrupted the learning environment,” “yelled at other students while they were trying to engage in the classroom activity,” and “repeatedly called the Teacher names while also verbally targeting another student.” The Student had no other documented disciplinary incidents during November 2024. The Student did not receive any out-of-school suspensions or other removals from school in October or November 2024.

19. The Student had two documented disciplinary incidents in December 2024, neither of which resulted in a removal from school. During both incidents, the Student engaged in “Insubordination (defiance, disobedience, disrespect) MINOR” for which they received “Lunch Detention.” On December 9, 2024, the Student yelled at their teacher, refused to follow directions, and “left the classroom multiple times without permission.” On December 10, 2024, the Student “refused to leave the office” and “continued to argue with the office staff” when offered alternative locations where the Student could go.
20. The District Behavior Specialist completed an FBA of the Student, with a report dated December 18, 2024 (FBA Part 1). According to the report, the “Challenging Behaviors” identified in the evaluation were “Emotional Dysregulation” defined as “difficulties managing and regulating their emotions, leading to heightened emotional responses such as anger, frustration, anxiety, and refusal behaviors in challenging situations;” and “Cognitive Inflexibility” defined as “difficulty adapting one’s thinking or actions when faced with new information, changing situations, challenging situations, or unexpected outcomes.” The behavior of Emotional Dysregulation was noted to occur 2-3 times per week, while Cognitive Inflexibility occurred multiple times per day. The Student’s “negative behavior choices typically present as defiance or refusal usually in the form of arguing, refusing to go to class, wandering the building, or sitting in the foyer for the whole class period.”
21. As reflected in the FBA Part 1 report, the Behavior Specialist’s hypothesis for the function of the Student’s behavior was that the two challenging behaviors “are interacting in a way that makes it difficult for [the Student] to adapt to changes in [their] environment, leading to a cycle of emotional outbursts, avoidance, or disengagement in learning activities.” “When faced with new or unexpected situations (e.g. changes in routine, conflict, new instructions, or mistakes), [the Student’s] rigid thinking patterns prevent [them] from considering alternative solutions or responses. This lack of flexibility can escalate emotional reactions, as they become overwhelmed or frustrated by the perceived inability to control the situation.” In their report, the Behavior Specialist recommends that a Behavior Intervention Plan (BIP) be developed for the Student. They also recommend that the strategies of “planned ignoring” and “public behavior corrections” be avoided when working with the Student.
22. The Behavior Specialist developed a BIP for the Student, dated December 18, 2024. The BIP includes the following strategies and interventions:
  - a. Use a daily progress monitoring tool with incentives/rewards attached.
  - b. Provide scaffold-supports to assignments requiring critical thinking/problem solving/comprehension.
  - c. Strategic seating – away from high traffic areas, overstimulating areas or near peers [they have] conflict with.

- d. Explicit communication in social situations, including verbally identifying what feelings are happening and why.
  - e. Strategic scheduling – spread out core classes throughout the day.
  - f. Give the Student choices when asking them to do something and allow them time to process and ask questions.
  - g. Social skills class to increase self-regulation, coping, and problem-solving skills and to help the Student learn to recognize emotions accurately.
  - h. Check-in Check-out procedure with designated staff member.
  - i. Staff will model appropriate ways to communicate anger, displeasure, frustration, etc.
  - j. Staff will challenge/reframe the Student’s false logic, perceptions, exaggerations, and “all or nothing” thinking.
  - k. Staff will model how flexible thinking can help the Student cope with frustrations, changes in routine, or challenging tasks.
  - l. Positive reinforcement for maintaining control of behavior, calming down quickly, using interventions like “taking a break” appropriately, putting forth good effort, exhibiting cognitive flexibility, and exhibiting a positive attitude.
23. On January 13, 2025, the Behavior Specialist created a De-escalation Plan for the Student. The De-escalation Plan describes five numbered “levels” of behavior, increasing in severity, with corresponding supports and strategies for how to respond to the Student at each level. The plan included, in relevant part, the following suggested strategies:
- a. Level 1: Provide positive reinforcement and acknowledgement, provide frequent check-ins, do not use the strategy of “planned ignoring,” and ask the Student to rate themselves on their emotional rating scale.
  - b. Level 2: Provide visual/verbal supports, acknowledge the Student’s feelings, provide choices and speak calmly.
  - c. Level 3: Speak calmly and maintain calm body language, give simple and safe choices, provide the Student with calm redirection paired with visual supports, offer a break or a walk, and assist the Student in processing their feelings.
  - d. Level 4: “Tag out” with another staff member, clear the classroom, if necessary, redirect the Student towards calming area or break space, and allow the Student to speak with a trusted adult.
  - e. Level 5: Contact office for immediate assistance, maintain a safe distance from the Student if possible, and follow CPI de-escalation and disengagement strategies.
24. In addition to the De-escalation Plan, the Behavior Specialist developed an Emotional Rating Scale for the Student and a “Choice Board” with visual representations of activities the Student can choose when feeling dysregulated.
25. When asked for examples of how the BIP and De-escalation Plan were implemented for the Student, the Behavior Specialist shared that, “personally I sat with [them] and problem-solved through many, many, many scenarios and situations trying to give [them] the

opportunity to be able to implement the strategies [they] came up with when [they were] calm.” In addition, the Behavior Specialist frequently reviewed the Student’s “safe spaces” with them to identify a “Plan A, Plan B, Plan C, Plan D” of where the Student could go when they were escalated. When asked where the use of “safe spaces” was reflected on the BIP, the Behavior Specialist explained that it was not but was “part of the interventions in general” that were used with the Student.

26. When asked how the “Check-in Check-out procedure” listed on the BIP was implemented, the Behavior Specialist explained that when the BIP was first adopted the Student had check-ins three times per day and was able to choose the adult with whom they completed the check-in. The purpose of the check-in was “to see how things were going, how [they are] feeling, if [they] need anything, if there’s something [they] need to talk about. They shared that the Assistant Principal had a daily check-in scheduled with the Student and that, among the Student’s preferred adults, the Assistant Principal was “the top one.” The Behavior Specialist observed that, if the Student was dysregulated, they would seek out the Assistant Principal “between two and five time[s] a day.” They expressed that they had no concern regarding the way the Assistant Principal implemented the Student’s BIP stating, “In fact, [the Assistant Principal] is excellent with [the Student].”
27. The remaining evaluations that were proposed in the October 22, 2024 Consent for Individual Evaluation (psychoeducational assessment, social/emotional/behavioral assessment and an assessment of adaptive behavior), were completed by the District School Psychologist with a report dated January 25, 2025 (FBA Part 2). The report incorporates the results of the FBA completed by the Behavior Specialist. The findings from FBA Part 2 include, but are not limited to, the following:
- a. The Student has significant difficulty interpreting facial affects, “inferring meaning from visual cues such as facial expression, posture, clothing and background elements,” and understanding idioms and sarcasm.
  - b. The Student has significant difficulties with visual and auditory processing, which are “subconsciously stressing [them] and activating [their] limbic/‘fight-flight’ system.” As a result, the Student “may be subconsciously exhibiting behavior designed to escape or withdraw from that threat.”
  - c. The Student “is likely trying to control [their] environment.” “If you take away a favorite item, say ‘No’ to a request, or interrupt a preferred activity, [the Student] will likely react with an emotional outburst.”
  - d. The Student struggles “to use [their] cognitive abilities to modify [their] initial limbic response,” “with situations that are new or novel,” and “to change [their] behavior based upon environmental cues.”
28. In their report from FBA Part 2, the School Psychologist recommends that the Student’s IEP team consider the following:
- a. The Student will need “ongoing instruction and practice on how others typically view visual social cues, the meaning of sarcastic statements, how others solve social problems and how others interact socially.”

- b. With the “rapid changes” brought about by adolescence, “ongoing emotional dysregulation will likely continue to occur,” and the Student “will seek out situations that [they] perceive to reduce [their] stress (such as being in the office when [they] shouldn’t be there).”
  - c. In an attempt to control their environment, the Student “will likely seek out individuals [they] perceive to have the authority to change the environment or situation.” They will “want immediate answers and will struggle to wait for responses.” The School Psychologist agrees with the Behavior Specialist that “planned ignoring” is a strategy that should be avoided.
  - d. The Student “would benefit from being presented with a myriad of social situations scenarios and typical choices that other individuals have made” and “be given the opportunity to think about how to reframe or reinterpret the situation for a more typical social response.”
  - e. The IEP team should consider evaluating the Student for special education eligibility under the category of Autism Spectrum Disorder (ASD).
29. On January 22, 2025, the District completed a Progress Report regarding the goals and objectives from the January 12, 2024 IEP, as amended on October 22, 2024. According to this report, the Student was making progress on their Communication, Reading, and Writing goals and had met their Math goal. For the two Social Emotional Learning goals that were added at the October 22, 2024 IEP, the Student was making progress on the goal addressing affect recognition, but “requires full prompting” to complete the steps in the goal for increasing cognitive flexibility around social situations.
30. The District convened an IEP meeting for the Student on January 28, 2025 (January 28, 2025 IEP). At this meeting, the IEP team reviewed the results of the FBA, the proposed BIP, and developed a new annual IEP for the Student. The January 28, 2025 IEP includes, among other things:
- a. Strengths of Student: The Student “enjoys and seeks out adult conversations,” “is a great self-advocate,” and “knows [their] accommodations and will ask for them.”
  - b. Concerns of Parent: The Parent “is concerned about [the Student’s] transition to high school,” and “wants an updated evaluation as [they] move into high school.”
  - c. Present Levels of Performance:
    - i. In Fall 2024, on District curriculum-based measures, the Student scored in the 6th percentile in Reading with a Lexile level of 191, in the 4<sup>th</sup> percentile in Math with a score of 192, and 14<sup>th</sup> percentile in Science with a score of 195.
    - ii. Team Discussion: The IEP team discussed that the Student “is experiencing a lot of stress” about going to high school. The Student needs choices when their preferred activity is not available, and “must be able to process their thoughts, perseverations, experiences, or perspectives even if the adults process with [them] indirectly.” The Student is currently using an emotional rating scale that has been working well for them, and “will seek the person [they] perceive can reduce [their] anxiety or provide



the desired access or activity. The team agreed to move forward with an ASD evaluation at the end of the school year, after discussing the time of the evaluation and determining that “having input from current staff and observing [the Student’s] transition to high school” would provide the most useful information for planning. When the Student becomes dysregulated, they display “maladaptive behaviors” that includes becoming “verbally argumentative” or engaging in harassment of staff and peers.

d. Goals:

- i. Communication: When given structured communication activities, the Student will generate complete sentences using four or more elements of the main idea in a story, social situation, or classroom assignment, increasing from 67% accuracy with initial prompts and models to 80% accuracy without prompts and models.
- ii. Reading: Given specific comprehension skills and strategy instruction with a focus on key inferences and points of view, the Student will increase reading comprehension proficiency from a 3<sup>rd</sup>-grade level at 55% proficiency to a 3<sup>rd</sup>-grade level with 60% proficiency in two out of three trials.
- iii. Writing: Given specially designed writing instruction, the Student will independently write a response on an academic topic, improving from scoring 1’s to 2’s in evidence/elaboration on the CSS or other similar rubric in 2/3 opportunities.
- iv. Social Emotional Learning: When given a personal social scenario, the Student will identify the conflict, their response and outcome, a different solution and outcome, and then determine if their response should have been different in 4/5 opportunities over three consecutive weeks.
- v. When provided real-life images, the Student will mimic pictures, accurately identify the complex emotions (frustration, trust, anxiety, pride, anger, sadness, joy, fear, disgust, and shame) and an example of when each emotion is experienced in 3/5 opportunities over three consecutive weeks.

e. SDI:

- i. Social Emotional for 12,800 minutes per year;
- ii. Reading for 4,800 minutes per year;
- iii. Written Expression for 2,400 minutes per year;
- iv. Communication for 800 minutes per year.

f. Accommodations:

- i. Small group, individualized instruction in core Language Arts standards within the special education setting;
- ii. Chunking of all classroom-based assessments;
- iii. Behavior Intervention Plan;

- iv. Strategic scheduling: Spread out core classes;
- v. Explicit and routine practice of essential academic skills as identified by special education teacher and general education teacher, in special education setting;
- vi. Extra response time for verbal responses;
- vii. Explain the reasoning (why) of directives and instructions verbally or written (email), this helps the Student feel heard and allows for insight into their thought patterns. Planned ignoring as an instructional strategy may not be used;
- viii. Breaks throughout the Student's school day, scheduled and as needed when identified by the Student or staff. Have a pre-determined break space across all areas.
- ix. Frequent check and daily staff check-in during independent or group work and after instructions have been given, one to two times per assignment;
- x. Front loading of known changes in daily schedule;
- xi. Positive Behavior Supports;
- xii. Preferential seating and strategic grouping with peers;
- xiii. Text to Speech;
- xiv. Visual supports (i.e. guided notes, teacher provided notes, steps for solving word problems, place value chart, multiplication chart, etc.).

- g. Non-Participation Justification: The Student is removed from the educational setting for four academic periods to receive SDI. The Student "also receives 70 minutes of breaks, small group instruction and explicit practice of essential academic skills, daily" outside of the general education setting.

31. According to the Special Education Placement Determination dated January 28, 2025, the placement selected for the Student was "Separate classroom (60%+) for specially designed instruction in the areas of need with less than 40% in the regular classroom."

32. The Student had four documented disciplinary incidents in January 2025.

- a. Two incidents of "Unexcused Absences, Skipping, Leaving Without Permission MINOR."
- b. One incident of "Insubordination (defiance, disobedience, disrespect) MINOR."
- c. One incident of "Encouraging Fighting MAJOR," resulting in an out-of-school suspension for one day.

33. The Student had five documented disciplinary incidents in February 2025.

- a. One incident of "Harassment, Intimidation, Bullying MINOR" and "Insubordination MINOR," when the Student was not in their assigned class, attempted to enter another room and, when told to leave, called the Assistant Principal and another staff member "stupid and dumb."
- b. One incident of "Unexcused Absences, Skipping, Leaving Without Permission MINOR."
- c. One incident of "Disruption of School (Disorderly Conduct) MAJOR," during which the Student "would not leave the office area . . . called staff member in the office stupid and a liar," and "called [the Assistant Principal] stupid multiple times while [they were] trying to get [the Student] out of the office." This resulted in an out-of-school suspension for a half day.

- d. One incident of “No Contact Contract Violation MINOR” and “Harassment, Intimidation, Bullying MAJOR,” when the Student “broke the Harassment/Bullying contract” that they had with another student. This resulted in an out-of-school suspension for one day.
  - e. One incident of “Harassment, Intimidation, Bullying MINOR,” when the Student entered a classroom and “began immediately yelling at the adults to “Leave the room.”” The Student “came over to the blue line/boundary to the Teachers’ desk,” “proceeded to push some of the items off the desk,” and “ripped off the calendar that was taped on the desk while yelling at the teacher calling them ‘stupid’ and a ‘jerk’.”
34. The Student had fifteen documented disciplinary incidents in March 2025. These incidents demonstrated a significant increase in both the frequency and the intensity of the Student’s behavior and resulted in out-of-school suspensions for a combined total of 2.50 days. In summary, these incidents included the following violations:
- a. One incident of “Insubordination,” during which the Student “was asked to stop calling staff members stupid,” “refused to follow directions,” was banging on the office door.
  - b. Nine incidents of “Harassment, Intimidation, Bullying,” when the Student called staff names, “was banging on the PSR room door,” “kicked and pushed [the CREW Teacher] multiple time,” told a staff member they wanted to slap them in the face, attempted to “destroy things” on teachers’ desks and other classroom materials, kicked and pushed the CREW Teacher, called staff “stupid,” “retarded” and “bitch,” tipped over a chair in their classroom, refused to leave the office when asked, targeted another student by yelling at them, “telling them to shut up and calling them stupid,” “pushed a desk towards a student with the intent of hitting them,” and threw and broke a Chromebook.
  - c. Three incidents of “Threat/Intimidation (Causing Fear of Harm),” during which the Student harassed another student, kicked a garbage can, “tried to destroy classroom materials,” and yelled at another student and called them names.
  - d. Three incidents of “Unexcused Absences; Skipping; Leaving Without Permission.”
35. Each Student placed in the CREW classroom has an electronic data collection sheet. On March 3, 2025, the Behavior Specialist emailed each of the Student’s teachers a spreadsheet with instructions for how to collect behavior data for the Student.
36. On March 21, 2025, the Parent sent an email to the Director and other District staff regarding the Student’s “recent behavior escalations.” In the email, the Parents states that “it’s clear that the current supports in [the Student’s] IEP are no longer sufficient to meet [their] needs” and requests an IEP meeting. The Parent goes on to request that the Student’s IEP be amended to include “The addition of a 1:1 paraprofessional or behavioral support aide to assist [the Student] throughout the entire school day,” and “Structured social skills instruction, provided either individually or in a small group.” The Parent also requests “A Functional Behavioral Assessment (FBA) if one has not already been conducted, and a review or revision of [the Student’s] current Behavior Intervention Plan (BIP) to ensure it aligns with [their] current needs.”
37. The District convened an IEP Meeting for the Student on March 31, 2025 (March 31, 2025 IEP Meeting). As reflected in the Meeting Minutes, the IEP team began the meeting by

considering the Parent's request for a 1:1 paraprofessional. District staff considered the request and proposed to add "adult support for transitions [and] co-regulation. The Parent expressed that they want the "consistency of one person" but District staff shared a concern that the Student "will persevere on" one staff member. In response to the Parent's input, the District revised its proposal to add "Additional adult support for coregulation. . . PBIS . . . reinforce visual scale, use of patterned language." Additionally, the Student will be given a "choice of staff" to provide the additional adult support "when possible."

38. According to the March 31, 2025 Meeting Minutes, the District also explained the MDR process and noted that there would be a "discussion of comp[ensatory] ed[ucation] after 10 days" of removal. The IEP team then reviewed the Student's special education services and supports. The Parent asked if the Student had an "in-school regulation space" and District staff shared that the Student used the CREW classroom, the library, and "a few diff[erent] options." The Parent noted that the Student also likes the Principal's office. The IEP team then discussed the FBA and possible behavior strategies including ideas for utilizing the "calm down space," the "suggestion of let's play a game" and giving the Student jobs in the classroom. District staff shared, "what has helped most is the walking." It was noted that the Student "looked calmer" and that they are "starting [their] anxiety meds." When asked how many "check-ins" were taking place, District staff replied that they were currently providing approximately five formal and ten informal check-ins per day and were utilizing the Student's "continuous feelings sheet". The District also agreed to make a social worker referral.
39. When interviewed, the Behavior Specialist recalled the IEP team talking about increasing the Student's check-ins at the March 31, 2025 IEP Meeting and having an adult check-in with them once per class period, but did not specify that the check-ins would occur every hour. The Behavior Specialist added that, at the time of the IEP meeting, the Student was receiving check-ins "much more" frequently than once each class period as they frequently did not go to class and were "heavily supervised."
40. The Student's IEP was revised at the March 31, 2025 IEP Meeting to include updated Parent concerns, a summary of the "Team Discussion" from the meeting, the addition of an accommodation for "Additional Adult Support for transitions and coregulation, provide choices of staff when available, use of patterned language to process social situations, and reinforce [their] visual scale."
41. The District provided the Parent with PWN, dated April 17, 2025, regarding decisions that were made at the March 31, 2025 IEP. The description of actions proposed or refused by the District states, "The IEP team refused the parental request of the addition of a 1:1 paraprofessional or behavioral support aide and arrived at consensus to include additional adult support to the specialized services section of the IEP at team (including parent) agreement." The document further notes that the IEP team reviewed the Student's current functioning in the school environment, current SDI which includes "social emotional skills building, the FBA and the BIP," "making no changes at this time."

42. Several of the Student's teachers during the 2024-25 school year submitted statements via email, dated May 20-23, 2025 regarding implementation of the accommodations in the Student's IEP throughout the school year. The teachers reported the following:
- a. The Student's 8<sup>th</sup> Grade Math Teacher states that the Student was enrolled in their class during the 2024-25 school year. They explain that they provided the Student with the accommodations in their IEP, including "preferential seating," "frequent check[-]ins for understanding," "extra time on assignments as well as . . . assessments," copies of teacher notes, and positive reinforcement.
  - b. The CREW Teacher states that they provided the Student "sentence frames, graphic organizers as well as verbal and visual aides," "chunking information and explicit instruction," "extra response time," "breaks," "small group and 1:1 instructional settings," access to numerous separate and preferred locations for breaks," "being front loaded of any known changes," and "Positive Behavior Supports."
  - c. The Student's 8<sup>th</sup> Grade Physical Education Teacher states that, when enrolled in their class, the Student received "strategic scheduling," "preferential seating," breaks, handouts and notes for health assignments, multiple check-ins, chunking of assignments, and was, at times, walked to class by the Assistant Principal or other adult.
  - d. The Student's 8<sup>th</sup> Grade Resource Room Teacher states that they provided the Student with their accommodations, "including frequent breaks, strategic seating, chunking, regular academic and emotional check-ins, and positive behavior support."
43. The Student continued to have a number of documented disciplinary incidents in April 2025. On April 3, 2025, the Student engaged in "Insubordination MINOR" when they "stole some classroom materials and refused to give them back."
44. On April 15, 2025, the Student committed "Assault/Battery – Physical Attack/Harm MAJOR" when they "physically assaulted [the CREW teacher]" causing "Visual scratch marks on arms, torso, neck and broken skin on ankles where [they were] kicked multiple times. As a result, the Student received an out-of-school suspension for two and a half days.
45. In response to the Student's April 15, 2025 suspension, the District convened an MDR Meeting on April 17, 2025 (April 17, 2025 MDR) to determine if the conduct that led to the removal was a manifestation of the Student's disability. According to the MDR form, since the start of the 2024-25 school year, the Student had received 42 disciplinary referrals and had been removed from school for a total of ten days. Upon review of the records provided by the District, however, the Investigator determined that the Student's suspension on April 15, 2025 resulted in a cumulative total of nine and a half (9.50) days of removal at that point in the 2024-25 school year.
46. The April 17, 2025 MDR form indicates that, after considering all relevant information, the team determined that the physical aggression demonstrated by the Student in connection with their April 15, 2025 suspension, 1) Was not the direct result of the District's failure to implement the Student's IEP; and 2) Was caused by or had a direct and substantial

relationship to the Student's disabilities. Accordingly, the MDR team determined that the Student's conduct was a manifestation of their disability.

47. The Meeting Minutes from the April 17, 2025 MDR detail the MDR team's discussion of the physical assault that precipitated the Student's removal and how that relates to the Student's disability. The Meeting Minutes note that the Student "does not understand personal space," "misreads social cues" and is often in a state of "fight or flight." In addition, their Social Emotional needs impact their self-regulation abilities. When analyzing whether the Student's conduct was a manifestation of their disability, the Parent expressed that they were "50/50" when considering whether the Student's conduct was the direct result of the District's failure to implement the IEP but did not provide further detail as to the basis of that opinion.
48. After the April 17, 2025 MDR team reached its conclusion regarding the question of manifestation, it discussed what additional or different supports could be provided to better address the Student's behavior needs. As reflected in the Meeting Minutes, the team noted that it had recently added "additional adult support" to the Student's IEP and discussed possible changes that could be made to the Student's schedule. To decrease the Student's stressors, the District and the Parent agreed to remove a Science class from the Student's schedule.
49. On April 18, 2025, the Student returned to school. On that same date, the Student engaged in a "Physical Altercation – Pushing, Shoving MAJOR" when they "shoved things off of [the CREW Teacher's] desk," and "shoulder checked" the CREW Teacher three times. As a result, the Student was sent home for the remainder of the day (5 hours), which was documented by the District as an out-of-school suspension, and resulted in the Student being removed from school for a cumulative total of ten and a half (10.50) days.
50. On April 21, 2025, the Student was disciplined for "Disruption of School (Disorderly Conduct) MAJOR" and "Harassment, Intimidation, Bullying MAJOR" when they followed another student during lunch calling them "Dumb Bitch" and telling them to "Shut the [f]uck up" multiple times. They then attempted to follow the other student into the office but was prevented from entering by the Assistant Principal. The Student then began cursing, kicking the door, and "banging on the main office window and door over and over." "The situation became unsafe as parents and students were trying to get into the main office," so the SRO cited the Student for Disorderly Conduct and the Student received an out-of-school suspension for one and a half days.
51. On April 23, 2025, the Student was disciplined for "Harassment, Intimidation, Bullying MAJOR" and "Disruption of School MAJOR" because of multiple behavior escalations throughout the day. During 2<sup>nd</sup> period, the CREW Teacher "had to perform a room clear" when the Student began cursing at another student and telling them that they needed to kill themselves. The Student then followed the other student into the library and repeatedly told them to kill themselves. The Student proceeded to curse at other students and staff before they calmed down. Later, during lunch, the Student made derogatory statements towards another student with a disability, threatened to both kick and kill a staff member, and then stated, "I'm gonna kill everyone in this school." The Student proceeded to the office where

they were “slamming desks and chairs” and cursing at the Assistant Principal. The Student was sent home for the remainder of the day and received an out-of-school suspension for an additional four days, with the condition that they undergo a Risk Assessment before returning to school.

52. On April 28, 2025, the District provided the Parent with a Consent for Individual Evaluation proposing to evaluate the Student for special education eligibility under the category of Autism Spectrum Disorder. The Consent to Evaluate included an Observation of the Learning Environment, Social/Emotional/Behavioral Assessment, and a Speech/Language Evaluation. The Parent consented to the proposed evaluation on the same date.
53. The District convened an MDR Meeting on April 29, 2025 (April 29, 2025 MDR) to determine if the conduct that led to the Student’s removals on April 18, 21, and 23, 2025 was a manifestation of the Student’s disability. The MDR team considered each incident separately and completed an MDR form for each of the three removals. After reviewing all relevant information, the team determined that the physical and verbal aggression and other behaviors exhibited by the Student during all three of the incidents, 1) Was not the direct result of the District’s failure to implement the Student’s IEP; and 2) Was caused by or had a direct and substantial relationship to the Student’s disabilities. As such, the MDR team concluded that the Student’s conduct on all three occasions was a manifestation of their disability.
54. The Parent disagreed, for each of the three incidents reviewed during the April 29, 2025 MDR, that the Student’s conduct was not the direct result of the District’s failure to implement the Student’s IEP. The Parent expressed that the Student’s behavior on April 18, 21, and 23, 2025 was the direct result of the District’s failure to implement the Student’s IEP when staff did not allow the Student to enter the office, which is a “safe space” for the Student, when the Student did not receive a “check-in” every hour, and because it is “triggering” for the Student that the Assistant Principal is both a “safe person” for the Student and a disciplinary figure.
55. After the MDR team reached its conclusions regarding the questions of manifestation, it discussed what additional or different supports could be provided to better address the Student’s behavior needs. As reflected in the Meeting Minutes, the MDR team described the supports that were provided to the Student, in accordance with their IEP, including additional adult support, choices of break places and alternate activities. The team also described new strategies that could be tried to address the Student’s behavior and agreed to create a list of interventions that have been trialed with the Student, along with their level of effectiveness.
56. When asked what revisions they believe should have been made to the Student’s BIP following the April 17, 2025 or April 29, 2025 MDR Meetings, the Parent shared during an interview that the Assistant Principal should be “either the support person or the disciplinary person.” In their June 15, 2025 Written Response, the Parent wrote that “The district strategy list included over 20 trauma-informed tools, but no records exist linking strategies to incidents. No data were collected to evaluate which interventions were used, how consistently, or with what outcomes.”

57. During an interview, when asked when a BIP would be revised to include a new strategy, the Student's 7<sup>th</sup> Grade Case Manager (who also served as one of the Student's Resource Room teachers during the 2024-25 school year) explained that it would typically not be appropriate to revise a student's BIP to include a new strategy until it was determined that the strategy was successful. Instead, there would be "an intervention time period" where staff would "try it out for two to four weeks" to see if it worked for the student before adding it to the BIP.
58. When asked during an interview to explain on what basis they believed the Student required a check-in every hour, the Parent stated, "It was during a manifestation. I requested that [the Student] have a one-to-one all day. They shot me down and said they would have someone check on [the Student] every hour." When asked what other ways the Student's IEP and/or BIP had not been implemented during the 2024-25 school year, the Parent shared their belief that, when the Student is escalated, school staff will "push [the Student's buttons] and "don't leave [them] alone long enough to calm down." In addition, the Parent explained that the District continued to place the Student in the CREW classroom after the Student had a physical altercation with the CREW teacher and that the Student "will do anything to get out of there." When asked if the Student ever expressed that they were uncomfortable in the CREW classroom, the Parent replied that the Student expressed that they did not like the CREW Teacher because, one time, the CREW Teacher did not allow the Student to play a game. The Parent shared that they believed this was the only time the Student expressed being uncomfortable in the CREW classroom.
59. When asked in interviews, neither the Assistant Principal, the Principal, nor the CREW Teacher observed that the Student was resistant to being in the CREW classroom subsequent to a physical altercation with the CREW Teacher. The Principal added that the CREW classroom continues to be one of the Student's preferred "safe spaces" to go to when they are dysregulated.
60. The District concedes that it did not provide all of the Student's SDI on the days they were removed from school, after exceeding ten days of removal. The Student did, however, have access to Google Classroom for each of their classes for notes and online assignments, as well as the ability to access online curriculum for their Science and Math classes. Finally, any homework the Student missed during removals from school could be picked up at the school upon request.
61. When interviewed, the District's Director of Special Programs (Director) shared that it is District practice to consider compensatory education services for Students who have been suspended for more than ten days. Whether a student is entitled to compensatory education depends on whether they missed SDI on the day(s) they were removed from school.
62. The Director reviewed whether the Student was provided with SDI on days they were removed from school and found that the Student partially received their required SDI on April 18, 21, and 23, 2025, prior to being sent home from school. They did not receive any of their required SDI, however, during their removals from school on April 24, 25, 28 or 29, 2025.



63. On April 29, 2025, following the MDR Meeting, the Director spoke with the Parent and discussed that the Student would be entitled to compensatory education for the days that the Student was removed from school, after the initial ten days of removal, and did not receive educational services. The Director and the Parent agreed to speak when the family returned from vacation to create a plan for providing compensatory education to the Student.

64. On April 29, 2025, after speaking with the Director, 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 District failed to provide the Student with the accommodations in their IEP and failed to implement their BIP.

School districts must provide special education and related services to a student with a disability in accordance with the student's IEP.<sup>4</sup> The school district must ensure that each staff member, including service providers, has access to a student's IEP and is informed of their specific responsibilities for implementing the IEP.<sup>5</sup> "IEP Teams and other school personnel should be able to demonstrate that, consistent with the provisions in the child's IEP, they are providing special education and related services and supplementary aids and services."<sup>6</sup>

Special education is defined as "specially designed instruction," that is provided at no cost to the parents and is intended to meet the unique needs of a child with a disability. "Specially Designed Instruction" means adapting, as appropriate to the needs of a child with a disability, the content, methodology, or delivery of instruction: 1) to address the child's unique needs resulting from the disability; and 2) ensuring the child's access to the general education curriculum.<sup>7</sup>

A district violates the IDEA when it materially fails to implement an IEP.<sup>8</sup> "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."<sup>9</sup>

The Parent specifically alleged in the Complaint that, "From February 2024 to April 2025, [the Student] was repeatedly denied access to [their] safe space during escalations, in direct violation of [their] IEP. Additionally, trauma-informed strategies detailing in [the Student's] BIP were not implemented, including the need for quiet redirection and limited staff interaction during dysregulation. Staff continued to engage [the Student] in overstimulating ways, worsening [their] emotional condition."

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<sup>4</sup> OAR 581-015-2220(1)(a); 34 CFR § 300.323(c)

<sup>5</sup> OAR 581-015-2220; 34 CFR § 300.323

<sup>6</sup> Questions and Answers on *U.S. Supreme Court Decision Endrew F. v. Douglas County Sch. Dist.* Re-1, 71 IDELR 68 (EDU 2017)

<sup>7</sup> OAR 581-015-2000(37); 34 CFR § 300.39(b)(3)

<sup>8</sup> *Van Duyn v. Baker Sch. Dist.* 5J, 502 F3d 811 (9<sup>th</sup> Cir. 2007) ("Van Duyn")

<sup>9</sup> *Id.*

None of the Student's IEPs that were in effect during the time period of the Complaint included an accommodation, or other requirement, that the Student be provided with a "safe space during escalations." The use of a safe space is also not included among the preventative strategies, accommodations, or interventions identified in the Student's BIP. School staff did work with the Student to identify spaces where they could de-escalate when needed. The school library, CREW classroom, and the front office were among the locations typically utilized by the Student for this purpose. The Parent takes particular issue with two incidents when the Student was prevented from entering the front office while emotionally dysregulated. District staff provided reasonable explanations for why the Student was denied access during these times, including maintaining student safety, and minimizing disruption of normal school operations. While the availability of a safe space was a tool that was often used by District staff to help the Student calm down during a behavior escalation, the Student's IEP does not mandate that they be provided with access to every one of their preferred safe spaces during all times of the day.

Similarly, the "need for quiet redirection and limited staff interaction during dysregulation," very well may be a useful tool in responding to the Student's behavior, but it is not a strategy, accommodation, or intervention required by the Student's BIP or IEP.

The Department does not substantiate this allegation.

### **Discipline**

The Parent alleged that the District violated the IDEA by:

- a. Removing the Student from school for more than ten (10) school days, either consecutively or cumulatively, constituting a pattern of exclusion, and by failing to conduct a manifestation determination review to determine whether the Student's behavior was a manifestation of their disability after each consecutive removal over ten days;
- b. Once determining that the Student's behavior was a manifestation of their disability, the District failed to return the Student to the placement from which they were removed;
- c. After determining that the Student's behavior was a manifestation of their disability, the District failed to conduct a functional behavioral assessment of the Student and/or review and modify the Student's BIP as necessary; and
- d. The District failed to provide educational services to the Student during their removal from school.

Under the IDEA and Oregon State law, a student with a disability may be removed from their current educational placement for a violation of a student code of conduct for up to ten school days in a school year to the same extent as students without disabilities. School districts may remove a student with a disability from their placement for additional periods of up to ten school days in a school year for disciplinary reasons, so long as the removals do not constitute

a pattern of removals. Any disciplinary removal in excess of this constitutes a change of placement.<sup>10</sup>

Within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, a school district must convene a meeting to determine if the student's behavior is a manifestation of their disability. If the conduct is found to be a manifestation of the student's disability, the school district must: a) return the student to their previous placement, unless the parent and school district agree to a change of placement or other special circumstances apply, and either b) conduct a functional behavior assessment and implement a behavior intervention plan, or c) review an existing behavior intervention plan and modify it, as necessary, to address the behavior. If the behavior is not found to be a manifestation of the student's disability, the school district may proceed with disciplinary action to the same extent as it would for a student without a disability.<sup>11</sup>

When a student with a disability is removed from their current placement for more than ten cumulative school days, the Student must continue to receive educational services "so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP."<sup>12</sup>

The District held its first MDR for the Student on April 17, 2025, following the Student's suspension from school on April 15, 2025. At the time this MDR was held, the Student had been removed from school for no more than ten days during the current school year. Accordingly, while the District elected to convene the MDR team, it was not required to do so at that time. Nevertheless, the MDR team determined that the Student's conduct was a manifestation of their disability, and the Student was returned to their previous placement the following day.

The District's disciplinary removals of the Student exceeded ten days on April 18, 2025 when the Student was sent home early from school due to a behavioral incident. Additional removals, in excess of ten days, occurred on April 21, 23, 24, 25, 28, and 29, 2025. As required, the District convened an MDR on April 29, 2025, within ten school days, to determine if the Student's behavior was a manifestation of their disability. The MDR team did find that the Student's conduct on April 18, 21 and 23, 2025 was a manifestation of the Student's disability and the Student was returned to their previous placement, as required, the following school day. While the Student had access to some general education curriculum, online assignments, notes, and homework during the removals that occurred in excess of ten school days, they did not receive the SDI required by their IEP. They received some SDI on April 18, 21 and 23, 2025, but did not receive any of their required SDI on April 24, 25, 28 or 29, 2025.

The Parent also alleged that the District should have conducted an FBA of the Student and/or modified the Student's BIP after determining that the Student's behavior was a manifestation of their disability. A District is only required to complete an FBA following an MDR if one has not yet been completed. The District recently completed two comprehensive FBAs of the

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<sup>10</sup> OAR 581-015-2405 & 2410; 34 CFR § 300.530

<sup>11</sup> OAR 581-015-2415; 34 CFR § 300.530(e)-(f)

<sup>12</sup> 34 CFR § 300.530(d)

Student in December 2024 and January 2025. The Behavior Specialist gave a credible opinion that there was no reason to believe that the function of the Student's behavior had changed since the completion of those FBAs. Following the April 29, 2025 MDR, the District was required to review the Student's existing BIP and modify it, as necessary, to address the behavior. As evidenced by the Meeting Minutes from the April 29, 2025 MDR, the District and the Parent thoroughly discussed the Student's BIP and considered additional behavioral strategies that may be successful for the Student. The law does not require that a District *immediately* review an existing BIP, determine if modifications are necessary and, if so, revise the BIP following a determination that a Student's behavior was a manifestation of their disability. While the District perhaps intended to revise the Student's BIP, they were not given the opportunity to do so before the Parent filed the Complaint, just hours following the April 29, 2025 MDR.

The Department substantiates this allegation, in part, as it relates to the District's failure to provide the Student with educational services during removals from school in excess of ten school days during the same school year.

### **Free Appropriate Public Education**

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

Each school district is responsible for providing a free appropriate public education to school age children with disabilities for whom the school district is responsible.<sup>13</sup> The IDEA defines FAPE as special education and related services that: 1) Are provided at public expense, under public supervision and direction, and without charge; 2) Meet the standards of the state educational agency; 3) Include an appropriate preschool, elementary school, or secondary school education; and 4) Are provided in conformity with an IEP.<sup>14</sup>

To determine if a student has been denied a FAPE, courts must consider whether the school district complied with the procedural requirements of the IDEA, and whether the school district met the substantive requirement to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.<sup>15</sup> Not all procedural violations amount to a denial of FAPE. A school district's procedural violation denies FAPE to a student if it results in a loss of educational opportunity or if it seriously infringes on the parents' opportunity to participate in the development of the IEP.<sup>16</sup>

In this case, the only IDEA violation that was found to occur was that the District failed to provide the Student with educational services during removals from school in excess of ten school days during the same school year. This failure resulted in a loss of educational opportunity in that the Student did not receive special educational services that would enable them to progress towards meeting goals in their IEP. The District does not contest that the Student is entitled to compensatory education as a result of this violation.

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<sup>13</sup> OAR 581-015-2040(1); 34 CFR § 300.101(a)

<sup>14</sup> OAR 581-015-2040; 34 CFR § 300.17

<sup>15</sup> *Endrew F.*, 137 S.Ct. at 999

<sup>16</sup> *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9<sup>th</sup> Cir. 1992)

The Department substantiates this allegation as it relates to the District's failure to provide educational services, to which the Student was entitled, between April 18, 2025 and April 29, 2025.

As to the remaining allegations, there was no finding of a violation of the IDEA. Accordingly, there was no denial of FAPE.

**V. CORRECTIVE ACTION**  
*In the Matter of Hermiston School District 8*  
*Case No. 025-054-025*

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

<b>Action Required</b>	<b>Submissions</b>	<b>Due As Soon As Possible But Not Later Than</b>
1. The District will develop and conduct training for all staff responsible for implementing IEPs on the District's responsibility to provide educational services to students with IEPs who have been removed from school for more than ten cumulative school days in the same school year.	Training agenda and materials to ODE for review and approval.  Sign-in sheet from training.	September 1, 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 did not receive educational services between April 18, 2025 and April 29, 2025.	A written plan for delivery of compensatory education developed at an IEP meeting with the Parent.  Evidence showing that compensatory services were provided.	September 30, 2025  December 31, 2025

Dated: this 26th Day of June 2025

*Ramonda Olaloye*

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Ramonda Olaloye  
Assistant Superintendent  
Office of Enhancing Student Opportunities

E-mailing Date: June 25, 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).)