BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of South Lane School District 45J3 and Lane Education Service District	))))	FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER Case No. 25-054-063

I. BACKGROUND

On October 2, 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) who resides in the South Lane School District (District) and attends an educational program operated by the Lane Education Service District (ESD). 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 and the ESD.

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

On October 15, 2025, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the District and the ESD identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of October 29, 2025.

The District submitted a *Response* on October 28, 2025. In its *Response*, the District disputed five allegations, partially disputed one allegation, provided an explanation, and submitted documents in support of the District's position. On November 3, 2025, the District submitted additional documents in support of its position. In all, the District submitted the following relevant items:

1. District's Written *Response* to Complaint, 10/28/25
2. Table of Contents, 10/28/25
3. List of Knowledgeable Staff, 10/28/25
4. Classroom Tracheostomy Management, 9/20/22
5. Occupational Therapy (OT) Evaluation, 4/19/23
6. Speech-Language Assessment Summary, 4/19/23

[1] OAR 581-015-2030(12) and 34 CFR § 300.152(a)
[2] OAR 581-015-2030(12) and 34 CFR § 300.152(b)

7. Confidential Psychoeducational Report, 4/26/23
8. Statement of Eligibility for Special Education (Other Health Impairment), 4/26/23
9. Prior Notice and Consent for Initial Provision of Special Education, 4/26/23
10. Licensed Intent to Hire, 9/15/23
11. Notice of Team Meeting, 12/5/23
12. Individualized Education Program (IEP), 12/7/23
13. Special Education Placement Determination, 12/7/23
14. Prior Notice of Special Education Action (PWN), 12/7/23
15. Meeting Notes, 12/7/23
16. IEP Snapshot, 12/7/23
17. Temporary Licensed Intent to Hire, 9/25/24
18. Progress Report, 11/20/24
19. IEP, 11/21/24
20. Special Education Placement Determination, 11/21/24
21. Notice of Team Meeting, 11/21/24
22. PWN, 11/21/24
23. Meeting Notes, 11/21/24
24. IEP Snapshot, 11/21/24
25. Progress Report, Speech and Language Therapy, 6/11/25
26. Progress Report, 6/13/25
27. Employee Absence History, 2024-25 School Year
28. Student Attendance Report, 2024-25 School Year
29. Student Attendance Report, 2025-26 School Year
30. Individualized School Healthcare Plan, 2025-26 School Year
31. School Medical Orders, 9/17/25
32. IEP Meeting Minutes, 9/22/25
33. Emails, 2024-25 and 2025-26 School Years
34. District Special Education Programs Descriptions, undated

The ESD submitted a *Response* on October 29, 2025 denying the allegations and providing an explanation. The ESD did not submit any documents with its *Response*, stating that it believed all requested documents had been provided by the District. On November 12, 2025, at the request of the Complaint Investigator, the ESD submitted the following relevant items:

1. Speech and Language Pathologist Notes, 2024-25 School Year
2. Physical Therapy Service Logs, 2024-25 School Year
3. Occupational Therapy Service Logs, 2024-25 School Year
4. IEP, 11/21/24
5. PWN, 10/3/25
6. Supervision Plan, 2024-25 School Year
7. Student Schedule, 2024-25 School Year
8. Attendance Report, 2024-25 School Year
9. Attendance Report, 2025-26 School Year
10. Emails, 2024-25 and 2025-26 School Years

On November 4, 2025, the Parent submitted a *Reply* to the District's *Response.* The Parent also submitted the following relevant items:

1. Supervision Plan, 2024-25 School Year
2. Text Messages, 2024-25 School Year
3. Photographs, 5/3/24
4. Emails, 2024-25 and 2025-26 School Years
5. District Special Education Programs Descriptions, undated

On November 19 2025, at the request of the Complaint Investigator, the District School Nurse submitted emails from the 2024-25 and 2025-26 school years.

On October 14, 2025 and November 13, 2025, the Complaint Investigator interviewed the Parent. The Complaint Investigator interviewed the District and ESD personnel on November 10, 12, 13 and 14, 2025. The Complaint Investigator interviewed the District School Nurse, who is no longer employed by the District, on November 18, 2025. 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 October 3, 2024 to the filing of the Complaint on October 2, 2025.

Allegations	Conclusions
When IEPs Must Be in Effect The Complaint alleged that the District and the ESD violated the IDEA by not providing special education and related services in accordance with the Student's IEP. Specifically, the District and the ESD failed to provide the Student with the nursing services required by their IEP and failed to provide nursing services in accordance with valid medical orders. In addition, the ESD regularly and repeatedly excluded the Student from school due to staffing shortages. (OAR 581-015-2220; 34 CFR § 300.323)	**Substantiated as to the District and the ESD** The District failed to provide the Student with the nursing services required by their IEP. The ESD failed to implement the Student's IEP when it excluded them from school due to staffing shortages.

Allegations	Conclusions
Content of IEP The Complaint alleged that the District and the ESD violated the IDEA by failing to include services and/or accommodations in the Student's IEP that are necessary to allow the Student to attend school when a nurse and/or other staff are unavailable. Instead, the Student's IEP provides that the Student will be excluded from school in the event of staff absences. (OAR 581-015-2200; 34 CFR § 300.320)	**Not Substantiated** The Student's IEP included all required components.
Parent Participation The Complaint alleged that the District and the ESD violated the IDEA by interfering with the Parent's ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the Student, and the provision of a free appropriate public education to the Student. Specifically, the District and the ESD amended the Student's IEP without a meeting, and without notifying the Parent, when it added protocols regarding the provision of speech and language services to the Student. In addition, the District and the ESD failed to consider the Parent's request for a change of educational placement. (OAR 581-015-2190; 34 CFR § 300.501)	**Not Substantiated** The District and the ESD did not amend the Student's IEP without a meeting, and without notifying the Parent, by adding protocols regarding the provision of speech and language services to the Student. The District and the ESD did not fail to consider the Parent's request for a change of educational placement.
Prior Written Notice (PWN) The Complaint alleged that the District and the ESD violated the IDEA by failing to provide PWN when it amended the Student's IEP without a meeting to add protocols regarding the provision of speech and language services to the Student. (OAR 581-015-2310(2)(a); 34 CFR § 300.503)	**Not Substantiated** PWN was not required because the Student's IEP was not amended regarding the provision of speech and language services to the Student.
Placement The Complaint alleged that the District and the ESD violated the IDEA by failing to educate the Student, to the maximum extent appropriate, with children who are nondisabled.	**Not Substantiated** The Student was educated, to the maximum extent appropriate, with children who are nondisabled.

Allegations	Conclusions
(OAR 581-015-2250; 34 CFR § 300.116)	
Free Appropriate Public Education (FAPE) Due to the alleged IDEA violations detailed above, the Complaint alleged that the District and the ESD failed to provide the Student with a FAPE. (OAR 581-015-2040; 34 CFR § 300.101)	**Substantiated as to the District only** The Student was denied a FAPE when the District and the ESD failed to implement their IEP.

REQUESTED CORRECTIVE ACTIONS

The Complainant requests that the District and the ESD:

1. Fill the nursing position and provide compensatory education for all hours that the Student missed.
2. Have at least one trained backup nurse.
3. No stipulations for coming to school.
4. Provide compensatory education services for all days removed beyond 10 (*sic*) without proper MDR procedure. Require administrator and staff re-training on disciplinary safeguards for students with disabilities under IDEA.
5. 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 schedule consideration.
6. 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.
7. 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 October 3, 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 seven years old and is in the second grade. The Student resides within the District and attends an educational program operated by the ESD on a District school campus.

2. The Student is eligible for special education under the category of Other Health Impairment (OHI).

3. The Student has a complex medical history that includes diagnoses of: calcaneovalgus deformity of both feet, moderate-sized atrial septal defect status post repair, chronic lung disease, subglottic stenosis, feeding difficulties with g-tube dependence, oropharyngeal dysphasia, eosinophilic esophagitis, retinopathy of prematurity, and developmental delay. They have a tracheostomy that requires suctioning throughout the school day.

4. The District completed a Speech-Language Assessment on April 19, 2023 as a part of the Student's transition from Early Childhood Special Education (ECSE) to Kindergarten. According to the assessment report, the Student does not communicate verbally. At the time of the assessment, the Student was using Picture Exchange Communication System (PECS) cards to communicate and was beginning to use a "Quick Talker" device with three words per page. It was noted that attempts at using sign language had not been successful for the Student, and the use of Augmentative and Alternative Communication (AAC) applications on an iPad is "too visually stimulating" for the Student.

5. The District convened an annual IEP meeting for the Student on December 7, 2023 when the Student was in Kindergarten (December 7, 2023 IEP). The December 7, 2023 IEP includes, among other things:

    a. Student strengths, interests, and preferences: The Student "is typically happy and has a high interest in books." They will follow a one-step direction, after a prompt, and is "very active and on the move most of the day."

    b. Input from Parent: The Student is working on spatial awareness, including stepping without assistance. The Parent wants the Student to learn to read and would like to see more communication.

    c. Present Levels of Performance: In the area of academic readiness, the Student "needs to work on attending for longer periods." They do not "demonstrate an ability to attend to non-preferred tasks, such as academics."

    The Student "stands up from the floor independently, walks, runs, and plays outside during recess." They "can move around the room quickly stumbling slightly" and "has been working on [their] stair management while at school."

    While a variety of AAC tools were referenced in the Student's ECSE records, they did not come to Kindergarten with a specific AAC system already being used. Based on a recent assessment, the IEP team agreed to trial the use of PECS with the Student. Skills targeted for the Student's use of AAC are, "cause effect, concrete symbol use, social communication exchange, [and] functional requesting." The Student's "AAC support will be ongoing and will include assessment and advancement of AAC materials and tools."

The Student's disability makes it hard for them to attend to a lesson in a general education class. "This could put [the Student] further behind peers as [they are] so active and on the move the teacher would have a hard time managing other students to give [the Student] the time [they] need to finish an activity or functional routine."

d. Goals: The IEP includes goals in the areas of academic readiness, fine motor, math, reading, receptive communication, expressive communication, social emotional, and adaptive skills.

e. Specially Designed Instruction:

   i. Adaptive Skills for 150 minutes per week;
   ii. Behavior – Social/Emotional for 480 minutes per year;
   iii. Fine Motor Skills for 75 minutes per week; and
   iv. Readiness Skills for 150 minutes per week.

f. Related Services:

   i. Nursing Services for 360 minutes per day, provided by a Licensed Practical Nurse (LPN) or Registered Nurse (RN);
   ii. Physical Therapy for 240 minutes per year;
   iii. Occupational Therapy for 300 minutes per year;
   iv. Speech/Language Therapy for 120 minutes per month; and
   v. Augmentative Communication Services for 420 minutes per year.

g. Supplementary Aids/Services; Accommodations: Token Reinforcement Board; Visual Schedule; Nursing/Health care protocol; Feeding protocol; Tube feeding protocol; Slantboard; Adult Support throughout the day; Adaptive Chair; Rocking Chair; Communication Notebook with Parents; Wagon for transporting; and Adaptive bowl and spoon.

h. Non-Participation Justification: "[The Student] will spend [their] day in a self-contained classroom which will separate [them] from nondisabled children for the duration of the day in school. [The Student] is medically fragile and has low spatial awareness. [They] can be put into compromising positions in a general education classroom with low adult to child ratios. [The Student] needs a high ratio adult to child room where [they] can receive direct supervision from staff and [their] 1:1 nurse."

6. According to the Special Education Placement Determination dated December 7, 2023, the Student's IEP team considered placements in a "Regular class with resource support," and "Self-contained classroom: Life Skills" (Life Skills Program). The first placement was rejected because it "doesn't provide adequate specialized instruction" for the Student. The Life Skills Program was selected as the least restrictive environment to meet the Student's needs. The Placement Determination notes that "mainstream opportunities" were considered as part of the Student's placement in the Life Skills Program.

7. According to the Meeting Minutes, dated December 7, 2023, the IEP team agreed that placement in the Life Skills Program was the least restrictive environment for the Student. The Meeting Minutes also note that the "AAC device being designed by AT and AAC Specialist will be implemented."

8. A document that lists all of the special education placement options in the District describes the Life Skills Program, which is run by the ESD, as "A specialized program that provides services to students whose IEPs demonstrate a need for cognitive, communication, socialization, motor skills, and life skills development. Skills are developed with significant adult support through the following strategies: visual systems for work completion and communication, functional routines, social skills routines, prevocational skill development, and functional academic development."

9. When asked to describe the roles of both the District and the ESD when a student is placed in the Life Skills Program, the District Special Education Director (Director) explained to the Investigator that the ESD provides the teachers, consultants, and service providers for the program, with the exception of nursing services, which are the responsibility of the District. They added that the District continues to be responsible for ensuring that the Student receives a FAPE, but it contracts with the ESD to provide the educational services.

10. In an interview, the ESD administrator who supervises the Life Skills Program for the 2025-26 school year (ESD #2) explained that the ESD operates twenty-two Life Skills classrooms across its member districts. These classrooms are staffed at a ratio of one staff member for every two students, and may have additional staff, such as a 1:1 nurse, if required by an individual student's IEP. The Life Skills Program at the Student's school is limited to eight students, in part because the classroom is smaller than at some other locations

11. When asked if the students in the Life Skills Program have opportunities to access the general education setting on the campus where their classroom is located, the ESD Supervisor #2 shared that mainstreaming students is "a huge goal of our program." They meet with the principal of each school once per month, at which time they discuss opportunities for the students in the Life Skills Program to be included with their typical peers. They described the principal at the Student's school as "a really great partner in trying to figure out ways to get our students included." They added that decisions regarding inclusion are made on a case-by-case basis because some students in the Life Skills Program "aren't ready for it."

12. The Student continued to be placed in the Life Skills Program during the 2024-25 school year. The District hired the same LPN (1:1 LPN) who had provided nursing services during the previous school year to provide the nursing services required by the Student's IEP.

13. When asked if there was an Individual Health Plan (IHP) or healthcare protocol in place for the 1:1 LPN to follow during the 2024-25 school year, which is an accommodation required by the Student's IEP, the Director acknowledged that there was not. The Director stated that there were "some medical orders" that were used as a healthcare plan but it "was not as detailed as we had hoped," so one was developed during the 2025-26 school year.

14. When interviewed, the Parent reported that no medical orders were provided to the school during the 2024-25 school year, and that the written instructions the 1:1 LPN followed when providing care to the Student were notes that were created and provided by the Parent. In a separate interview, the District nurse confirmed that the school did not have medical orders or an IHP for the Student during the 2024-25 school year.

15. Due to the nature of the Student's medical needs, the Student cannot safely attend school if a nurse is not available. While the District did provide a nurse for the Student during the 2024-25 school year, it had no system in place to provide backup if the nurse were absent or on a break. Both the School Nurse and the Interim Nurse shared that neither the 1:1 LPN nor the Interim Nurse were permitted to take breaks during the workday because there was no one else to attend to the Student. If the nurse assigned to the Student was absent, the only option available was to exclude the Student from school. For instance, on October 8, 2024, the 1:1 LPN sent a text message to the Parent stating that they had to leave at 12:30 to take someone to a dental appointment. The Parent responded, "Ya I can be there front or back?" The 1:1 LPN replied, "We'll be at the back. Thank you I really appreciate it."

16. When interviewed, the Director stated that the District Nurse was responsible for "supervising [the 1:1 LPN] medically," "was supposed to create individual healthcare plans," and "was supposed to provide the backup coverage" when the 1:1 LPN was absent. The Director further stated that the District Nurse "was asked multiple times" to cover for the 1:1 LPN when they were out, but "it just never happened."

17. The District Nurse provided the Investigator with an email, dated September 12, 2024, from the Director's Administrative Assistant. The email mentioned the 1:1 LPN in the context of their eligibility to be reimbursed for licensing fees. The District Nurse replied and asked for more information about the 1:1 LPN, and whether they were expected to supervise them, as this was the first time they had heard of the LPN. In response, the Administrative Assistant sent an email stating, "The 1:1 LPN is a one-on-one LPN for a special education student. [They] would be under [the Director's] supervision." Additionally, the District Nurse denied that they were ever asked to be a backup for the 1:1 LPN during the 2024-25 school year and there is no evidence provided to indicate that any such requests were made.

18. On October 9, 2024, the Student's special education teacher for the 2024-25 school year (Previous Teacher) sent an email to the Parent stating, "Here is the proposed plan! Let me know if you want anything expanded or if I might have missed something." Attached to the email was a document titled "[Student] Supervision Plan."

19. The Supervision Plan, dated October 9, 2024, is a seven-page document that details various aspects of the Student's medical needs and educational services. In a section titled "General Classroom Supervision and Safety," the Supervision Plan states:

    "Low staffing: When [the 1:1 LPN] is absent, [the Student] will not come to school. If [the Previous Teacher] is absent, if all other staff are present, [the Student] will come to school. If more than 2 staff members are out with unfilled substitutes, a group text between [the Previous Teacher], [1:1 LPN], [the Parent] and [the ESD administrator who supervised the Life

Skills Program during the 2024-25 school year [ESD Supervisor #1)] will be created to plan for a response for the day by 7:30 am."

20. When interviewed, the Parent recalled that the Supervision Plan "was started" at the Student's annual IEP in November 2024 and that the District and ESD agreed that, in the event of a staffing shortage, "the only option was to keep [the Student] out of school." The Parent believed that either the Previous Teacher or the ESD Supervisor #1 had drafted the plan and recalled that it was "sent out to everyone and everyone agreed."

21. Neither the Parent nor the District or ESD provided evidence that the Supervision Plan, which the Previous Teacher emailed to the Parent on October 9, 2024, was discussed at an IEP meeting in November, or that it had been sent to anyone other than the Parent at the time it was drafted.

22. None of the ESD or District staff members who were interviewed acknowledged being aware of the Supervision Plan at the time it was drafted and all denied being involved in drafting it. The ESD Supervisor #2 shared that they first discovered the Supervision Plan in September 2025 while reviewing the Google Drive from the Previous Teacher, who was no longer employed by the ESD, in preparation for the Student's IEP meeting. The Director recalled learning about the Supervision Plan around the same time.

23. The ESD Supervisor #2 explained that the Supervision Plan does not reflect the ESD's typical practice when a staff member in the Life Skills Program is absent. When a teacher is out, the ESD has a pool of substitute teachers who can be assigned. If a substitute teacher is not available, the ESD has "at-large teachers" that are employed full time and that the ESD will "dispatch to any classrooms that a substitute teacher did not pick up." In the rare event that there aren't sufficient at-large teachers to cover absences, each classroom has a behavior consultant who can substitute and, as a last resort, one of the ESD administrators will fill in for the teacher. When more than one instructional assistant is absent in a classroom, the ESD has "at-large instructional assistants" who can be utilized, as well as other ESD staff who can be reassigned to assist in a classroom for the day if needed.

24. On October 24, 2024, the Previous Teacher sent a text message to the Parent and another individual at 7:30 a.m. stating, "I have two staff out today and no subs yet. I wanted to include you [name] as I know you will be dropping off [the Student] today. We have an arrangement that without subs for staff, [the Student] stays home to keep [them] safer." At 11:13 a.m., the 1:1 LPN sent a text message to the Parent stating, "[The Previous Teacher] and I agree that due to staffing it has become unsafe for [the Student] to be here. We need you to come pick [them] up." The Parent responded that they would let the 1:1 LPN know when they arrived at the school.

25. On November 20, 2024, the District completed a Progress Report regarding the goals from the December 7, 2023 IEP. According to this report, the Student made the following progress on their goals:

    a. Academic Readiness: Progressing. "[The Student] will attend unpreferred group lesson times such as content and writing for 3-5 minutes if staff members are actively engaging

[them] in the lesson. Independently [the Student] will not sit for these groups for longer than 30 seconds to a maximum of 1 minute."

b. Fine Motor: Mastered or Completed. "[The Student] has imitated drawing actions such as vertical, horizontal, and circular lines with 80% accuracy and will make several successful independent lines on a page."

c. Math: Mastered or Completed. "[The Student] can match and identify many colors and shapes when asked to find the color or shape out of a field of three" and "can sequence and identify numbers 1-10."

d. Reading: Mastered or Completed. "[The Student] has high print concepts and can use a book with ease, [they are] able to discriminate letters and match upper to lowercase for 23 of 26 letters."

e. Receptive Communication: no data reported

f. Expressive Communication: no data reported

g. Social/Emotional: Limited Progress. "[The Student] has decreased [their] non preferred activity time to the previous progress reported [from] 1 to 2 minutes to around 30 seconds to 1 minute."

h. Adaptive: Limited Progress. "[The Student] will walk to the bathroom, get on changing table and allow staff to complete [their] changing routine. [The Student] is not participating in any of these steps and this has been due to changing physical abilities over the year with a broken leg and regaining balance after cast removal."

26. The District convened the Student's next annual IEP meeting on November 21, 2024 (November 21, 2024 IEP). The November 21, 2024 IEP includes, among other things:

a. Student strengths, interests, and preferences: The Student "has a good memory and can recall information learned in different settings." They "prefer group times such as am and pm meetings that are interactive and engaging through songs [and] interactive SMART board elements such as calendar building and greeting wheel."

b. Input from Parent: The Parent noted that the Student's vision had declined and that further evaluation for a vision impairment was recommended.

c. Present Levels of Performance: The Student "is an active individual who communicates most often with [their] behaviors." They "intentionally communicate using a specialized AAC device containing icons associated with earned choices." The Student's aided communication "consists of a light tech communication board with icons containing [their] preferred items and the verbs associated with them." "When presented side by side, [the Student] often chooses the leftmost item regardless of its meaning and [their] desire." Staff switch the side of the Student's most preferred item "in order to help [them] scan the entire visual field."

In the area of AAC, it is recommended that the Student continue with the current AAC system because: "[The Student's] love of books causes [them] to not differentiate other light tech communication boards/binders from books as being meant for purposeful communication." In addition, the Student's love of "Leap Frog" toys and iPads causes them to have trouble differentiating high or mid tech AAC devices from games "as being meant for purposeful communication." The Student's "difficulty with scanning the entire visual field . . . is a barrier in more robust AAC options."

The Student "is able to demonstrate joint attention for a maximum of 15 minutes throughout [their] school day." They become "frustrated quickly" when blocked from a desired activity, but "will interact with the staff member in a desired manner . . . provided with prompts, insistence, and wait time." They "will attend unpreferred group lessons times such as content and writing for 3-5 minutes if staff members are actively engaging [them] in the lesson." "Independently [the Student] will not sit for these groups for longer than 30 seconds to a maximum of 1 minute." The Student needs to "increase [their] tolerance of peers in [their] vicinity to hopefully increase [their] engagement in non-preferred activities such as playing with peers, art, sensory activities. . . and meal times."

d. Goals: The IEP includes goals in the areas of expressive communication, reading, math, writing/fine motor, adaptive skills, social/emotional learning, self-care, and gross motor.

e. Specially Designed Instruction:

   i. Adaptive Skills for 150 minutes per week;
   ii. Behavior – Social/Emotional for 480 minutes per year;
   iii. Fine Motor Skills for 75 minutes per week; and
   iv. Readiness Skills for 150 minutes per week.

f. Related Services:

   i. Nursing Services for 360 minutes per day, provided by an LPN or RN;
   ii. Physical Therapy for 240 minutes per year;
   iii. Occupational Therapy for 300 minutes per year;
   iv. Speech/Language Therapy for 120 minutes per month; and
   v. Augmentative Communication Services for 420 minutes per year.

g. Supplementary Aids/Services; Accommodations: Token Reinforcement Board; Visual Schedule; Nursing/Health care protocol; Feeding protocol; Tube feeding protocol; Slantboard; 1:1 Adult Support; Adaptive Chair; Rocking Chair; Communication Notebook with parents; Wagon for transporting; and Adaptive bowl and spoon.

h. Non-Participation Justification: "[The Student] will spend [their] day in a self-contained classroom which will separate [them] from nondisabled children for the duration of the day in school." "[The Student] is medically fragile and has low spatial awareness. [They] can be put into compromising positions in a general education classroom with low adult to child ratios. [The Student] needs a high ratio adult to child room where [they] can receive direct supervision from staff and [their] 1:1 nurse."

27. According to the Special Education Placement Determination dated November 21, 2024, the Student's IEP team considered placements in a "Regular class with resource support," and "Self-contained classroom: Life Skills". The first placement was rejected because it "doesn't provide adequate specialized instruction" for the Student. The Life Skills Program was selected as the least restrictive environment to meet the Student's needs. The Placement Determination notes that "inclusion opportunities" were considered as part of the Student's placement in the Life Skills Program.

28. According to the Meeting Minutes, dated November, 21, 2024, the IEP team agreed to change the wording for the Student's adult support from "throughout the day to 1:1 due to safety plan and parent concerns." Additionally, the IEP team agreed that the Student's current placement in the Life Skills Program continued to be appropriate.

29. On January 15, 2025, the Previous Teacher sent an email to the ESD administrator who supervised the Life Skills Program during the 2024-25 school year (ESD Supervisor #1). They ask if there was an update on a substitute for an instructional assistant who will be out and states, "With [the Student's] plan, if we are down a certain number of staff, [the Parent] can make the choice for [the Student] to stay home if we don't think it is safe."

30. The ESD Supervisor #1 responded via email on the same date, "Are we limiting [the Student's] access, or is [the Parent] making that decision? I am worried that it could be viewed as a suspension." The Previous Teacher then responded, "[The Parent] makes the choice. I send a text in the morning to let [them] know if we are short staffed and [they] will usually make the call, but sometimes asks what our opinion is on it as well, if we think it will be safe or not. I can start including you in these texts too."

31. On February 7, 2025, the 1:1 LPN and the Parent had the following exchange via text message:

    1:1 LPN: "We're down another staff member. We're down 2 IAs with a sub teacher. We can see how things go if you want or do you want to pick [the Student] up? [They] can stick close to me if needed."

    Parent: "I'm in town for about another hour. So let's see how it goes and if I need to pick [the Student] up on the way home I can."

    Parent: "Ok [*sic*] my way back do you want me to get [them]?

    1:1 LPN: "It will be tough with the staffing ratio. Sounds like lots of group work today. Safety may be compromised but I'll stuck [*sic*] close to [them] if I need to. I'm going to leave it up to you and [the Previous Teacher] to decide based on the protocol you both put together."

    Parent: "I'm on my way be there in 5 meet in the back."

32. On May 8, 2025, the Previous Teacher sent a text to the Parent informing them that they need to attend an IEP meeting for another student at 10:00 a.m. and that one of the instructional assistants is also absent. They explain, "I figured we have coverage until 10 so we could either just have [the 1:1 LPN] with [the Student] until I return or you could pick him

up at 10, I wanted [them] to at least get some class time today since we will be staffed until 10." The Parent responded that they would pick the Student up from school.

33. According to an employee attendance report, the 1:1 LPN was absent for twelve and one-half days during the 2024-25 school year. The documented dates of absence are:

    a. October 28, 2024
    b. November 5, 2024
    c. November 20, 2024
    d. November 22, 2024
    e. December 6, 2024
    f. December 12, 2024
    g. January 7, 2025
    h. February 18, 2025
    i. March 14, 2025
    j. March 19, 2025 (2.0 hours)
    k. March 21, 2025
    l. March 31, 2025
    m. April 3, 2025

34. As reflected on a Student Attendance Report for the 2024-25 school year, the Student was absent on the following dates (with accompanying comments):

    a. September 12, 2024 1:1 nurse out
    b. September 20, 2024 1:1 nurse out
    c. October 21, 2024 Short staffed
    d. October 25, 2024 Short staffed
    e. November 5, 2024 Excused
    f. November 20, 2024 Nurse out
    g. November 22, 2024 Excused
    h. November 26, 2024 Excused
    i. December 3-6, 2024 Excused
    j. January 7, 2025 Excused
    k. January 9-10, 2025 Unexcused
    l. February 10, 2025 Unexcused
    m. February 18, 2025 Unexcused
    n. March 11-12, 2025 Unexcused
    o. March 17, 2025 Illness
    p. March 19-21, 2025 Illness
    q. March 31, 2025 Unexcused
    r. April 3, 2025 Unexcused
    s. May 9, 2025 Unexcused
    t. May 21-22, 2025 Unexcused

35. In an interview, the Parent recalled that they were asked to pick the Student up early "at least once per week" during the 2024-25 school year due to staffing shortage. They shared that

the 1:1 LPN would text them "if the class was too outrageous" and tell the Parent to come and get the Student. When the Parent picked the Student up, they met the Student at the back of the building, so they did not believe the front office of the school was notified.

36. When interviewed, the Principal explained that the school keeps track of attendance for the Life Skills Program, even though it is operated by ESD staff. The school relies on the ESD teacher to report student absences to the office, including when a student leaves before the end of the school day. Both the Principal and the ESD Supervisor #2 acknowledged that the Life Skills teachers can be inconsistent when recording attendance and may not always notify the front office when a student is picked up early.

37. The ESD speech-language pathologist (SLP) completed a Progress Report, dated June 11, 2025, regarding the Student's expressive communication goal from their November 21, 2024 IEP. According to this report, the Student is "on target" to meet the goal by their next annual IEP based on the following progress: "[The Student] is able to scan a visual of 2 choices to select the appropriate icon in 2/5 opportunities." They are "demonstrating an ability to scan as shown by how [they] tap both icons before selecting one." "The barrier to selecting the appropriate icon is that [they] may not want either of the two icons."

38. The Investigator asked the Parent to provide further details regarding their allegation that the District amended the Student's IEP without a meeting when it added protocols regarding the provision of speech and language services to the Student. The Parent replied that Student had "started doing something with a speech board" but "it's stupid" and "it makes [the Student] angry." In a second interview, the Parent explained that they were referring to "a communication board with Velcro" that the SLP started using with the Student during the 2023-24 school year, when the Student was in kindergarten. They added that, "I told [the SLP] it wasn't going to work, but [they] did it anyway." When the Parent was in the Student's classroom at the start of the 2025-26 school year, they observed that "the stupid board" was still being utilized with the Student.

39. When interviewed, the SLP shared that they were responsible for maintaining and updating the Student's AAC system during the time period of the Complaint. When asked to describe the AAC system, the SLP explained that for the past year and half, the Student has utilized a "light tech system" with nine icons representing their "most highly motivating activities." Staff are instructed to place two icons on either side of a large book, so that the Student can make a choice of which activity they want. The SLP shared that the Student has had difficulty accessing the AAC system because they do not understand the "cause and effect" of selecting an icon. In addition, the Student's vision deficits make it difficult for the Student to scan a visual field of choices. Accordingly, an updated AAC assessment was proposed at the Student's September 22, 2025 IEP Meeting.

40. On June 13, 2025, the District completed a Progress Report regarding the remaining goals from the November 21, 2024 IEP. According to this report, the Student made the following progress:

a. Reading: Mastered or Completed. "[The Student] passed the unit 1 test for the lessons 1-10 and has completed this goal. [They] can continue to add more words to this by continuing with [their] EdMark lessons at lesson 11."

b. Math: Mastered or Completed. "[The Student] has shown correspondence up to 11 showing that [they have] completed this goal. [They] can continue with correspondence up to 20 and start basic addition facts."

c. Writing/Fine Motor: Limited Progress. "[The Student] sill fights doing fine motor activities. [They] had a few surgeries and had some time off resulting in a possible loss of fine motor skills."

d. Adaptive: Limited Progress. "[The Student] will lift [their bottom] when asked while being changed. [They are] still not able to indicate that [they are] dirty or needs to [void]."

e. Social/Emotional Learning: Progressing. "[The Student] is attending for 15 minutes of group when accompanied by a staff member and has [their] activity book that is tied into the group slides. [They] will go through writing group as quickly as [they] can just to be done with it."

f. Self-Care: Progressing. "[The Student] is helping wipe [their] glasses on 3 of 5 opportunities and spraying the cleaner on 1 of 5 opportunities."

g. Gross Motor: No data provided.

41. On June 6, 2025, the Parent sent an email to the Director stating, "It has come to my attention that [the 1:1 LPN] will not be returning next year," and "if you do find a nurse for next school year, I would like to meet them and make sure I feel comfortable with them being in charge of [the Student's] care.

42. On July 31, 2025, the Parent sent an email to the Director and asked if a new nurse had been found for the Student and when they could meet the new nurse prior to the start of the school year. The Director replied on the same date that, "School and HR staff return to work August 4th. The LPN position will be posted sometime that week. Once the LPN is hired we will certainly set up a time for you to see them."

43. When asked by the Investigator why the LPN position wasn't posted until August, when the District was aware of the need for a new nurse for the Student in June, the Director explained that "We didn't have an HR director, and we didn't have an HR office at that time."

44. When asked to detail the efforts the District made to secure a nurse for the Student, the Director shared that they had posted the position and also contacted staffing agencies in an attempt to secure a nurse. Several of the candidates offered by the staffing agencies, however, had already been interviewed by the District and deemed unsuitable for the position. The Director expressed a preference for hiring a nurse as a District employee as they found staffing agencies to be unreliable.

45. On August 27, 2025, the Parent sent another email to the Director inquiring about the status of hiring a nurse for the Student. The Director responded, "We have not been able to secure an LPN, but are close. In the interim, the ESD (who runs the classroom) is working on re-assigning their RN to [the school] for a short time. As a last option, does [the Student] have a personal-service worker or respite care worker who has been trained on [the Student's] protocols. [*sic*] If so, we could hire on a short term basis until we secure a full-time LPN." The Parent replied that the Student's caregivers were not permitted to provide the Student's medical care.

46. The Student's placement in the Life Skills Program continued for the 2025-26 school year, which began on September 3, 2025. There was, however, a new teacher (Teacher) assigned to the classroom as the Previous Teacher was no longer employed by the ESD.

47. On September 3, 2025, the ESD Administrator emailed the Director and informed them that a nurse from the ESD (Interim Nurse) was available part-time to provide nursing services to the Student, but "not 5 full days consistently." The first date that the Interim Nurse could serve the Student was September 8, 2025.

48. On September 3, 2025, the Director emailed the Parent and informed them that the ESD "was able to secure a temporary RN for [the Student] and we would like to target Monday (8th) as the start date for [them]." The Director continued that waiting until September 8th for the Student to start school "will give the [ESD] RN and [the Parent] some time to connect and review the medical protocols prior to [the Student's] first day."

49. When interviewed, the Interim Nurse recalled that they began attending school with the Student on September 8, 2025. They had another professional obligation every Tuesday and every other Thursday, so were only able to provide nursing services to the Student either three or four days per week. When asked how they learned what services the Student required, they replied that the Parent trained them on the specifics of the Student's care. They noted that "there was no individualized health plan in place" so they worked on creating one.

50. On September 8, 2025, the District Nurse sent an email to the ESD Administrator asking, "Considering the challenges that [the Student] has experienced, the concerns of the health team and [the Parent], and our shared goal of supporting [the Student's] academic success, is there an option for [them] to join a general education 2nd grade classroom with [their] 1:1 nurse rather than staying in the [ESD] program? If so, what does the transfer process entail? If this is not possible, are there other options?"

51. In response to the District Nurse, the ESD Administrator sent an email to the Parent and other members of the Student's IEP team offering to schedule an IEP meeting "to discuss questions that have come up regarding nursing support, academics, mobility support, placement, AAC, vision services and any other topics the team would like to discuss." After some discussion, the IEP meeting was scheduled for September 22, 2025.

52. On September 12, 2025, the District Nurse sent an email the ESD Administrator, the Teacher, the Parent, and other staff stating, "[The Student's] class is down by two [instructional

assistants] today. This has been an ongoing concern for [the Parent] as [the Student] does not have structured education in these circumstances, so [they] have kept [the Student] home when this has happened. Is there an option to create an alternative education plan when [their] classroom doesn't have enough [instructional assistant] support?"

53. The Teacher responded to the District Nurse via email and explained, "We are only down one IA today, the other was filled with a long term sub that is very familiar with the students. Nonetheless, [the Student] will be accessing most of [their] education in the library today. We also have a plan in place starting next week for [them] to go to a gen-ed class for part of the day and work up to additional as appropriate."

54. According to the Teacher and ESD Supervisor #2, regular attempts have been made to include the Student in a general education classroom during the 2025-26 school year. The ESD Supervisor #2 shared that the Student is sometimes able to stay in the general education classroom for ten to fifteen minutes at a time. They have also observed the Student become overstimulated in the classroom and leave almost immediately.

55. The Interim Nurse accompanied the Student to the second-grade general education classroom during their mainstreaming times. They shared that the Student attended in the morning "for as long as possible, which is fifteen to twenty minutes." After that, the Student "gets pretty wiggly" and wants to go back to the Life Skills classroom. When the Student wants to leave, they walk out the door. In their opinion, the Like Skills classroom "is very disruptive" and the sounds and stimulation in the classroom "makes learning difficult." Despite these challenges, the Interim Nurse reported that the Student participates and "does really well" in group lessons with the other students in the Life Skills Program.

56. At the request of the District Nurse, the Student's physician provided a document entitled School Medical Orders, dated September 17, 2025, detailing the Student's care for the 2025-26 school year. The School Medical Orders include, in relevant part:

    a. Supervision Requirement: The Student requires 1:1 direct supervision by a licensed RN or LPN at all times while in the school setting. RN/LPN must remain within arm's reach for immediate intervention.
    b. Tracheostomy and Suctioning Orders: Specific details regarding tracheostomy management, including routine suctioning as needed and emergency trach replacement if dislodged/obstructed.
    c. Exclusion Criteria for Vomiting: Vomiting may occur due to secretions or behavioral triggers. Exclusion not required unless accompanied by fever, lethargy, dehydration, respiratory distress, or suspected contagious illness.
    d. Skin Care-Trach and G-Tube: Specific instructions for cleaning and dressing changes.
    e. G-Tube Feeding Orders: Specific instructions for feeding.
    f. Safety Parameters: The Student is restricted from contact sports/rough play to protect trach and G-tube.
    g. Classroom Safety: Do not place the Student near peers with aggressive behaviors.

h. Recess Accommodations: The Student requires daily outdoor activity equivalent to recess to be provided at an alternate time in a designated safe area. RN/LPN to supervise at all times.
i. General Education Inclusion: Student may attend general education classroom with 1:1 RN/LPN present.

57. The ESD Supervisor #2 shared during an interview that they were concerned about the portion of the Doctor's order restricting the Student from being placed near peers with aggressive behavior. They explained that, in the Life Skills Program, there are students who can become overstimulated and aggression can occur. While staff do everything they can to avoid these incidents, the reality is that this type of behavior is "the potential reality" and "it is part of who we serve."

58. The Parent described the Life Skills Program as "dangerous" and "a behavior class," noting that only two students in the class, including the Student, are medically fragile. They shared that the Student had "been attacked before" during either kindergarten or first grade. The Parent provided the investigator with photographs of the Student with scratches, but the photos are dated May 3, 2024, which is outside the time period of the Complaint.

59. When interviewed, the Interim Nurse described some aggressive behaviors they observed from other students in the Life Skills Program, including one student who "is a danger," "has caused harm to adults" and requires three to four staff members to manage their behavior when escalated. During their time working with the Student, they did not observe the Student harmed by any of their classmates. When asked if they had concerns about the Student's safety in the Life Skills classroom, they replied that they and the other staff in the classroom "never let [the Student] get in harm[']s way."

60. When interviewed, the Teacher reported that the Life Skills Program currently has eight students and six adults (five instructional assistants and the Teacher). When asked to describe their classroom, they shared that the students in the class are "significantly impacted by their disability . . . with a range of different needs." As a result, the class can be "super chaotic" but other times "it's pretty chill." They added that they do not believe "the chaos that happens in our room . . . generally bothers [the Student] unless it's right next to [them]."

61. On September 22, 2025, the District convened an IEP meeting for the Student (September 22, 2025 IEP). According to the Meeting Minutes, the meeting was scheduled because of a "placement discussion happening via email." The IEP team discussed the Student's nursing services, and it is noted that the ESD was providing services three days per week and that the District had not yet hired a nurse for the Student. There was a discussion regarding the need to draft an IHP for the Student, and it was agreed that the team would meet again once an IHP was drafted.

62. The Meeting Minutes also reflect a discussion regarding the Student's Supervision Plan. It is noted that the Student will not attend school when the nurse is absent, but that the school would make a plan for when the Teacher and/or instructional assistants were out that did not require excluding the Student from school. Finally, there was a discussion regarding the

Student's AAC system. The Parent expressed that they want a system that will "grow with [the Student]" and that they have the same system at home and at school. The SLP noted that the Student was not yet able to distinguish between two icons and it was determined that a new AAC evaluation would be completed to consider other options.

63. On September 22, 2025, after the IEP Meeting, the Parent sent an email to the Director requesting a list of all other placement options, other than the Life Skills Program, that could be available to the Student and requesting a meeting to review those options.

64. On September 23, 2025, in response to the Parent's email, the Director sent them a document describing the special education placement options that are available to students in the District and offered times for a meeting. The Parent responded, "After further consideration, I want to do some more research and learn a bit more before we sit down to talk about these programs. I will get back to you when I am ready to go over my options."

65. The Parent expressed frustration during their interview that the District had offered to hold an IEP meeting on September 22, 2025 to discuss the Student's placement, but that other items were discussed instead and "we never got to it." In their *Reply*, the Parent explained that they did not accept the Director's September 23, 2025 offer to meet and discuss the available placement options because "it would have been an evasive and unproductive conversation."

66. When asked if they believe the current placement is appropriate for the Student, the Teacher expressed that the Life Skills Program "is a good placement for [them] compared to Gen[eral] Ed[ucation]" but wonders if "a medically fragile setting might be better for [them]." They further explained that the Student started going to a general education classroom this year for up to twenty minutes, but "sometimes only lasts 5 minutes . . . and [they are] ready to go back to our classroom, because [they] feel safe in there." There are times when the Teacher does not think the general education classroom is appropriate for the Student "because [they] really feel overstimulated" in that setting. They added that the Student will "force [themselves] to throw up" or "attempt to throw up" if they want to leave the general education classroom. They do not have any concerns for the Student's safety in the Life Skills Program, due to the number of staff that are supporting them.

67. When asked if the Student has made progress since starting school this year, the Teacher shared that the Student is making gains in the curriculum and is able to sit with a group of students in the Life Skills classroom for thirty minutes, which is a significant improvement from the previous school year. They added that the Student especially enjoys the reading and math lessons that are presented on the Smart Board. They do, however, believe that the Student would be "further ahead in our reading curriculum and math" if they had not missed so much school because of the lack of consistent nursing support.

68. When asked what impact the continued absences had on the Student, the Parent shared that the Student "is sort of able to retain the things [they have] learned," but "when [they are] pulled out of [their] routine, every time [they go] back to school [they are] going to push boundaries." They also "have to relearn the routines and what is expected of [them]."

69. On October 2, 2025, the Director emailed the Parent and acknowledged their frustration with the District's failure to hire a nurse for the Student. The Director then writes, "In regards to compensatory education, absolutely. In situations like this (where a student isn't able to attend due to the district in-ability [*sic*] to keep the student safe) we tally the hours missed and provide an equivalent amount of instruction over school breaks (typically during the summer break). I'll contact you with details closer to the break."

70. As reflected on a Student Attendance Report for the 2025-26 school year, the Student was absent on the following dates (with accompanying comments) during the time period of the Complaint:

    a. September 16, 2025 No nurse available
    b. September 18, 2025 No nurse
    c. September 23, 2025 No nurse
    d. September 25, 2025 No nurse
    e. October 2, 2025 Nurse out

71. According to the Parent, the Student missed the following days of school during the 2025-26 school year (within the time period of the Complaint) because no nurse was available: September 4, 5, 9, 11, 18, 23 & 25, 2025 and October 2, 2025. In addition, the Student missed two hours of school on September 29, 2025 because the nurse arrived late.

72. On October 2, 2025, the Parent filed this Complaint.

IV. DISCUSSION

When IEPs Must Be in Effect

The Parent alleged that the District and the ESD violated the IDEA by not providing special education and related services in accordance with the Student's IEP. Specifically, the District and the ESD failed to provide the Student with the nursing services required by their IEP and failed to provide nursing services in accordance with valid medical orders. In addition, the ESD regularly and repeatedly excluded the Student from school due to staffing shortages.

School districts must provide special education and related services to a student with a disability in accordance with the student's IEP.[3] 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.[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]

[3] OAR 581-015-2220(1)(a); 34 CFR §300.323(c)
[4] OAR 581-015-2220; 34 CFR §300.323
[5] Questions and Answers on *U.S. Supreme Court Decision Endrew F. v. Douglas County Sch. Dist.* Re-1, 71 IDELR 68 (EDU 2017)

Under Oregon law, a "school district" means the public education agency (school district, ESD, or state agency) that is responsible by statute, rule, or contract for providing education to children with disabilities.[6]

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.[7]

A district violates the IDEA when it materially fails to implement an IEP.[8] "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."[9] 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."[10]

In this case, the evidence demonstrates that, during the 2024-25 school year, the District did not provide nursing services in accordance with valid medical orders and did not develop an IHP as required by the Student's IEP. In addition, the District acknowledges that the Student was excluded from school during both the 2024-25 and 2025-26 school years due to unavailability of an RN or LPN to provide the nursing services in the Student's IEP. During the 2024-25 school year, the Student was excluded when the 1:1 LPN was absent because the District did not have a plan in place to provide substitute nursing coverage for the Student. During the 2025-26 school year, the Student was excluded because the District was unable to hire, or otherwise secure the services of, a nurse for the Student. While the District certainly has had difficulty securing consistent nursing services for the Student, perhaps due to factors that are outside of the District's control, challenges in finding staff do not excuse any school district from its obligation to implement a Student's IEP. In communication with the Parent, the District has indicated a willingness to provide the Student with compensatory education for the time they missed school because nursing services were not provided.

[6] OAR 581-015-2000(32)
[7] OAR 581-015-2000(37); 34 CFR §300.39(b)(3)
[8] *Van Duyn v. Baker Sch. Dist. 5J*, 502 F3d 811 (9th Cir. 2007) ("Van Duyn")
[9] *Id.*
[10] *Id.*

The evidence also demonstrates that the ESD failed to implement the Student's IEP during the 2024-25 school year when it excluded the Student due to the absence of the teacher and/or instructional assistants in the Life Skills Program. While the District was responsible for providing nursing services to the Student, it contracted with the ESD to provide the remainder of the Student's special education placement, supports, and services in accordance with the Student's IEP. As the contracted placement, the ESD was responsible for implementing the Student's IEP. Further, it was the Previous Teacher, an ESD employee, who developed the Supervision Plan, setting forth the protocol for excluding the Student from school when staff are absent.

It is challenging to determine the precise number of days that the Student missed school during the 2024-25 school year. The District's Attendance Report identifies just five days that the Student was absent due to staff shortage or absence of a nurse. There are numerous other absences listed, however, that do not indicate why the absence occurred. In addition, the Attendance Report is clearly inaccurate. It is undisputed that the Student did not come to school on any day that the 1:1 LPN was out. The 1:1 LPN's absence history, however, identifies three dates that they were absent that are not reflected on the Student's Attendance Report. There are seven additional dates identified on the 1:1 LPN's absence history that are included on the Student's Attendance Report, but do not indicate that the absence was due to lack of nursing. Further, the text messages between the 1:1 LPN, Previous Teacher, and the Parent establish that the Student missed five full or partial days of school due to nurse absence or staffing shortage. None of these five dates are documented on the Student's Attendance Report. Based on this, it does not appear that the Previous Teacher reported the Student's absences when the Parent was asked or encouraged to keep the Student home or pick the Student up early. According to the Parent, they were also called and asked to pick the Student up at least once per week during the 2024-25 school year. Given the Previous Teacher's history of failing to report the Student's absences, it is likely that the Student was excluded from school for far more days than is reflected on the Attendance Report.

During the 2025-26 school year, there was not an allegation that the Student was excluded from school due to staffing shortages in the Life Skills Program. All of the parties are in agreement, however, that the Student was excluded from school on any day that a nurse was not available. Based on evidence provided by both the District and the Parent, the Student missed at least eight and one-half days of school during the first month of school due to lack of nursing.

Once it is established that there was a failure to implement the Student's IEP, the question then turns to whether that failure was material. While progress reports show that the Student made progress on some of their IEP goals, others showed limited progress. Progress reports also do not capture the amount of instruction in the general education curriculum that the Student missed as a result of their absence. The Parent described how the Student's routine was disrupted each time they missed school, requiring them to relearn routines and expectations. The Teacher also shared their opinion that the Student would be further ahead in the curriculum if they had not missed so much school. Both the volume of the absences, and the impact that they had on the Student's educational progress, establish that the District's and ESD's failure to implement the Student's IEP was material.

The Department substantiates this allegation as to both the District and the ESD.

Content of the IEP

The Parent alleged that the District violated the IDEA by failing to include services and/or accommodations in the Student's IEP that are necessary to allow the Student to attend school when a nurse and/or other staff are unavailable. Instead, the Student's IEP provides that the Student will be excluded from school in the event of staff absences.

When developing a student's IEP, the IEP must include a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum. It must also include measurable annual goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum and meet each of the student's other educational needs that result from the student's disability. The IEP must also include information on how the student's progress toward meeting the annual goals will be measured and provided to the parents. Finally, each IEP must include a statement of the specific special education and related services and supplementary aids and services to be provided to the student, or on behalf of the student.[11]

The basis of this allegation is the Parent's understanding that the Supervision Plan, which sets forth the protocol for excluding the Student from school, was part of the Student's IEP. The evidence shows that the Supervision Plan was developed outside of the IEP process, is not mentioned in the Student's IEP, and was not agreed upon by the Student's IEP team. None of the Student's IEPs in effect during the time-period of the Complaint contain language suggesting that the Student would be excluded from school due to staff absences.

The Department does not substantiate this allegation as to the District or the ESD.

Parent Participation

The Parent alleged that the District and the ESD violated the IDEA by interfering with the Parent's ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the Student, and the provision of a free appropriate public education to the Student. Specifically, the District and the ESD amended the Student's IEP without a meeting, and without notifying the Parent, when it added protocols regarding the provision of speech and language services to the Student. In addition, the District and the ESD failed to consider the Parent's request for a change of educational placement.

A school district must provide one or both parents with the opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child.[12] School districts must consider the concerns of the parents for enhancing the education

[11] OAR 581-015-2205(1); 34 CFR §300.320
[12] OAR 581-015-2190(1); 34 CFR § 300.501(b)

of their child, among other indicators of the student's academic, developmental, and functional needs.[13] "[P]arents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child's needs and the services to be provided to meet those needs."[14] A meeting, in which parents must be given the opportunity to participate, does not include "preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting."[15]

When asked to identify the "protocols" what were added to the Student's IEP without their consent, the Parent identified the SLP's use of a communication board with Velcro that was first implemented during the 2023-24 school year. The SLP confirmed that the Student had been using the same communication board as their AAC system for the past year and a half, with any changes occurring after the Complaint was filed. While the Student's IEP includes AAC services, it does not contain any specific protocol regarding what AAC system will be used with the Student. Further, there were no amendments made to the Student's IEP regarding Speech and Language or AAC services during the time period of the Complaint.

The Parent also alleged that the District failed to consider the Parent's request for a change of placement. When Parent and the School Nurse began inquiring about the possibility of a placement change for the Student at the start of the 2025-26 school year, the ESD Supervisor #2 immediately offered to convene an IEP meeting to discuss the matter. It is correct that the Student's placement was not explicitly considered during the September 22, 2025 IEP meeting. There were, however, a number of pressing matters that were addressed during the meeting, including finding nursing support for the Student, implementing the new medical orders that were received from the Student's doctor, developing an IHP for the Student, addressing the Student's vision needs, and creating a plan that does not exclude the Student from school when staff are absent. While the IEP team may not have made it through the entire agenda, the Meeting Minutes reflect that the IEP team would meet again once the IHP was drafted. Just one day after the meeting, at Parent request, the Director sent a document describing the continuum of alternative placement options available in the District and offered to meet with the Parent to discuss them within the following ten days. The Parent, however, declined to meet with the Director to discuss placement options. While the possibility of changing the Student's placement had not yet been fully discussed and considered at an IEP meeting, the District has demonstrated a willingness to have that discussion with the Parent.

The Department does not substantiate this allegation as to the District or the ESD.

Prior Written Notice

The Parent alleged that the District and the ESD violated the IDEA by failing to provide PWN when it amended the Student's IEP without a meeting to add protocols regarding the provision of speech and language services to the Student.

[13] OAR 581-015-2205(1)(b) and (d); 34 CFR § 300.324(a)(1)
[14] Letter to Northrop (OSEP 5/21/13), citing 71 Fed. Reg. 46,678 (2006)
[15] OAR 581-015-2190(4); 34 CFR § 300.501(b)(3)

The IDEA requires school districts to give parents PWN "a reasonable time" before it proposes or refuses to initiate or change anything related to the identification, evaluation, educational placement, or the provision of FAPE to a child with a disability.[16] PWN must be both specific and explanatory, including:

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

The PWN must be provided early enough that parents have time to fully consider any proposed change and respond to the action before it is implemented.[17]

As discussed above, the Student's IEP was not amended to add protocols regarding the provision of speech and language services to the Student. Accordingly, no PWN was required.

The Department does not substantiate this allegation as to the District or the ESD.

Placement

The Parent alleged that the District and the ESD violated the IDEA by failing to educate the Student, to the maximum extent appropriate, with children who are nondisabled.

School districts must ensure that, to the maximum extent appropriate, students with disabilities are educated with students who do not have a disability. The IDEA requires that education in special classes, separate schooling, or other removal of students with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.[18] This mandate is referred to as the requirement that a student be placed in the Least Restrictive Environment (LRE).

Each school district must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services. The continuum of alternative placements must include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions. Further, the continuum

[16] OAR 581-015-2310; 34 CFR § 300.503(a).
[17] *Letter to Chandler* (OSEP 2012)
[18] OAR 581-15-2240; 34 CFR § 300.114

of alternative placements must allow for the provision of supplementary aids and services to be provided in conjunction placement in a regular classroom.[19]

The educational placement of a student with a disability shall be determined by a group of persons, including the parents and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The decision regarding placement must be based on the student's IEP, determined at least once per year, and be as close as possible to the student's home. Unless the student's IEP requires some other arrangement, the student must be educated in the school that they would attend if not disabled.[20]

In considering the LRE for a student, placement teams may apply a four-factor balancing test which considers: 1) the educational benefit to the student of placement in a regular education setting, 2) the non-academic benefit to the student of such a placement, 3) the impact of the placement on the teacher and the other students in the regular education setting, and 4) the costs associated with the placement.[21]

The Student's placement was considered and agreed upon by the IEP Team, including the Parent, at the Student's annual IEP meetings on December 7, 2023 and November 21, 2024. While the Student did not spend any time in the general education setting during the 2024-25 school year, the IEP team noted valid and reasonable justification for this, including the Student's short attention span, their need for a high adult-to-student ratio, medical fragility, and tendency to become overstimulated. During the 2025-26 school year, the District and the ESD have demonstrated that the Student is included in the general education setting to the maximum extent appropriate. Each day, the Student spends as much time as they are able in a general education second grade classroom. While the Student began the year attending for just a few minutes, the District and ESD have increased that time as the Student's tolerance has increased. When the Student leaves the general education classroom, it is because they have self-selected to return to the Life Skills classroom or have otherwise communicated a desire to leave the general education setting. The evidence presented does not suggest that the Student would benefit from spending additional time in the general education setting.

The Department does not substantiate this allegation as to the District or the ESD.

Free Appropriate Public Education

Due to the alleged IDEA violations detailed above, the Parent alleged that the District and the ESD 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.[22] In Oregon, the school district who is responsible for providing FAPE to a student is the student's district of residence.[23]

[19] OAR 581-015-2245; 34 CFR § 300.115
[20] OAR 581-015-2250; 34 CFR § 300.116
[21] *Sacramento City Sch. Dist. Bd. Of Educ. V. Holland*, 14 F.3d 1398 (9th Cir. 1994)
[22] OAR 581-015-2040(1); 34 CFR §300.101(a)
[23] OAR 581-015-2040

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.[24]

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.[25] 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.[26]

In this case, the District and the ESD violated the IDEA when they failed to provide the Student with the nursing services required by their IEP and excluded the Student from school due to nurse absence and/or staffing shortages. This failure resulted in a loss of educational opportunity in that the Student did not receive special educational services or instruction that would enable them to progress towards meeting goals in their IEP and did not have access to the curriculum. The District does not contest that the Student is entitled to compensatory education as a result of this violation.

The Department substantiates this allegation as it relates to the District only.

V. CORRECTIVE ACTION

In the Matter of South Lane School District 45J3 and Lane Education Service District
Case No. 025-054-063

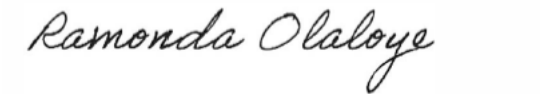
Based on the facts provided, the following corrective action is ordered:

Action Required	**Submissions**	**Due As Soon As Possible But Not Later Than**
1. The District will secure the services of an LPN or RN as soon as possible to provide the nursing services required by the Student's IEP. These efforts shall include, but not be limited to, attempts to contract with outside agencies that provide nursing services.	Evidence showing the District's attempts to secure the services of an RN or LPN for the Student.	February 15, 2026

[24] OAR 581-015-2040; 34 CFR §300.17
[25] *Endrew F.,* 137 S.Ct. at 999
[26] *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23,* 960 F.2d 1479, 1484 (9th Cir. 1992)

2. The District will develop a plan to provide backup nursing coverage in the event that the Student's 1:1 nurse is absent, on a required break, or otherwise not able to provide the nursing services required by the Student's IEP.	A written plan for how the District will provide backup nursing coverage in the event that the Student's 1:1 nurse is absent, on a required break, or otherwise not able to provide the nursing services required by the Student's IEP.	January 15, 2026
3. The District and the ESD will develop and conduct training for all staff responsible for implementing IEPs on the District's and ESD's responsibility to provide educational services to special education students in accordance with their IEPs.	Training agenda and materials to ODE for review and approval. Sign-in sheet from training.	January 31, 2026 April 15, 2026
4. The District will convene an IEP meeting with the Parent to determine appropriate compensatory education services for the loss of educational benefit and opportunity caused when the Student was excluded from school due to nurse absence and/or ESD staffing levels during the time period of the Complaint. If the parties are unable to reach an agreement on the compensatory education to be offered to the Student, either party can request that the determination be made by the Department.	A written plan for delivery of compensatory education developed at an IEP meeting with the Parent. Evidence showing that compensatory services were provided.	January 15, 2026 November 30, 2026

Dated: this 1 Day of December 2025



Ramonda Olaloye

Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: December 1, 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).)