BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of John Day School District 3 and Grant County Education Service District	))))	FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER Case No. 25-054-070

I. BACKGROUND

On October 22, 2025, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the John Day School District 3 (District), with allegations made against the District and the Grant County Education Service District (the ESD). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District 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 and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.[2]

On October 28, 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 September 12, 2025.

The ESD submitted a *Response* on November 4, 2025, denying the allegations, and providing an explanation. The ESD stated, "[The ESD] did not participate in, nor offer consultation for, any meetings for this child" and "was not designated to provide any services to the child as per the IEP."

The District submitted a *Response* on November 10, 2025, denying the allegations, providing an explanation, and submitting documents in support of the District's position. The District submitted the following relevant items:

1. District's Written *Response* to Complaint, 11/10/25
2. Individualized Education Program (IEP), 10/10/23
3. Special Education Placement Determination, 10/10/23

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

4. Meeting Request for meeting on 10/10/23, 10/5/23
5. Disability Statement (OHI), 3/16/23
6. Disability Statement (DHH), 3/16/23
7. Disability Statement (ASD), 3/16/23
8. IEP Amendment, 4/2/25
9. Special Education Placement Determination, 10/21/24
10. Notice of Team Meeting on 3/3/25, 2/14/25
11. Prior Written Notice (PWN), 3/3/25
12. District Meeting Notes, 3/3/25
13. IEP, 9/22/25
14. District IEP Meeting Notes, 9/22/25
15. PWN, 9/22/25
16. PWN, 10/15/25
17. Email exchanges between District Staff and Parent, 9/16/25 – 10/15/25
18. Email exchanges between District Staff and District Legal Counsel, 10/7/25 – 10/15/25

The District provided one additional document on December 2, 2025:

19. Special Education Placement Determination, 9/22/25

The Parent submitted a *Reply* on November 18, 2025, providing an explanation and rebuttal, as well as additional documents. The Parents submitted the following relevant items:

1. *Reply*, 11/18/25
2. Email exchanges between Parent and Staff from District, [Virtual School]Virtual School, a different ESD (ESD 2), and Family Advocate, 2/14/25 – 4/2/25
3. Parent's Discrimination Complaint filed with ODE Complaint and Appeals, 8/15/24
4. Email exchange between Parent and Advocates, 4/1/25 - 9/23/25
5. Email from Parent to District, 7/24/24
6. Email from ESD Superintendent to Parent, 9/5/2024
7. Email exchanges between Parent and Out-of-State School for the Deaf, 1/7/22 – 2/17/23
8. Email exchanges between Parent and District, 9/17/24 – 11/8/24
9. Email attendance notifications from OSD to Parent, 1/18/24 and 5/31/24
10. Email from District to Parent, 9/12/24
11. Email exchanges between Parent and OSD, 10/16/23 - 6/3/24
12. Email exchanges between Parent and District, 9/3/24 – 9/17/24
13. Email from District to Parent, 3/20/23
14. Email exchange between Parent and Oregon Deaf and Hard of Hearing Services, 7/24/24 – 8/2/24
15. Email exchanges between Parent and District, 9/16/25 – 11/10/25

The Parent provided additional documents between November and November 26, 2025:

1. Virtual School Modified Diploma Determination, signed 10/28/24

2. Email exchanges between Parent and [Virtual School]Virtual School, 9/20/24 – 4/30/25
3. Draft IEP, 9/22/25
4. Parent's Meeting Notes**,** 2023-2025

The Complaint Investigator interviewed the Parent on November 21, 2025. On November 24 and 25, 2025, the Complaint Investigator interviewed District personnel. On December 2, 2025, the Complaint Investigator interviewed personnel from a different ESD (ESD 2). Virtual interviews were conducted instead of on-site interviews. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Complainant's allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from October 23, 2024, to the filing of this Complaint on October 22, 2025.

Allegations	Conclusions
When IEPs Must Be in Effect The Complaint alleged that the District violated the IDEA by not providing special education and related services in accordance with the Student's IEP. (OAR 581-015-2220; 34 CFR § 300.323)	**Not Substantiated** The only IEP implemented during the complaint period was developed and implemented by a virtual public charter school sponsored by and located in a neighboring school district.
Requirement for Least Restrictive Environment The Complaint alleged that the District violated the IDEA requirement to ensure the Student is educated with children who do not have a disability to the maximum extent appropriate and special classes, separate schooling or other removal from the regular educational 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 satisfactory. (OAR 581-015-2240; 34 CFR § 300.114)	**Not Substantiated** The IEP team was unable to reach consensus on the Student's placement. The District determined (1) it did not have the resources or programs necessary to provide the Student with FAPE, and (2) the Oregon School for the Deaf was the only placement that could meet the Student's individual needs and provide a FAPE.

Allegations	Conclusions
	The District based the determination that separate schooling and removal from the regular educational environment was necessary on the Student's individual needs. Education in the District with the use of supplementary aids and services could not be achieved satisfactorily.
Placement of the Child The Complaint alleged that the District violated IDEA requirements when determining the educational placement of the Student. (OAR 581-015-2250; 34 CFR § 300.116)	**Not Substantiated** The team that determined the Student's placement consisted of a group of persons, including the Parent, and other persons knowledgeable about the Student. The team discussed various placement options and considered the benefits and potential harmful effects of each. The team determined that the services and supports required to provide FAPE could not be provided in the District.
Prior Written Notice (PWN) The Complaint alleged that the District violated the IDEA by not providing the Parent with PWN within a reasonable period of time before the District proposed to initiate or change the identification, evaluation, educational placement, of provision of a free appropriate public education to the Student. (OAR 581-015-2310; 34 CFR § 300.503)	**Not Substantiated** The Parent's Complaint indicated that the District did not provide a copy of the PWN from the September 22, 2025 IEP meeting until October 15, 2025. The District did provide a copy to the Parent on September 22, 2025, as well as a second PWN dated October 15, 2025.
Parent Participation The Complaint alleged that the District violated the IDEA by interfering with the Parent's ability to participate in	**Substantiated** The District was responsive to the Parent's concerns, convened

Allegations	Conclusions
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 Complaint alleged that the District predetermined the Student's placement. (OAR 581-015-2190; 34 CFR § 300.501)	IEP meetings when requested (except for the October 2025 request), and considered the Parent's input. Although the Parent disagreed with decisions made by the District, the Parent was provided the opportunity to meaningfully participate in IEP meetings. However, following the September 22, 2025 meeting, the District initially told the Parent that the IEP was not completed. The Parent requested another IEP meeting to finalize the IEP and discuss placement. After consulting with Legal Counsel, the District unilaterally finalized the IEP by adding related services information (provider, location, time, etc.). The District provided PWN stating it would not hold another meeting, however, unilaterally revising the IEP without an IEP meeting interfered with the Parent's ability to participate in decisions regarding the Student.
Free Appropriate Public Education (FAPE) The Complaint alleged that the District's failed to provide the Student with a free appropriate public education. (OAR 581-015-2040; 34 CFR § 300.101)	**Not Substantiated** There is insufficient evidence to conclude that any errors made by the District resulted in a loss of educational opportunity or benefit. As the Parent indicated many times that they would not agree with a placement at OSD, it is unlikely that alternative educational possibilities would have been considered.

REQUESTED CORRECTIVE ACTION

- Allow the Student to attend their District high school alongside the Student's non-disabled peers in their local community near their health care team.
- Provide the Student the full 510 minutes a day for ASL interpretation during all school settings as documented in the IEP.
- Provide the Student with specialized instruction in the areas the District failed to provide for the time documented on the IEP.
- Do not make decisions of placement before an IEP meeting is held.
- Give PWN in a timely manner and BEFORE decisions are implemented.
- Hold a follow up mediated IEP meeting for the District to reevaluate placement options with appropriate supports for FAPE in the least restrictive environment in which the District is ready to actively listen and take into consideration legitimate concerns regarding the Student's individual needs. Including correct documentation of the Parent's concerns regarding the Student traveling 7 hours one way twice a week as well as being in a setting where emergent medical care is not accessible. Especially given the Student's history at OSD and the Parent pulling the Student from there for safety/health reasons twice previously.
- Provide compensatory services for missed interpretation time and educational access violations.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before October 23, 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 16 years old and in the tenth grade.

2. The Student is currently eligible for special education services under the disability category of Deaf or Hard of Hearing (DHH) and Autism Spectrum Disorder (ASD).

3. The Student was born deaf and started receiving special education early intervention services shortly after birth.

4. The Student's medical history included diagnoses of profound bilateral hearing loss (at birth), attention-deficit/hyperactivity disorder (age five), autism spectrum disorder (age 13), and dysautonomia (age 16).

5. While a resident of a different school district in Oregon, the Student started attending the Oregon School for the Deaf (OSD) at age five.

6. The Parent reported that, at age ten, the Student was sexually assaulted on the bus by a high school student while being transported home for the weekend from OSD.

7. The Parent reported they subsequently pulled the Student from OSD and moved out of state in order for the Student to attend a different school for the deaf. The Student attended an out-of-state school for the deaf through February 2023.

8. The Student moved to the District in late February 2023, with an out-of-state IEP.

9. In February and March 2023, the Parent contacted the District's Director of Student Services (the Director). According to the Parent, the Director stated they did not think it was appropriate or safe for the Student to attend their neighborhood school because of the Student's hearing loss. The Parent said it was obvious almost immediately that the District thought the only place the Student could be educated was OSD.

   The Parent reported the District was "actively pushing OSD as placement early on." The Director sent "a registration link for OSD rather than facilitating local placement."

10. On March 20, 2023, the Director sent the Parent an email with a registration link for OSD, asking the Parent to get the Student registered "so we can move forward with make [*sic*] arrangements."

11. The Student started attending OSD on April 9, 2023.

12. The District reported the following about the Student's move to the District, in relevant part:

    a. "The IEP team reviewed records and determined that placement at OSD was the only setting capable of providing a Free Appropriate Public Education (FAPE) due to the student's profound hearing loss, communication needs, and co-occurring disabilities of Autism Spectrum Disorder (ASD) and Attention-Deficit/Hyperactivity Disorder (ADHD)."

    b. "The Parent agreed at that time that OSD was the best educational placement, though [the Parent] expressed concerns about the travel distance and the student being away from home."

    c. "The student attended OSD for the remainder of the 2022-23 school year and the entirety of the 2023-24 school year[.]"

    d. At the Student's annual IEP meeting for the 2023-24 school year "no major concerns were brought forward from the parent about the students [*sic*] participation in the OSD program."

13. The Parent reported that the District's indication that the Parent freely chose OSD as the best placement was inaccurate, and the District has "a pattern where OSD is presented as the only option."

14. The Director reported that once the Student started attending OSD, the District had limited involvement. The District remained responsible for providing transportation and the Director attended IEP meetings, but OSD led the meetings and developed the Student's IEP.

2023-24 School Year

15. During the 2023-24 school year, the Student attended eighth grade at OSD.

16. On October 10, 2023, OSD convened the Student's annual IEP meeting.

17. The Student's October 10, 2023 IEP (the October 2023 IEP), included the following information, in relevant part:

    a. Parent Concerns: Accommodations, unrealistic math goals, and the Student "has been in 2nd grade reading for many years."

    b. Present Levels: Assessments indicated the Student scored in the average range in "expressive/receptive ASL language skills."

    "[The Student's] primary mode of communication is ASL. [The Student] reportedly has used a cochlear implant in the past but appears to have rejected it and is currently using no amplification…. prefers to sign. Speech services are not recommended on [their] new IEP."

    "[The Student] is a nice addition to OSD's middle school… comes to class on time and with all of [their] materials… and is ready to work. [The Student] does [their] best and is patient when [they need] help. [The Student] pays attention well and although [they are] quiet, [the Student] participates well in class and stays on task. Some days there are social issues that affect the classroom and [the Student] needs some space."

    c. Special Factors: The Student exhibits behavior that impedes their learning or the learning of others, and the Student is deaf.

    d. Annual Goals: One Math goal ("demonstrate increased skills in math in the areas of multiplication and division"); one Adaptive/Self-Management goal ("Given an independent work assignment… will work with 2 or less redirects to complete [their] work for a period of 20 minutes without disrupting other students in the environment"); one ASL goal ("increase [their] skill from 25th percentile to 50th percentile in the ASL assessment with regards to the Questions portion"); and one English goal ("demonstrate increased expressive language competency and increase reading comprehension").

e. Specially Designed Instruction (SDI): Math (720 minutes per month), Adaptive/Self-Management (15 minutes per week); ASL (720 minutes per month); and English (720 minutes per month).

f. Related Services: Audiology (30 minutes per year); and Transportation (60 minutes per day).

g. Accommodations: Access to cushion for better focus; allowed to have gum to lessen stimming; signed support as permitted by standardized assessments … access to interpreter window as permitted; and visual reminders and reinforcers for appropriate communication and problem-solving with peers.

h. Supports for School Personnel: Counseling Consultation (60 minutes per week).

i. Non-Participation Justification: "[The Student] is a full time student at the Oregon School for the Deaf… [The Student] needs direct instruction in a visual language, ASL, and a small class setting to fully access [their] educational program. [The Student] also benefits from opportunities to interact socially with a critical mass of peers. [The Student] receives specially designed instruction in ASL, English, and Math. It is likely [the Student's] deafness poses challenges in fully accessing information if it's presented only by auditory means."

18. In the October 10, 2023 Special Education Placement Determination, the IEP team selected "Public residential facility," from the two options listed. Benefits of this option included deaf adult role models, deaf peers, direct signed instruction at all times, opportunities for extracurricular and leadership activities, and small class sizes. Possible harmful effects were listed as "Far from home" and "Few or no hearing peers."

    The other option considered was "Regular class (more than 80%)." Benefits were "close to home" and "Hearing peers." Possible harmful effects were listed as few or no deaf adult role models and peers, larger class sizes, and "[l]ittle or no direct sign instruction outside of time with DHH teacher/specialist." The "Modification/Supplementary aids and services considered to maintain the student in a less restrictive option (before selection of a more restrictive option)" included interpreters and regional support. This placement was rejected, stating, "does not meet the student's academic, social, and communication needs at this time."

19. The Parent indicated they had many concerns about the Student attending OSD, which increased during the 2023-24 school year. This included the Student's behavior, attendance, mental health, and access to medical care. Emails with OSD provided by the Parent included the following information, in relevant part:

    a. On October 16, 2023, OSD emailed all parents to report that threats had been made against the school by a former student. Parents were notified that the state police were involved.

b. On January 18 and May 31, 2024, OSD emailed the Parent to report the Student missed school.

c. On May 2, 2024, OSD emailed the Parent regarding health concerns about the Student's eardrum discovered by an audiologist.

d. On May 31, 2024, an OSD teacher emailed the Parent to report the Student was having behavior issues, including inability to focus in class, missing lessons and schoolwork, and being rude to teachers.

e. On June 3, 2024, an OSD teacher emailed the Parent, stating, "the Student needs to improve [their] work ethic instead of blaming the teachers when [the Student] doesn't want to put in the effort… [The Student] also seems to need a lot of support from the aide to self regulate."

20. According to the Parent, the Student was unable to get medical care while at OSD. The Parent reported that the infirmary on the OSD campus was similar to a school nurse; they provided bandages and over-the-counter pain killers but did not provide any real medical treatment. Additionally, the Parent stated OSD was unwilling to transport the Student to medical appointments that the Parent scheduled in the area. The Parent had to drive to OSD in order to obtain medical care for the Student.

21. According to the Parent, there were serious concerns about the Student living in the OSD dorms. The Parent reported that the Student was physically assaulted in the bathroom, that they were contacted by an OSD school psychologist to report that the Student needed help, and there was an "epidemic" of students wanting to commit suicide. The Parent felt that the Student's life was in danger at OSD.

22. The Parent reported they had legitimate concerns about the Student at OSD, which the District did not take seriously or appropriately consider.

23. The Parent reported trying to reach the Director in summer 2024 to notify the District that "OSD wasn't going to be an option this year." The Parent stated the Student wanted to attend school locally rather than travel seven hours twice a week "to be in a setting we no longer feel is safe."

24. In a July 24, 2024 email to the Director, the Parent indicated it was too difficult having the Student attend school so far away and the Student would like to attend school in the District for the upcoming school year. The Parent reported they identified someone locally who had worked for the District before and was willing to work as an interpreter for the Student.

25. According to the Parent, the Director called them on August 8, 2024, stating that placement was a team decision and the Director thought the Student's "needs were too high to be met locally." However, the District agreed to set up an IEP meeting.

26. On August 13, 2024, the Parent went to the local District high school (the High School) to register the Student. The Parent reported they were approached by the Director, who stated (1) OSD needed to initiate the requested IEP meeting "since they did [the Student's] last meeting"; and (2) the Director "didn't want to get [the Student's] hopes up for [them] to go to school here." The Director also indicated the Parent could not register the Student for the High School until after the upcoming IEP meeting.

2024-25 School Year

27. On August 27, 2024, an IEP meeting was convened at the Parent's request "to revisit placement." The meeting was not completed on August 27, 2024 and continuation meetings were held on September 3 and September 12, 2024.

28. The District reported the following about the IEP meetings:

    a. The Parent expressed "concerns about travel time, medical care access, and mental health support, particularly within the OSD dormitory environment."

    b. The Student stated "[they] wanted to remain at OSD because it best supported [their] educational and communication needs."

    c. "The IEP team reviewed all relevant data and offered FAPE with continued placement at OSD."

    d. "Following this meeting, the parent declined the District's offer of FAPE and subsequently enrolled the student in [virtual charter school] for the 2024-25 school year."

29. When asked about the Student's statement that they wanted to remain at OSD, the District reported this occurred when the Parent got upset and took a break from the meeting. District staff indicated the Student told the team that they wanted to remain at OSD but did not want to go against the Parent's wishes or hurt their feelings.

    The Parent reported they were not present when this was allegedly shared by the Student, but when the Parent asked the Student, they said they did not say that they wanted to stay at OSD at the meeting.

30. The Director reported the following about the meetings:

    a. The meeting was led by OSD because the Student was still considered an OSD student.

    b. The District and OSD had been unaware that the Student was not planning to return to OSD for the 2024-25 school year.

    c. The Parent went through their concerns, which included mental health and safety at the OSD dorms, and reports that students were expressing suicidal thoughts; the distance

from home; the Parent did not have reliable transportation to get to OSD when needed; and concerns about the Student's access to medical care while at OSD.

d. The Special Education Director [the Virtual School Director] from a virtual charter school [the Virtual School] from a neighboring school district [District 2] was invited to the meeting. The team discussed the option of a virtual setting but team members were concerned that it would not be adequate to meet the Student's needs.

e. The IEP team determined that OSD was the only placement option that could meet the Student's needs.

f. After the team failed to meet consensus on placement, the Virtual School Director contacted the Parent to inform the Parent they could still choose to enroll the Student in the Virtual School.

31. The Parent reported the following about the IEP meetings:

a. They were told that they had to either send the Student to OSD or pull them from the District.

b. They were told that they had to unenroll the Student from the District and register the Student for homeschooling in order to enroll the Student in the Virtual School.

c. They were contacted outside the meeting by the Virtual School Director.

d. The Parent hesitantly agreed to the Virtual School because they were told the Student could also participate in sports and electives at the High School.

32. Staff from a different ESD (ESD 2) attended the meetings, as they provided deaf and hard of hearing services to the region. The ESD 2 Director of Speech Services (the ESD 2 Director) reported the following about the meetings:

a. The main conversation they recalled was that the team was concerned about the Student's mental health and needed access to a provider who could communicate with the Student in ASL. This was available at OSD, but could not be provided in the District.

b. A representative from an organization providing support to families with deaf children encouraged the Student to advocate for themselves. Through the ASL interpreter, the Student expressed the desire to remain at OSD. When the Parent got upset and left, the Student was visibly shaken and concerned about how the Parent was doing.

c. ESD 2 coordinates with districts in the region to help locate providers for deaf students. The ESD 2 Director did not know of anyone in the District, or anywhere nearby, who was proficient in ASL. They noted that the District was the most remote district in the region.

33. The District reported it did not have meeting notes, placement determination, PWN, or other documents related to the August and September 2024 IEP meetings because the meetings were led by OSD. The Director reported they requested these documents from OSD but did not receive them.

34. According to the Parent, on September 26, 2024 the District agreed to release the Student from the District to attend the Virtual School in District 2.

35. In an October 3, 2024 email, the Parent mentioned that the District had listed a job opening for an ASL interpreter.

36. On October 21, 2024, District 2 and the Virtual School convened the Student's annual IEP meeting.

37. The Student's October 21, 2024 IEP (the October 2024 IEP), included the following information, in relevant part:

    a. Present Levels: "Because of the [the Student's] disability [they are] below grade level in all academic areas. Reading and writing are particularly delayed because English is not [their] first language… Communication challenges have made access to education challenging and [the Student] requires special education services in reading, writing, and math in order to reach [their] individual goals."

       "Social skills, Social opportunities: [The Student] wants to be on campus at school. [They do] communicate with friends on [their] tablet and [are] looking forward to teaching ASL at the local art center. Participating in field trips is something [the Student] is looking forward to. Our school will do the best we can to provide interpretation for [the Student] on field trips. This will be through a virtual interpreter. We are hoping that internet service will allow this to work for [the Student] most of the time."

       "Because of [their] disability, communication is challenging. In [the Student's] rural community attending an online school, social opportunities are sparse and emotional health could be impacted."

    b. Special Factors: Added the Student has limited English proficiency; has communication needs; needs assistive technology devices or services; and requires one or more specialized formats of educational materials.

    c. Annual Goals: One Math goal ("demonstrate computation and problem solving at the 3rd grade level"); one Reading goal ("demonstrate understanding and comprehension of 3rd grade level content standards in language arts"); and one Writing goal ("demonstrate improved sentence level writings as demonstrated by writing sentences that include adjectives or active verbs as well as proper conventions").

       Goals in the areas of Adaptive/Self-Management and ASL were removed.

d. Specially Designed Instruction (SDI): Math (20 minutes per month), Reading (20 minutes per month); and Writing (20 minutes per month).

e. Related Services: Audiology/hearing services (200 minutes per year).

f. Accommodations: Added reduce visual distractions; enhance speech reading conditions; present information in simple, structured, sequential manner; ensure the Student's attention prior to speaking; allow extra time for processing information; repeat or rephrase information when necessary; frequently check for understanding of information; use visual supplements; downtime/break from watching/listening; extra time to complete assignments; step-by-step directions; extra practice opportunities; provide supplemental materials to reinforce concepts of curriculum; alternate test or testing methods; reading assistance with test for clarification of directions and non-reading items; and provide ASL interpreting, among others.

g. Modifications: "Modified reading/writing assignments (shorten length, adapt phonics-based)" and "Alternative curriculum."

h. Supports for School Personnel: Consultation to teaching staff "from DHH staff to [Virtual School] staff" (60 minutes per year); and Consultation to teaching staff "from [special education] to [Virtual School] teachers" (60 minutes per year).

i. Non-Participation Justification: "Student will participate 100% in general education… [The Virtual School] is a public online charter school utilizing a full inclusion model, which specializes in designing programs to meet individual student needs. One-on-one advisory visits are offered for each student, and may include progress checks, instruction, supported work completion, and/or specially designed instruction. Due to the design of our program, this one-on-one instructional time does not remove the child from the general education setting or peers for any amount of time. Specially designed instruction will be provided through specialized supports in the general education curriculum, vectored instruction, and/or another specialized curriculum targeting the student's needs."

38. In the October 21, 2024 Special Education Placement Determination, the team selected "[The Virtual School] WITH support services." No other options were listed as being considered and rejected.

39. The Student started attending the Virtual School as a ninth grader in October or November 2024.

40. The ESD 2 DHH Teacher reported they started working with the Student in November 2024. They reported the following about their involvement with the Student:

    a. They did not provide any direct services or SDI.

b. Although their role in implementing the IEP was for consultation services to the Virtual School Staff, they were asked to have a monthly meeting with the Student to provide the Student with the opportunity to communicate with someone in ASL.

c. They did not meet with the Student very often as their attempts to schedule meetings with the Student were largely unsuccessful.

d. When asked about the Student's level of ASL proficiency, they stated the Student was pretty proficient and had good vocabulary, but there were frequent misunderstandings by the Student and the Student was missing some fluency.

41. The District reported it offered the Student "participation in an on-campus art course" and "the opportunity to participate in athletics (track and field)," while enrolled at the Virtual School during the 2024-25 school year "to support the student's educational access and inclusion."

"Despite the District's efforts and willingness to collaborate, these arrangements were not successful in the eyes of either the parent or the District due to the student's ongoing communication and access challenges."

42. A November 7 - 8, 2024 email exchange between the Parent, the District Superintendent, and the Director about the District's attempts to hire an ASL interpreter included the following information:

a. The Parent wrote, "It has been a while and I haven't heard anything, so I wanted to check in on the interpreter to see how that process was going."

b. The Superintendent responded, "[W]e have been unable to find an in person ASL interpreter but we have secured an online option that we believe will work so [the Student] can entry [*sic*] in the Art class at [the High School]. We are awaiting word from [the Virtual School] so we can move forward."

The Superintendent noted, "We have advertised for some time locally and to date we have not received an application."

43. In February 2025, the Student started attending an art class at the High School. Both parties reported that this attempt did not go well.

44. On February 12, 2025, the Parent emailed District, Virtual School, and ESD 2 staff about "critical issues… regarding [the Student's] experience in the Art class at [the High School]." The Student reported "[t]he teacher and aides are not utilizing the interpreter as required by [their] IEP, instead expecting [the Student] to lip read"; "staff treat [the Student] as if [they are] incapable, treating [them] as 'a baby that can't do anything'"; the teacher broke the Student's art project and when the Student reached for it, "the teacher slapped [the

Student's] hand away"; "Despite the class working with clay, the teacher refused to allow [the Student] to use clay and insisted [the Student] draw instead"; and "[The Student] was instructed to move away from [their] two friends who know some sign language without any provided reason, disrupting [their] social and emotional support." The Parent claimed this was evidence that the District should provide the Student with an in-person interpreter.

45. The Parent provided a copy of a March 1, 2025 letter from the Student about their experience since moving to the District:

    a. The Student reported they struggled at OSD and they were bullied. "On June 3, 2023, I had an accident where someone hit me into a wall, injuring my shoulder. I got a bruise on my right arm, and didn't realize that my left should[er] had been broken for over a year."

    b. "I am no longer attending OSD because I only had one day a week for family time, and I was tired of traveling… I love my family deeply, and I want to spend time with them."

    c. They reported they were dissatisfied with the Virtual School. "The computer often runs out of storage, and it's hard to connect with the interpreter or get online access. "[The Virtual School] is not very helpful for me as a Deaf student[.]"

    d. "On January 21, 2025, I attended [the High School] for an art class, which I loved. However, the teacher was not nice to me and didn't listen to me… The teacher kept getting too close to me, trying to make me read [their] lips and treating me like a baby."

    e. "I know have seven friends at [the High School]… I ask you to listen to what I am saying as a [High School] district kid."

46. On March 3, 2025, District 2 convened a meeting. District 2's meeting notes included the following information, in relevant part:

    a. "This meeting was not an IEP meeting as it was planned with less than 24 hours notice and not all required team members were present… The goal was to work on accommodations and logistics to enable [the Student] to participate in track and field at [their] local high school."

    b. "There are no live interpreters available in the region. Online interpretation will be utilized for direct coaching. It is not possible to know how well this will work and how much time will be needed. The challenges of online interpreteation [*sic*] are the internet reception, the weather and glare from the sun on the screen, the unstructured environment of people talking from many locations. [The Student] and [their] coach much [*sic*] be at the screen and patiently using the interpreter to communicate back and forth. We will provide the service as it is needed and found useful by both parties. To ensure [the Student's] safety and low tech communication; an adult assistant will be available for [the Student for] the entire track practice. This person will utilize written communication and visual signals they develop together to be sure [the Student] is not injured and that

[the Student] understands where to be and what [they] should be doing during practice and track meets."

c. "[The Student's] IEP is being ammended [*sic*] today with written agreement from [the Parent] to ammend [*sic*] without a meeting. [The Parent] can request an official meeting to make changes or review concerns with the full team at any time and may ask that we schedule a meeting for the near future."

47. District 2 issued a PWN dated March 3, 2025, proposing to change the Student's placement and provision of FAPE. It stated the Student's IEP was amended "to include accommodations [the Student] needs to be fully included in track and field and remain safe."

48. In a March 12, 2025 email to their family advocate (the Advocate), the Parent reported District delays in getting support in place for the Student to participate in track. The Parent indicated, "There's literally no reason [the Student] can't attend [the High School] except them being unwilling to provide services… [The Student] wants [the High School] full time."

49. In a March 31, 2025 email with the Parent and the District about plans for the Student to participate in track and safety concerns, Virtual School staff stated, "We feel that it is important for [the Student] to have a 1:1 adult with [them] at track to ensure [their] safety… this adult would not be a sign language user and they would have to communicate using writing and other means that they can develop together. We feel it is also important for [the Student] to have some coaching and time with [their] coach using sign language. We would like to have an online interpreter with [the Student] and the coach for 15 minutes before practice… Before [the Student's] first practice, [District] staff wants [the Student's] IEP amended to include the accommodations that [the Student] needs for track and field."

50. In an April 1, 2025 email exchange between the Parent and the Advocate's organization, the Advocate noted, "While an ASL fluent 1:1 or ASL interpreter would be preferable, we know that they are extremely hard to find in rural areas."

51. On April 2, 2025, the Virtual School and the District convened a meeting to "ensure everything is in place" for participation in track at the High School.

52. The Student's April 2, 2025 Amended IEP (the April 2025 Amended IEP), added the following:

a. Present Levels: "[The Student] will be participating in track and field at [their] local high school." The team convened "to determine accommodations that are needed to ensure [the Student] has fair access to this extracurricular activity. The accommodations that are needed are unclear as there are challenges with online interpretation. It will take some trial and error and effort on the part of all parties to figure out how to best support [the Student] in track and field. To start, [the Student] will have a 1:1 adult aid [*sic*] with [them] for safety and to ensure [the Student] receives communication and has [their] questions and concerns addressed using a written mode. For direct coaching instruction and important messages from the head coach; it is important for [the Student] to have an

interpreter (the only option for this at this time is an online interpreter). Although for the first week it will be provided the entire practice; it is likely that [the Student] and [their] track coaches will figure out the most crucial and beneficial times to have the online interpreter and use other means of communication for most of practice. [The Student's] service is written with the minimum amount of time provided and the team can provide more while we learn what [the Student] needs."

b. Accommodations: Added online interpretation for coaching during track meetings and practices; and "1:1 adult assistance for track practice" to ensure safety and support with track and field activities.

c. Non-Participation Justification: Added, "[The Student] will participate in track and field at [their] local high school… Accommodations are provided to ensure [their] safety and support for communication challenges."

53. In the April 2, 2025 Special Education Placement Determination, the team added, "[The Student] will participate in track and field at [the High School] in accordance with Oregon law… which allows students who are… enrolled in a charter school… to participate in interscholastic activities at their resident school."

54. The Student started participating in track and field at the High School on April 2, 2025.

55. In an April 2, 2025 email to the Parent and Virtual School staff, the Director reported there were "a few hiccups with technology" on the first day of track but they "managed to work through them." The Director asked for suggestions on "how to better support peer engagement so [the Student] can truly feel like part of the team. This is a challenge with an online interpreter, but we would love any tips or feedback from this team on how we can better support [the Student] and our other student-athletes in engaging with [the Student]."

56. The Director reported there were multiple problems with online interpreters, including the lack of reliable internet service and areas in the District that did not have any cellular service. In addition, having an online interpreter on a tablet was problematic as (1) outside at track, the glare of the sun on the tablet made it difficult to see, and (2) for the Student to be able to sign to the interpreter on the tablet and have their statements translated, the Student needed to have their hands free. It was not possible for the Student to hold the tablet and sign at the same time.

    The Director reported the Student had minimal communication with peers. Peers could write to the Student on a whiteboard, but the Director did not believe that participation in track resulted in any meaningful social interactions. The District was trying to include the Student and provide a sense of community but, even with the supports provided, the Student did not have equal access.

57. Because of problems with the Virtual School, the Parent decided the Student would not continue with the Virtual School.

2025-26 School Year

58. The District reported the Parent came to the High School on September 11, 2025 to enroll the student.

59. According to the Parent, they were able to confirm that the Student was registered at the High School for the 2025-26 school year in the District's online computer system.

60. On September 15, 2025 the Director called the Parent "to coordinate an IEP meeting." The following day, the Parent requested that all communication occur through email.

61. An email exchange between the Parent and the Director from September 16 - 22, 2025 included the following, in relevant part:

    a. On September 16, 2025, the Director emailed available dates for the IEP meeting and stated, "I am currently working to collect all requested records from [the Virtual School]… We are in a bit of a time crunch to get this meeting planned and executed in order to make sure we can get [the Student] back to school as soon as possible."

    b. On September 17, 2025, the Parent reported the Student was not comfortable with the DHH Teacher and did not want to work with them.

    c. The Director responded, "as a district, we are required to ensure the appropriate members of the IEP team are present at the meeting. Parents/Students cannot exclude team members, as each person brings required expertise to the table… [the DHH Teacher] is the only Teacher of the Deaf assigned to our region, so there's not another provider available to participate in the meeting… [The DHH Teacher] will only be in attendance via Zoom and not physically in the room with us… I will speak with [the DHH Teacher's supervisor] prior to the meeting to make sure we are able to facilitate a collaborative meeting."

    d. On September 22, 2025, the Parent requested that the District record the IEP meeting and send it to the Parent afterwards, "That way if [the Student] wants to revisit, we can do that to make sure [the Student] fully understands everything."

62. On September 22, 2025, the District convened an IEP meeting to conduct the Student's annual IEP review and determine placement. The District reported, "At the District's discretion, OSD was not invited to this meeting because the District was willing to hear the Parent out and determine whether any new data supported a possible in-district placement. No new information or data was presented that demonstrated a change in the student's educational needs since the prior IEP review."

63. The Student's September 22, 2025 IEP (the September 2025 IEP), included the following changes:

a. Strengths of Student: Were not updated, remained the same as October 2024 IEP.

b. Parent Concerns: Were not updated, remained the same as the April 2025 Amended IEP.

c. Present Levels: Added "Progress as of 9/18/25 (From [the Virtual School])" to the academic present levels, including updates on IEP goal progress. No updates were made to the present levels for developmental and functional performance.

d. How the student's disability affects involvement and progress in the general education curriculum: Included the "Benefits and Challenges of Virtual Instruction."

"Overall, [the Student] was making measurable academic progress through virtual instruction, with [their] strongest performance in language arts, writing, and mathematics. While technology and social connections post [*sic*] challenges, supports were in place to address these areas. [The Student's] disability affects involvement in progress in the regular curriculum due to social skills such as _____ [*sic*]."

e. Annual Goals: All three goals (Math, Reading, Writing) from the October 2024 IEP were carried over, word for word.

The ASL (goal category changed to "Language") and Adaptive/Self-Management goals from the October 2023 IEP were added back, without any changes. The present levels were left blank for these goals.

f. Specially Designed Instruction (SDI): Math (45 minutes per day); Reading (45 minutes per day); and Written Language (45 minutes per day). Added SDI in the areas of Language (120 minutes per week) and Study/Organizational Skills (30 minutes per day).

g. Related services: Removed Audiology/Hearing Services. Added Deaf/Blind (60 minutes per month); Counseling (30 minutes per week); Transportation (720 minutes per week); ASD Service (60 minutes per quarter); and Sign Language Interpreter Service (510 minutes per day).

h. Accommodations: Added accommodations, including access to fidgets; small class size; 1:1 adult assistance during physical activity; repeat or rephrase information when necessary; strategic seating; and separate setting for testing. The accommodation for alternate test or testing methods was removed.

The anticipated location, time, and frequency were changed for the accommodation "Provide ASL interpreting" (all settings, 150 minutes per day).

i. Modifications: Changed to modified "Curriculum/Setting" for Science, Math, History, and ELA.

j. Supports for School Personnel: Consultation with ASD Specialist (30 minutes per month); and Consultation with Counselor (30 minutes per month).

k. Non-Participation Justification: "[The Student] will be removed from the general education setting 100% of the day. [Their] placement will be at the Oregon School for the Deaf… This placement is appropriate as the Oregon School for the Deaf provides a fully accessible learning environment for students who are Deaf or Hard of Hearing. The specialized instruction, communication supports, and peer environment at OSD best meet [the Student's] academic and communication needs, which cannot be effectively provided in a general education setting."

64. In the September 22, 2025 Special Education Placement Determination, the team selected, "Public residential facility," of the four options listed. The other options were "Less than 40% of the day in regular class," "Public separate school," "and "Home-Schooled."

The Parent reported that they never received a copy of this document.

65. The District's September 22, 2025 Meeting Notes included the following:

a. Purpose of meeting: "Review [the Virtual School] IEP and progress, review current needs, brief review of goals, and discuss placement."

b. Diploma Track: "All freshman courses at [the Virtual School] were modified and transcripted as such… Due to [the Student's] needs, [they are] on track to receive a modified diploma."

c. "[The Virtual School] Notes: … Technology issues impacted access… Asychronous instruction limited ability to ask questions or receive reteaching… Social isolation noted… interpreter services provided virtually; challenges included inconsistency of interpreters and limited scheduling flexibility[.]"

d. Input from Regional Providers: "confirmed ASL SDI is an ongoing need… technology barrier limits access and socialization… Recognized challenges of virtual setting for [the Student]."

e. "Medical: Parent reported new diagnoses (dysautonomia, seizure activity, heart issues)… District requested medical information/ROI to develop a health plan; parent indicated willingness to provide information directly rather than signing ROI."

f. Three placement options reviewed:

i. Local High School ("<40% gen ed"): Benefits listed as close to home, access to general education classes, and daily peer interaction. Harmful effects listed as: no ASL peers/adults, risk of social isolation, restricted access to ASL, one-on-one SDI may be more restrictive, and limited post-secondary preparation.

ii. Public Online School: Benefits listed as flexible pacing, access to visual curriculum, reduced environmental distractions, and proximity to family. Harmful effects listed as technology issues, social isolation, limited peer interaction, minimal exposure to fluent ASL models, inconsistent access to highly trained staff.

iii. OSD (public residential facility): Benefits listed as Direct ASL instruction, specialized staff in Deaf education and autism, adapted curriculum, ASL peer group, extracurricular opportunities, structured residential program supporting independence and SEL. "Concerns from parent/advocate: Safety concerns (referenced suicidal peers in dorms); medical access concerns; parent stated 'OSD is not an option.'"

g. Input from the DHH Teacher: "Research on outcomes for deaf students supports placements such as OSD; services/programs available at OSD appropriate given [the Student's] needs."

h. District Input: "Must ensure FAPE; [the High School] would not provide required access; OSD remains most appropriate setting."

i. Advocate/Parent Input: "ASL peers not necessary given [the Student's] fluency… Strong concerns about OSD safety and medical access; prefers [the High School] or online placement; stated OSD would be dangerous for [the Student]."

j. Outcome: "District proposes OSD as placement for FAPE… Parent asked why only one option offered; district clarified IDEA requires offering the single placement that provides FAPE[.]"

k. Parent disagreed with placement. PWN "to be issued documenting discussion and disagreement."

66. When asked about the issues discussed at the September 22, 2025 meeting, the Director reported:

a. Medical Access: It was their understanding that OSD will drive students to appointments scheduled by parents in the area.

b. FAPE: Even if the District successfully hired an ASL interpreter to hire, this support would not be sufficient to provide FAPE to the Student.

c. Placement: OSD was the only placement option that could meet the Student's needs, which are very specific. Even at OSD with direct instruction in ASL, it was difficult for the Student to make academic progress.

The Director intentionally did not invite OSD to the IEP meeting. Even though OSD was a placement option, they did not think it was appropriate to invite anyone from OSD as that would indicate predetermination.

d. New Medical Diagnosis: the Parent did not provide the District with any medical documentation following the September 22, 2025 meeting or other information on how the diagnosis may impact the Student's needs.

67. ESD 2 staff reported the following about the September 22, 2025 IEP meeting:

a. The ESD 2 Director believed the Student would receive more appropriate and necessary services and supports at OSD.

b. The ESD 2 Director felt like the critical component was the need for counseling services, and they had concerns that a non-ASL speaking provider using an interpreter would not be able to meet this need.

c. The DHH Teacher has concerns about the Student's access to communication and incidental learning in an environment that an interpreter cannot convey.

d. Both the ESD 2 Director and DHH Teacher had to leave the meeting early.

68. The District provided a copy of the recording of the September 22, 2025 IEP meeting with its *Response*.

69. The recording of the IEP meeting included the following information, among other things:

a. The Director indicated that the need for transportation, the amount of interpreter support, and the provider for ASL services was dependent on placement.

b. The team agreed it would be beneficial for the Student to have counseling with someone who is fluent in ASL.

c. Advocate/Parent Input: The benefit of local placement was being with peers, as the Student had been without social interaction the past school year. It does not matter if peers know ASL if the Student has an interpreter. The goal is for the Student to get ready for the real world, where most people do not know ASL. OSD is dangerous for the Student.

d. Director: There are many barriers as a rural area with access to services and supports that are important to provide the Student with equal access to education. The District cannot provide access to FAPE without placement at OSD.

e. When Parent brought up the new medical diagnosis, including seizure and heart concerns, the Director asked if it would limit the Student's ability to travel. The Parent responded, "I would think so." The District stated the offer of FAPE through placement at OSD stands,

but if the District is provided with new medical information, the team might need to convene another meeting to discuss whether there are concerns that may impact placement.

70. On September 22, 2025, the District issued a PWN which stated the District offered FAPE through placement at OSD, but the Parent "did not agree with this offer of placement." The District proposed this action because "[the Student] requires highly specialized instruction, services, and an environment that cannot be provided within the local district…. The district does not have the resources or programs necessary to provide [the Student] with FAPE locally."

71. On September 22, 2025, following the meeting, the Director emailed the Parent a copy of the District's Meeting Notes, PWN, and Procedural Safeguards. The Director indicated they were also sending a hard copy of these documents to the Parent by regular mail.

72. In a September 30, 2025 email to the Director, the Parent requested a copy of the September 22, 2025 IEP as they had not yet received it. The Parent noted they were working "to determine next steps moving forward to make sure [the Student] gets a safe placement that meets [their] needs locally" and they would "be in contact soon to set up a meeting."

    The Director emailed the Parent a copy of the September 2025 IEP and stated a copy was also sent by regular mail. The Director wrote, "Here is an electronic copy of [the Student's] DRAFT IEP that you requested. Again this is in draft format as there were still things that needed to be decided as a team based on our ability to agree on placement (transition planning, non-participation justification, gathering data on present levels of added goals (ASL and Adaptive Self-Management). I did my best to document the discussion that we had during the meeting and add those things to the document. If you feel that I missed something please let me know."

73. On October 7, 2025, the Parent emailed the Director, stating, "I have the draft IEP and was wondering what the next steps are. Because this is still a draft, I would like to schedule a follow up IEP meeting to discuss placement and finalize the IEP. I'm looking forward to getting [the Student] back into the classroom as soon as possible."

74. The Director forwarded the Parent's email to the District Superintendent and District Legal Counsel, asking for advice on how to respond. The Director asked how to "best proceed," stating, "The IEP is not finalized because our offer of FAPE was not accepted. I am not sure what exactly we would have a meeting about?"

    District Legal Counsel responded on October 13, 2025, "If at the last IEP meeting we were at a point where we had a full offer of FAPE, then whether the parent 'accept' [*sic*] or agrees with that offer is legally irrelevant. If there were aspects of the IEP that we still need to cover then we would need to have another IEP meeting to address those areas of the IEP."

75. In an October 15, 2025 email to the Parent, the Director wrote, "I had reached out for guidance on how to finalize the document, as it was still in draft form. The IEP could not be finalized earlier because I was uncertain how to complete the Non-Participation Justification (NPJ), given that the team was unable to reach consensus on [the Student's] placement. The NPJ has now been completed based on the district's offer of FAPE, which includes placement at the Oregon School for the Deaf (OSD). Attached, you will find the finalized IEP with the completed NPJ page, as well as a Prior Written Notice indicating that the district stands ready to serve [the Student] under the offer of FAPE made during the meeting on September 22nd. At this time, the IEP has been fully reviewed by the team during our September 22nd meeting and is now finalized. The district believes the current IEP accurately reflects the team's discussion and stands ready."

76. The October 15, 2025 PWN stated the following, in relevant part:

    a. "The district proposes to implement the attached IEP, offering a Free Appropriate Education (FAPE) through placement at the Oregon School for the Deaf (OSD). Parents have refused this offer of FAPE. The district refuses the parent's request for an additional IEP meeting at this time, as the IEP was recently reviewed, updated, and finalized."

    b. "The district proposes this placement because [the Student] requires highly specialized instruction and communication supports that cannot be provided within the local district setting… No new information or changes have been presented that would warrant reconvening the team… no new data or concerns have been introduced."

    c. "Local district placement… Rejected due to lack of ASL peers, reliance on a single interpreter, limited access to rigorous instruction, and potential social isolation."

77. In comparing the draft September 22, 2025 IEP sent to the Parent on September 30, 2025, with the finalized IEP sent on October 15, 2022, the following changes were made:

    a. Transition Services: On the draft IEP, the measurable post-secondary goals (training education, employment, and independent living skills) were left blank.

       On the finalized IEP, a statement was added to each goal, "Transition planning to be discussed at a later meeting date."

    b. Related Services: On the draft IEP, some information was left blank. For Deaf/Blind services, the role, anticipated location, time, and frequency were left blank; for Counseling, the provider, role, anticipated location, time, and frequency were left blank; for Transportation, the role changed from "Bus Aide" to "Other," and the time changed from 30 minutes per day to 720 minutes per week; and for ASD Service, the role, anticipated location, time, and frequency were left blank.

       These were all filled in on the finalized IEP.

c. Statement of Non-Participation Justification: On the draft IEP, the Extent of Removal and Explanation and Justification sections were left blank except for the statement, "This needs to be discussed after placement is selected. Depending on the program [the Student] is in the extent of removal may look different."

   These were all filled in on the finalized IEP.

78. When asked about what was changed between the draft and finalized September 2025 IEP, the Director stated nothing changed except the Non-Participation Justification.

79. The Parent initially alleged that they did not receive the September 22, 2025 PWN until October 15, 2025. The Parent later reported this claim was based on a misunderstanding, as they did not initially realize that the District issued two separate PWNs, one on September 22 and the other on October 15, 2025. The Parent confirmed they did receive the September 22, 2025 PWN on September 22, 2025.

80. The District's November 10, 2025 *Response* stated the following, among other things:

    a. "The District has explored all reasonable options to provide comparable services locally, including multiple recruitment efforts for qualified ASL interpreters and Deaf-education specialists, and the use of remote interpreting supports. Despite these efforts, the IEP team determine[d] that the student's unique communication and instructional needs, requiring direct ASL instruction, Deaf-peer interaction, and ASL-fluent counseling, cannot be met within the local district setting. The IEP team, therefore, determine[d] that only OSD can implement the IEP in full, ensuring the student receives consistent ASL instruction, social interaction with Deaf peers, and access to qualified professionals."

    b. "The District acknowledges that OSD is a more restrictive setting. However, based on the nature and severity of the student's disabilities and the lack of local ASL-based programming, the IEP team concluded that OSD remains the least restrictive environment where FAPE can be achieved.

       The team considered multiple placement options… Each option was found insufficient to meet the student's language, education, and communication access needs."

    c. "The District denies any predetermination of placement. Placement decisions were made only after full team discussion, including review of all data, parent concerns, and student input."

    d. "Because the most recent IEP was developed without OSD's direct participation, should the parent accept the District's offer of FAPE, the IEP team would reconvene promptly to include OSD staff in revising and amending the IEP. This amendment would ensure that service minutes and delivery methods accurately reflect how supports are implemented within OSD's instructional model."

e. "The District recognizes that the distance to OSD (approximately seven hours each way) presents a hardship." However, "[e]ducational need, not geographic proximity, governs FAPE determinations."

f. "The IEP team's placement decision was individualized, data-driven, and student-centered, ensuring access to FAPE in the only environment capable of implementing the IEP as written-the Oregon School for the Deaf."

g. "Because the District has continuously stood ready to implement the IEP at OSD and the offer of FAPE was declined by the parent, the student's lack of participation at OSD does not constitute a denial of FAPE by the District."

81. On October 22, 2025, the Parent filed this Complaint.

82. Both the ESD and the District reported that the ESD has not been involved with the Student's special education services or placement.

IV. DISCUSSION

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.

School districts must provide special education and related services to a student with a disability in accordance with the student's IEP.[3] As soon as possible after the development of the IEP, the services included therein must be made available to the student.[4] The district must ensure that each staff member, including service providers, has access to a student's IEP and is informed of their specific responsibilities for implementing the IEP and the specific accommodations, modifications, and supports in accordance with the IEP.[5] A school district "must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."[6]

The Parent claimed the District and ESD failed to provide special education services and supports during the complaint period, as required by the Student's IEP. However, the only IEP implemented during the complaint period was developed and implemented by the Virtual School and District 2. Neither the District nor the ESD were involved.

The Department does not substantiate this allegation.

Requirement for Least Restrictive Environment

[3] OAR 581-015-2220(1)(a); 34 CFR § 300.323(c).
[4] OAR 581-015-2220(2)(b); 34 CFR § 300.323(c)(2).
[5] OAR 581-015-2220; 34 CFR § 300.323.
[6] *Endrew F. v, Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 999 (2017).

The Complaint alleged that the District and the ESD violated the IDEA by failing to follow requirements to ensure the Student is educated with children who do not have a disability to the maximum extent appropriate and special classes, separate schooling or other removal from the regular educational 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 satisfactory.

School districts must ensure, to the maximum extent appropriate, that children with disabilities are educated with children who do not have a disability.[7] Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur 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.[8] Even though some students with highly complex needs may require intensive individual services and support, the IEP team must consider the possibility of delivering those services and supports in the regular classroom before removing the student to a separate classroom.[9]

The LRE mandate does not require that school districts first place students with disabilities in the regular classroom and see if they fail before a more restrictive placement can be considered. However, first consideration must be given to placement in the regular classroom with appropriate aids and services before a more restrictive placement can be considered.[10] "Following this individual inquiry, if a determination is made... that the IEP for a particular disabled student could not be implemented satisfactorily in the regular education environment, even with the provision of supplementary aids and services, regular class placement would not be the LRE placement for that student."[11]

For a child who is deaf or heart of hearing, the IEP team must consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.[12] The team should also look at a child's "[s]ocial, emotional, and cultural needs including opportunities for peer interactions and communication."[13]

"Meeting the unique communication and related needs of a student who is deaf is a fundamental part of providing a free appropriate education (FAPE) to the child. Any setting, including a regular classroom, that prevents a child who is deaf from receiving appropriate education that meets [their] needs including communication needs is not the LRE for that child."[14]

[7] OAR 581-015-2240(1); 34 CFR § 300.116(a)(2)(i).
[8] OAR 581-015-2240(2); 34 CFR § 300.116(a)(2)(il).
[9] Letter to Beckwith, (OSEP 4/18/2017).
[10] Letter to Cohen, (OSEP 8/6/1996).
[11] Letter to Cohen, (OSEP 8/6/1996).
[12] 34 CFR § 300.324 (a)(2).
[13] Notice of Policy Guidance: Deaf Students Education Services (OCR 10/29/1992).
[14] *Id*.

The District consistently stated it did not have the resources or programs available to meet the Student's individual needs. District and ESD 2 staff reported concerns about communication barriers, difficulty making academic progress and the need for direct instruction in ASL, social isolation, and the Student's mental health and need for counseling from a provider who could communicate in ASL. District and ESD 2 staff additionally reported that it was essentially impossible to hire an in-person interpreter in the rural region in which the District is located. Even assuming the District could hire an interpreter, the Director reported that this support would not be sufficient to provide FAPE to the Student.

Both the Parent and the District reported that the District's attempts (and District 2's attempts) to provide online interpreting services was problematic. Barriers included technology problems, including inconsistent internet and cellular service, as well as practical problems, such as the Student needing their hands free to sign with an online interpreter on a tablet.

The DHH Teacher additionally reported that, while the Student's ASL skills were proficient, the Student had a continued need to increase their ASL language skills. To their knowledge, there was no one in the region who could provide SDI in ASL.

There is insufficient evidence to determine that there was a less restrictive environment in which the Student's IEP could be implemented and the Student could receive FAPE.

As previously stated, the ESD was not involved in the special education services or placement of the Student.

The Department does not substantiate this allegation.

Placement of the Child

The Complaint alleged that the District and the ESD violated IDEA requirements when determining the educational placement of the Student.

School districts must ensure that the educational placement of a child with a disability is determined by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.[15] In addition, the educational placement of a child must be made in conformity with LRE provisions and be based on the child's current IEP. Children with disabilities should be educated with children who are not disabled to the maximum extent appropriate.[16]

Placement decisions should not be based solely on factors such as category of disability, severity of disability, configuration of delivery system, availability of educational or related services, availability of appropriate staff, or administrative convenience.[17] "Each student's placement must be individually-determined based on the individual student's abilities and

[15] OAR 581-015-2250(1); 34 CFR § 300.116(a)(1).
[16] OAR 581-015-2240 and OAR 581-015-2250(1); 34 CFR § 300.114(a)(2).
[17] OSEP Memorandum 95-9 (OSEP 11/23/1994); Letter to Veazey (OSEP 11/26/2001).

needs... it is the program of specialized instruction and related services contained in the student's IEP that forms that basis of the placement decision."[18] The IDEA "requires that the placement be based on the IEP, and not vice versa."[19]

"[T]he overriding rule in determining the program and placement for each child who is deaf is that these determinations must be made on an individual basis to ensure that a free appropriate public education (FAPE) is made available to the child."[20] However, this does not "alter a public agency's obligation to place a student with a disability in a regular classroom if FAPE can be provided in that setting."[21]

While IEP teams should work towards consensus, the district is ultimately responsible for the provision of FAPE to a student. "If the team cannot reach agreement, the public agency must determine the appropriate services and provide the parents with prior written notice of the agencies determinations regarding the child's educational program and of the parents' right to seek resolution of any disagreement by initiating an impartial due process hearing or filing a state complaint."[22]

At the September 22, 2025, IEP team meeting, the IEP team determined that the Student needed direct instruction in ASL for the Student's academic and language goals. Additionally, the Student needed counseling services with a service provider who could communicate in ASL. The District was not able to provide these services to the Student. Without the services and supports included in the Student's September 2025 IEP, the Student would not receive FAPE.

At the September 22, 2025 IEP meeting, the team reviewed the Student's individual needs, developed an IEP, and discussed placement options, including the potential benefits and harm for each option. Team members were given the opportunity to ask questions and provide input on each placement option considered. Although the Parent disagreed with the decision, the District complied with IDEA requirements when determining the educational placement of the Student.

As previously stated, the ESD was not involved in the special education services or placement of the Student.

The Department does not substantiate this allegation.

Prior Written Notice

The Complaint alleged that the District violated the IDEA by not providing the Parent with prior written notice within a reasonable period of time before the District proposed to initiate or change the identification, evaluation, educational placement, of provision of a free appropriate public education to the Student.

[18] OSEP Memorandum 95-9.
[19] *K.D. ex rel. C.L. v. Dep't of Educ., Hawaii*, 665 F.3d 1110, 1123 (9th Cir. 2011).
[20] OSEP Memorandum 94-15, 20 IDELR 1181 (OSEP 1994) .
[21] *Id*.
[22] Letter to Richards (OSEP 2010).

The District provided Parent with PWN on September 22, 2025, as well as a second, separate PWN on October 15, 2025. The Parent confirmed this information. There is no evidence that the District failed to provide PWN to the Parent during the complaint period.

As previously stated, the ESD was not involved in the special education services or placement of the Student.

The Department does not substantiate this allegation.

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 Complaint alleged that the District predetermined the Student's placement.

A school district must provide one or both parents the opportunity to participate in meetings with respect to the identification, evaluation, IEP, educational placement, and FAPE of the child.[23] Districts must consider the concerns of the parents for enhancing the education of their child, among other indicators of the student's academic, developmental, and functional needs.[24] "[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."[25] While school districts have educational discretion, parents still have the right "to remain informed of, and to participate in, educational decisions concerning their children."[26]

"In order to fulfill the goal of parental participation in the IEP process, the school district [is] required to conduct a meaningful IEP meeting, not just an IEP meeting."[27] A school district violates the IDEA's procedural requirements regardless of the discussion at a meeting when it predetermines the Student's placement.[28] Predetermination occurs when a district makes a determination about the type or form of services it is willing to provide prior to the IEP meeting, regardless of the student's individual needs, and is unwilling to consider alternatives.[29]
When no alternatives to a proposed IEP or placement are considered at an IEP meeting, the Parent is denied meaningful participation as required by the IDEA.[30]

[23] OAR 581-015-2190(1); 34 CFR § 300.501(b).
[24] OAR 581-015-2205(1)(b) and (d); 34 CFR § 300.324(a)(1).
[25] Letter to Northrop (OSEP 5/21/2013), citing 71 Fed. Reg. 46,678 (2006).
[26] *Pasatiempo v. Aizawa*, F.3d 796, 804 (9th Cir. 1996).
[27] *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1485 (9th Cir. 1992).
[28] *H.B. v. Las Virgenes Unified Sch. Dist.*, 48 IDELR 31 (9th Cir. 2007).
[29] *Id.*
[30] *Target Range*, 960 F.2d at 1484.

In this case, there was regular communication between the District and the Parent. The District responded to the Parent's concerns and, except for the October 2025 inquiry, scheduled IEP meetings when requested by the Parent. While the Parent disagreed with many of the District's decisions, disagreement does not amount to a lack of meaningful participation at IEP meetings. The Parent was provided with PWN to document the Parent's disagreement with decisions made by the District, which included an explanation of why the decisions were made.

There is insufficient evidence to conclude that the District predetermined the Student's placement at the September 22, 2025 meeting. Although the District indicated that OSD was the only placement option that could provide FAPE to the Student based on their current needs, this decision was made after a review of various placement options and team member input.

However, following the September 22, 2025 IEP meeting, the District told the Parent that the IEP was not completed at the meeting, was still in draft form, and was yet to be finalized. In the September 30, 2025 email to the Parent, the Director specifically noted that the team still needed to make decisions on transition planning, nonparticipation justification, and gathering data on present levels of added goals. When the Parent asked to schedule an IEP meeting to finalize the IEP, the District changed its position and (1) unilaterally finalized the IEP, and (2) refused to convene another IEP meeting. Changes made to the September 2025 IEP outside the IEP meeting included related services information (provider, role, anticipated location, time, and frequency), and the statement of nonparticipation justification (removal area, extent of removal, and explanation and justification). There is no evidence that the specific changes made to the September 2025 IEP by the District were discussed at the IEP meeting.

Revising the Student's IEP outside the IEP meeting, without discussion or agreement from the IEP team, and without written agreement from the Parent, interfered with the Parent's ability to participate in decisions with respect to the Student's IEP, educational placement, and provision of FAPE.

As previously stated, the ESD was not involved in the special education services or placement of the Student. The Department does not substantiate this allegation for the ESD.

The Department substantiates this allegation for the District.

Free Appropriate Public Education (FAPE)

The Complaint alleged that the District violated the IDEA by not providing special education and related services in accordance with the Student's IEP.

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.[31] In order to determine whether a student has been denied a FAPE, the courts review a district's compliance with the procedural and substantive components of the student's education. Reviewing courts must

[31] OAR 581-015-2040(1); 34 CFR § 300.101(a).

inquire whether the school district complied with the procedural requirements of the IDEA, and whether the school district met the substantive requirement to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.[32]

Not every procedural error is sufficient to rise to a denial of FAPE.[33] The procedural test consists of three pivotal procedural errors: (1) whether the student suffers a loss of educational opportunity;[34] (2) whether the parent's right to participate in the IEP process was infringed;[35] or (3) whether the procedural error caused a "deprivation of educational benefit."[36] Procedural errors rise to the level of a denial of FAPE where, absent the errors, there is a "strong likelihood" that alternative educational possibilities for the student "would have been better considered."[37]

Although the District should have scheduled an additional IEP meeting to finalize the IEP as a team, there is no evidence to suggest that the District's offer of FAPE, or the Parent's refusal to accept the offer, would have changed. There is insufficient evidence to conclude that any errors made by the District resulted in a loss of educational opportunity or that alternative educational possibilities for the Student would have been better considered had an additional meeting been convened to finalize the IEP and further discuss placement.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION

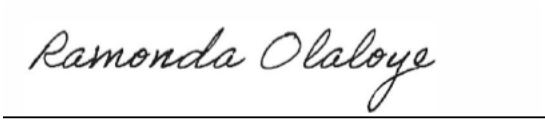
In the Matter of John Day School District 3 and Grant County Education Service District
Case No. 25-054-070

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

Action Required	**Submissions**	**Due Date**
1. The District must ensure that all District staff involved in the Student's special education and placement receive training in each of the following areas: • Parent Participation • Review and revision of IEPs	Training agenda/materials to ODE for review/approval. Sign-in sheet for training.	**February 1, 2026** **May 1, 2026**

[32] *Endrew F.*, 137 S.Ct. at 999.
[33] *Amanda J. v. Clark Co. Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001) (citing *Roland M. v. Concord 13684 Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990)).
[34] *Target* Range, 960 F.2d at 1484.
[35] *Id.*
[36] *Amanda J.*, 267 F.3d at 892 (citing *Roland M.,* F.2d at 994).
[37] *M.L. v. Federal Way Sch. Dist*., 394 F.3d 634, 657 (9th Cir. 2005).

Dated: this 19 Day of December 2025



Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: December 19, 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).)