BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of	)	FINDINGS OF FACT,
Baker School District 5J and Harney	)	CONCLUSIONS,
Union High School District 1J	)	AND FINAL ORDER
	)	Case No. 25-054-091

I. BACKGROUND

On December 5, 2025, the Oregon Department of Education (Department) received a written special education complaint (Complaint) from the parent (Parent) of a student (Student) who attends a Charter School sponsored by the Harney Union High School District (Harney) and served by the Baker School District (Baker) (collectively "Districts"). 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 Districts.

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 Districts agree to the extension to engage in mediation or local resolution or for exceptional circumstances related to the complaint.[2]

On December 17, 2025, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the Districts identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of January 2, 2026. Both Districts requested additional time to respond to the Complaint and were given an extension to provide their *Response* until January 12, 2026.

The Districts submitted a joint *Response* on January 12, 2026. In their *Response*, the Districts disputed each of the allegations, provided an explanation, and submitted documents in support of the Districts' position. Baker submitted the following relevant items:

1. IEP, 9/3/25
2. Notice of Team Meeting, 9/8/25
3. Prior Notice of Special Education Action (PWN), 9/3/25
4. Meeting Notes, 9/3/25
5. IEP, 9/15/25
6. Special Education Placement Determination, 9/29/25

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

7. Notice of Team Meeting, 9/18/25
8. PWN, 9/15/25
9. Meeting Notes, 9/15/25
10. Meeting Notes, 9/29/25
11. PWN, 12/18/25
12. Emails, 2026-26 School Year

Harney submitted the following relevant items:

1. Charter Agreement, 7/1/24
2. The Baker Sped Engagement Agreement, 8/1/24
3. Board Meeting Minutes, 1/16/24
4. Student Grade Report, 1/7/26
5. Charter School Registration Checklist, 2024-25 School Year
6. Bylaws of [School], 10/25/28
7. Student and Parent Handbook, 2025-26 School Year
8. Emails, 2025-26 School Year

On January 16, 2026, the Parent submitted a *Reply* to the Districts' *Response.* The Parent also submitted the following relevant items:

1. IEP, 9/15/25
2. Special Education Placement Determination, 9/29/25
3. PWN, 9/15/25
4. IEP, 2/4/25
5. IEP Progress Report, 5/18/25
6. PWN, 9/3/25
7. PWN, 9/9/25
8. PWN, 9/16/25
9. PWN, 12/18/25
10. Parent Written Input, 9/29/25
11. Student Course Reports, 1/15/26
12. Student Course Reports, 1/16/26
13. Emails, 2025-26 School Year

On December 16, 2025 and January 20, 2026, the Complaint Investigator interviewed the Parent. The Complaint Investigator interviewed Harney and Baker personnel on January 15, 16, 20, and 23, 2026. 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 December 6, 2024 to the filing of the Complaint on December 5, 2025.

Allegations	Conclusions
When IEPs Must Be in Effect The Complaint alleged that Harney and Baker violated the IDEA by not providing special education and related services in accordance with the Student's IEP. Specifically, Harney and Baker failed to implement the SDI and speech-language services required by the Student's IEP when they transferred to the Charter School at the start of the 2025-26 school year. Additionally, Harney and Baker failed to implement the SDI in the Student's IEP dated September 15, 2025. (OAR 581-015-2220; 34 CFR § 300.323)	**Substantiated as to Harney and Baker** Harney and Baker failed to provide the Student with the SDI and speech-language services required by their IEP.
Content of IEP The Complaint alleged that Harney and Baker violated the IDEA when they failed to include information in the Student's IEP that is necessary to address the Student's unique educational needs. Specifically, the IEP does not include SDI or speech-language services that are based on the Student's individual needs and that are sufficient to allow the Student to make appropriate progress towards their goals. Additionally, the Student's IEP does not clearly specify the nature and type of SDI and related services that will be provided to the Student such that the Parent can understand what is being offered. (OAR 581-015-2200; 34 CFR § 300.320)	**Substantiated, in Part, as to Harney and Baker** The Student's IEP does not clearly specify the nature and type of SDI that will be provided to the Student.
Prior Written Notice (PWN) The Complaint alleged that Harney and Baker violated the IDEA by failing to provide clear, accurate and sufficient PWN regarding proposals and refusals related to the	**Substantiated as to Harney and Baker** PWN provided to the Parent does not adequately describe the SDI that the Student would receive.

provision of special education and related services to the Student. (OAR 581-015-2310(2)(a); 34 CFR § 300.503)	
Free Appropriate Public Education (FAPE) Due to the alleged IDEA violations detailed above, the Complaint alleged that Harney failed to provide the Student with a FAPE. (OAR 581-015-2040; 34 CFR § 300.101)	**Substantiated as to Harney only** The Student was denied a FAPE when Harney and Baker failed to provide the Student with the SDI and speech-language services required by their IEP and when they failed to adequately describe the SDI that the Student would receive.

REQUESTED CORRECTIVE ACTIONS

The Complainant requested corrective action as follows:

1. Find Harney and Baker noncompliant with IDEA's PWN requirements and FAPE obligations.
2. Order Harney and Baker to issue corrected PWN.
3. Require an IEP meeting to review and revise the Student's SDI and related services based on current student-specific data.
4. Require Harney and Baker to document and implement SDI as written.
5. Correct any misstatements of Parent agreement in PWN and IEP documents, particularly concerning Social Skills SDI.
6. Provide compensatory services to make up for SDI and related services that were not provided.
7. Require District-level corrective action to ensure that in the future: a) Any reduction or removal of IEP services is based on student-specific, data-driven analysis and accurately recorded in PWN; and b) Requests to add services, restore minutes, or fully implement written SDI are considered on the same data-driven basis, rather than rejected because they conflict with a present program model.

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 December 6, 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 fifteen years old and is in the ninth grade. They are eligible for special education under the category of Autism Spectrum Disorder (ASD).

2. The Student is enrolled in and attends the Charter School, which is a virtual public charter school sponsored by Harney.

3. Effective August 1, 2024, Harney entered into a contract with Baker to provide certain special education-related services to its staff and students, including students enrolled in the Charter School (Baker Agreement). The Baker Agreement includes the following relevant provisions related to the education of students with disabilities:

    a. Baker will provide "special education administrative oversite [*sic*], special education specific state and federal reporting, case management and academic evaluations" to Harney staff and students. "Such services include academic and cognitive evaluations, direct synchronous and/or asynchronous parent consultation services (conducted with interactive audio and video connection), special education program planning, IEP case management, and IEP forms management system."

    b. Harney will pay Baker a standard fee for each IEP served. "For any services or materials not included in the scope of services above, [Baker] will first provide an estimate of the cost of the service/materials which will be subject to [Harney's] written approval prior to purchasing. Examples of services not included; speech and language pathology service, occupational therapy services, special education specific curriculum, and behavior management specialists." If approved by Harney, Baker will provide the services and invoice Harney for the amount in addition to the standard fee.

4. When interviewed, the Superintendent of both the Charter School and Harney (Superintendent) explained that, per the terms of the Baker Agreement, the role of Baker is to "oversee our special ed program at [the Charter School]," not provide the special education services. The services in a student's IEP are provided by the Charter School teachers. If the Charter School does not have staff who are qualified to provide services such as speech, occupational therapy, or physical therapy, then Harney will contract with individuals who can provide those services.

5. When asked who has authority to commit resources to special education students at the Charter School, the Assistant Superintendent of the Charter School (Asst. Superintendent), who is also an administrator for Harney, explained that Harney holds that authority but that "Baker's going to make a recommendation and 90% of the time we are going to follow it." The Superintendent confirmed that Baker would need to seek approval from Harney before offering special education services to a student that are not included in the Baker Agreement but, if an IEP team determined that a student requires a specific service, then Harney would approve it.

6. In June 2025, the Student enrolled in the Charter School for the 2025-26 school year. Prior to that, they were enrolled in a remote learning program at a different charter school (Prior School), which was sponsored by another school district.

7. At the time of the Student's enrollment at the Charter School they had an active IEP, dated February 4, 2025, developed by the Prior School and its sponsoring school district (February 4, 2025 IEP). The Parent provided this IEP to the Charter School when they enrolled the Student in June. The February 4, 2025 IEP includes, among other things:

   a. Student strengths, interests, and preferences: The Student is "kind, creative, and imaginative." They are "good at rhyming" and enjoy "writing poems and stories."

   b. Parent Concerns: The Parent is concerned about the Student's progress and would like to review the amount of time that the Student is supported for math and reading. The Student's most recent assessments in math gave the Parent "cause for alarm," and the Parent is concerned that the Student is not meeting grade level requirements in math.

   c. Present Levels of Performance: The Student "is progressing well in [their] curriculum." The Student "goes to cohort one time per week to engage in in person learning with peers."

      The Student attends speech therapy two times per week. They do "a marvelous job when asked to re-tell portions of literature that are read aloud to [them]," and "demonstrates a consistent ability to summarize content using specific details, appropriate grammatical forms, in a sequential style." They have "rather significant difficulty working on [their] articulation skills when asked or reminded to do so." This difficulty is "deemed to be not so much a result of refusal to cooperate, but rather a combination of reduced auditory awareness/self-assessment skills & increased self-consciousness." The Speech Language Pathologist recommends that the IEP team "discuss and consider whether this [articulation] goal should continue to be targeted as it may not be achievable and/or appropriate."

      In the area of Reading, the Student received the following scores on an i-Ready assessment administered on December 9, 2024: Vocabulary, Grade 5; Comprehension Literature, Grade 7; and Informational Text, Grade 4. The Student shows a strength in reading comprehension and, "Overall [their] reading is not a concern . . . although [their] fluency rate is still lower than expected, [they are] now far more accurate."

      In the area of Math, the Student received the following scores on an i-Ready assessment administered on December 10, 2024: Numbers and Operations, Grade 6; Algebra and Algebraic Thinking, Grade 7; Measurement and Data, Grade 5; and Geometry, Grade 4. "Math is showing to be [the Student's] biggest area of need." On recent curriculum-based measures, the Student scored 17/45 (38% accuracy) and "[the Student] has shown [they] need math support."

      In Writing, the Student needs support "in forming meaningful detailed sentences," and "spelling continues to be a huge need" requiring "imbedded [*sic*] tech support."

The Student participates in a social group for thirty minutes each week. The Student "often does not know how to engage with [their] peers" and "seems to show anxious type behavior" when in social situations.

d. Goals: The IEP includes goals in the areas of reading, writing, social/emotional/behavioral, math, language, and articulation.

e. Specially Designed Instruction: The anticipated location for all SDI is designated as "virtually" and the role responsible for monitoring the SDI is identified as either "Speech/Language Pathologist" or "Special Ed Teacher/Provider."

   i. Speech/Language for 60 minutes per week;
   ii. Written Language for 120 minutes per week;
   iii. Mathematics for 150 minutes per week;
   iv. Social Skills for 30 minutes per week; and
   v. Reading for 30 minutes per week.

f. Related Services: The Student is not in need of related services.

g. Supplementary Aids/Services; Accommodations: Ability to break testing sessions into smaller chunks of time; Test with a familiar staff member; Check for understanding when directions are given; Pre-teach routines when new routine is introduced; Access to manipulatives, calculator, scratch paper for math; Visuals to support lessons; Directions read aloud; Speech to text, text to speech; Chunk directions, 1 or 2 steps at a time; Chunk assignments into smaller pieces; Allow additional time for responses to questions; Social and behavioral self-reflection checklist; Test in a separate setting; Allow movement breaks between academic tasks; and Visual checklist for tasks to be completed.

h. Supports for School Personnel: Consultation between special education teacher/provider and general education for 30 minutes per quarter.

i. Non-Participation Justification: "The team has determined that no removal is necessary in order for the student to receive specially designed instruction, related services, or supplementary aids or services."

8. Each student at the Charter School is assigned a homeroom teacher who is responsible for coordinating the student's educational program and monitoring their progress in the curriculum. Students are required to "check in" with their homeroom teacher daily for the purpose of establishing attendance. In addition, students and their parents meet with their assigned homeroom teacher in-person once per month at one of the Charter School's regional learning centers (Learning Centers). The purpose of these meetings is to "look at progress," "answer any questions the parents might have," and "build relationships with the students." For students with IEPs, the homeroom teacher coordinates with the student's other teachers to ensure that any required accommodations are implemented for the student.

9. On August 21, 2025, the Parent emailed the Student's assigned homeroom teacher (Homeroom Teacher) with copies of some of the Student's educational records from the Prior School, including the February 4, 2025 IEP.

10. On August 27, 2025 the Parent and the Student met in-person with the Homeroom Teacher to discuss what classes the Student would take and answer Parent questions.

11. On August 29, 2025, the Parent sent an email to the Homeroom Teacher regarding the Student's IEP. The Parent acknowledged that the Student's IEP is "still under review with Baker" and states, "I know that [the Student] is supposed to have comparable services to [their] previous IEP while said review is taking place. I just want to make sure . . . comparable services will be available when school starts. So if you could keep me updated on how the comparable services will look like interim, I would be most grateful."

12. On August 29, 2025, the Homeroom Teacher replied to the Parent stating, "I asked our dean of high school students and our 504 specialist about specialized 1:1 instruction and they both said that the specialized instruction comes in the form of making accommodations and modifications in the student's online classes and providing access to teachers' classes and virtual study halls throughout the day every day. Individual meetings can be set up as needed. Specially Designed Instructions are provided by the parents and the curriculum they are using."

13. On September 2, 2025, the Baker special education teacher assigned as the Student's case manager (Case Manager) emailed the Special Education Coordinator for Baker (Baker Coordinator) informing them that they had transferred the Student's IEP into Baker's IEP management system. They note that the Student has a social/emotional/behavior goal and ask, "Would you like me to omit this or leave it in and we can have that discussion with the parents in the meeting as to why it will need to removed [*sic*] for our setting?" The Baker Coordinator responded that the Case Manager should, "Leave it for now and we will talk tomorrow about if the student is being seen in-person."

14. When interviewed, the Baker Coordinator explained that the Charter School has some options for in-person elective classes at the Learning Centers and, if the Student chose to take advantage of those opportunities, their social/emotional/behavior goal would be written so that it could be monitored by a teacher in that setting. If the Student decided to only attend classes virtually, then the IEP team would need to consider how to write the goal for a virtual setting.

15. Baker convened an IEP meeting for the Student on September 3, 2025 for the purpose of transferring the Student's current IEP to the Charter School (September 3, 2025 Transfer Meeting). According to the Meeting Minutes, the following discussions occurred during the meeting:

    a. The Parent shared that the week prior they had been told by staff from the Charter School that the Student would not receive the services in their IEP but would only receive accommodations.

b. The Baker Coordinator explained to the Parent that "specially designed instruction (SDI) looks different in the virtual setting" and "SDI is served through the curriculum, not a person."

c. The Parent shared that, at the Prior School, the Student received "60 minutes of speech-language services per week, in addition to academic and social skills support." The Baker Coordinator replied, "We can continue to offer direct speech services but we offer 60 minutes per month."

d. The Parent expressed frustration that no staff from the Charter School attended the meeting.

16. On September 3, 2025, following the Transfer Meeting, the Baker Coordinator sent an email to staff from the charter school sponsored by Baker. The email explained that the Parent "was not told at the time of enrollment that services offered through [the Prior School] would not be able to be served at [the Charter School] (number of speech minutes would be reduced, no specially designed direct instruction, etc.)." The email requests that the charter school provide the Parent with enrollment information and inform the Parent whether it can provide the Student with services that are comparable to those from the Prior School.

17. Baker provided Prior Written Notice (PWN) to the Parent, dated September 3, 2025, regarding the outcome of the September 3, 2025 Transfer Meeting, along with an email indicating that the Student's IEP had been "finalized and put into effect." The PWN includes, in relevant part:

    a. "The team met to transfer the IEP but parent did not agree with the services provided."

    b. Other options considered: "Enrolling [the Student] in a setting that can accommodate current SLP minutes."

    c. Other factors considered: "Staying with [the Charter School] and accepting the SLP minutes that are available in this setting."

18. During an interview, when asked what they meant by "a setting that can accommodate current SLP minutes," the Case Manager explained that the Student received 60 minutes per week of speech-language services at the Prior School, but the Charter School "generally starts with . . . 60 minutes per month." "The way the SLPs have explained it, they can do either 15 minutes a week or 30 minutes bi-weekly, and that's the model that they've seen be really successful here." A student may demonstrate that they need more or less speech-language services, but it's general practice to start with 60 minutes a month.

19. The Baker Coordinator denied that the Charter School has a practice of offering 60 minutes per week of speech-language services. They shared that they "have an entire SLP spreadsheet" showing that students at the Charter School receive varied levels of speech-language services based on their individual needs.

20. On September 9, 2025, the Parent sent Baker an email regarding the September 3, 2025 PWN. In the email, they object to Baker's representation that the September 3, 2025 IEP had been "finalized and put into effect" for the Student. They describe the September 3, 2025 IEP meeting as "invalid" because the IEP team did not include a district representative with the "authority to commit resources," and "an attempt to impose a non-individualized 'program model' (60 min/month SLP, no SDI) with an 'accept or deny' agenda." They further allege that the September 2, 2025 PWN lacks required components, including a specific description of the proposed IEP. The Parent requests an amended PWN "detailing proposed services," confirmation that the September 3, 2025 IEP would not be implemented, and assurance that the upcoming IEP meeting would be "an actual collaborative discussion" rather than "another reiteration of the school's program model."

21. Baker provided PWN to the Parent, dated September 9, 2025, regarding paperwork from the September 3, 2025 Transfer Meeting. The PWN includes, in relevant part:

    a. "A finalized IEP was sent to [the Parent] in error. There is no finalized IEP in place as of yet. The team met on September 3rd, but an IEP was not put in place because [the Charter School] did not have representation at the meeting, and the team could not agree on service minutes at that time."

    b. The IEP team offered to "look into" other placement options for the Student, but the Parent declined. The IEP team planned to reconvene on September 15, 2025, "to discuss services, placement, and how best to support [the Student's] needs in a virtual learning environment."

    c. The IEP team considered the option, "To transfer the IEP as is and continue services as they were before," but rejected that option, "Due to the constraints of being a virtual environment and the parent being the primary educational coach," "the programming may look different than programming in previous settings the student has been in."

22. Baker convened the Student's next IEP meeting on September 15, 2025, which was continued on September 29, 2025 (September 15, 2025 IEP). "Baker School District 5J" and Baker's contact information appear at the top of the IEP form, but Harney is designated as both the Student's resident and attending district.

23. According to the Meeting Minutes, the following discussions occurred during the September 15, 2025 IEP meeting:

    a. The Parent shared that they met with the Homeroom Teacher and was "surprised that the IEP would look more like a 504." They anticipated that "the IEP would be comparable to the last placement in regard to how services and accommodations are offered." They expressed that the description of the services offered to the Student was "vague."

    b. Baker's Special Education Director (Baker Director) explained that "Oregon is giving virtual charter schools bandwidth in that virtual settings are a choice," and "If the virtual community is not a good fit then the school can recommend a bricks [*sic*] and mortar or hybrid model."

c. The Parent clarified that the Student had received all their SDI and speech services online at the Prior School and "wants to know what exactly will be offered" at the Charter School. The Baker Director responded that, "[The Homeroom Teacher] will provide a lot of the SDI. There is no intervention specialist specifically. Interventions are built into the current programming."

d. The SLP reviewed and revised the Student's speech-language goals and conferred with the Parent regarding the level of services that the Student requires to meet those goals. The SLP indicated that the goals were achievable with 60 minutes per month of speech-language therapy. The Parent shared concern that that level of service was not sufficient.

e. The Baker Coordinator asked how the Student's SDI in Social Skills was monitored at the Prior School. The Parent explained that the Student's case manager at the Prior School met with the Student "multiple times a day." The Baker Coordinator replied, "SDI is served through the curriculum itself. There is no direct instruction teacher. [The Homeroom Teacher] has office hours [the Student] can join."

f. The Parent asked, "Why are we writing the IEP for what the school offers and not what the student needs?" The Baker Director responded, "We offer services through the curriculum. We expect parents/guardians to work with the student to support them." "In a virtual setting we work more in a consultative manner. More specialized care and 1:1 support is more difficult to provide in a virtual setting." Additionally, the Baker Director informed the Parent, "ODE considers us a school of choice. ODE says it is okay for us to inform parents of what we offer. If parents do not feel this is appropriate they do not have to keep their student here."

g. The Parent expressed frustration that this information regarding provision of SDI had not been shared with the Parent before they enrolled the Student at the Charter School. They reiterated that the Student's SDI at the Prior School had been provided "online working with teachers directly" and wondered why the same could not be done at the Charter School. The Baker Coordinator replied, "A lot of the interventions in a virtual setting are virtual interventions. They will be provided through a supplemental program."

h. The Asst. Superintendent detailed the academic support services that are available to students. "There are virtual supports from 7am-5pm. It might not be with [the Homeroom Teacher] but there are other staff that can support face to face opportunities." "Every teacher serves for an hour. [The Student] can pop on any of those hours." "Our teachers are very skilled at working with these kids. It is a first come first serve basis."

i. The Charter School Principal (Principal) added, "There is academic support time that each teacher has which is 4 hours at the Learning Center. They can be virtual as well." The Parent asked if the Student can "get preferential treatment for a certain amount of time." The Baker Coordinator replied, "[The Student] would need to email each of the teachers directly. It would be up to the teachers. We cannot answer for the teachers."

j. The team discussed that the SLP wanted to meet with the Student to determine the amount of speech-language services that would be appropriate. The Baker Coordinator

clarified that they were offering 60 minutes of speech-language services per month, "but will not finalize until [the SLP] meets with [the Student] and the team meets again."

24. While it is not reflected in the Meeting Minutes, the Baker Coordinator reported that the IEP team discussed how to address the Student's social skills goal and informed the Parent about the opportunity for the Student to take an in-person class at the Learning Center in Bend. According to the Baker Coordinator, the Parent declined to have the Student enroll in an in-person class.

25. The Parent has a different perspective on the in-person services that are available to the Student. According to the Parent, the Charter School informed them that there was not much interest in the in-person classes at the Bend Learning Center, so most of the classes were virtual. They were told that there were more options for in-person classes at the Learning Centers located elsewhere. The Parent also reported being unaware that the Homeroom Teacher was available for in-person instruction at the Learning Center, in addition to their regular monthly check-ins.

26. Baker provided PWN to the Parent, dated September 16, 2025, regarding the outcome of the September 15, 2025 IEP meeting. The PWN includes, in relevant part:

    a. The IEP team met to develop an IEP for the Student but could not complete it due to time constraints. Additionally, the team agreed to wait until the SLP had met with the Student to determine how many minutes of speech-language services they require. "We will put the IEP in place, as is, for the time being until the team can reconvene." Additionally, an email will be sent to the Charter School staff with the accommodations that should be implemented for the Student.

    b. The "academic minutes" on the IEP will remain the same. SDI for reading, writing, and math "is served through the general education teacher and the inclusion model for learning."

    c. The Parent agreed to remove the social skills goal. The Student "is now completely virtual, and there's no way for staff to monitor social skills in this setting, which is a setting of choice by the parent."

27. On September 18, 2025, the Parent emailed the Baker Coordinator and requested that the September 16, 2025 PWN be corrected to state, among other things, that no speech-language services had been provided to the Student since the start of the school year, that SDI from the Student's previous IEP would not be implemented, and that the Charter School offers "general-education supports . . . and not specialized instruction." In addition, the email clarifies that the Parent had not agreed to remove SDI in social skills from the Student's IEP and that the Parent declined to transfer the Student to a different charter school.

28. The SLP met virtually with the Student for the first time on September 18, 2025 and again on September 25, 2025. These first two sessions were intended for the SLP to gather information to determine the level of speech-language services that the Student requires.

29. The SLP sent an email to the Parent on September 18, 2025 summarizing their thirty-five-minute session with the Student earlier that day. The email notes that the SLP "observed speech sound errors on initial /r/, vocalic /r/ and final -er" and "inconsistent accuracy on r-blends." The Student "was very easy to talk to" and "spoke using a neurodivergent communication style (provided a lot of information on preferred topics) but also made a few related comments or asked a related question" when the SLP shared something.

30. The SLP also sent an email to the Parent following their session with the Student on September 25, 2025. They shared that they worked on the Student's expressive language goal and the Student was able to "listen and following instructions, read 2.5 7^{th}/8^{th} grade passages" and "answer a variety of questions about the text." Out of the first two passages, the Student answered five of seven questions correctly for 71% accuracy. When including the third passage, which the Student did not have time to read in its entirety, they answered six of nine questions correctly for 66% accuracy.

31. On September 29, 2025, the Student's IEP team reconvened to continue development of the September 15, 2025 IEP. According to the Meeting Minutes, the following discussions occurred during this meeting:

    a. The SLP reviewed their observations of the Student during recent therapy sessions and recommended, based on these observations, that the Student receive 30 minutes per week SDI in speech-language. They added, "When a student gets to middle school or older it is general practice to start fading back minutes. It's up to [the Student] to practice the /r/ pronunciation." The Parent disagreed that the SLP's observations justified reducing the amount of speech-language SDI the Student receives.

    b. The IEP team discussed the Student's placement. The Principal shared they were, "Concerned that [the Charter School] model is not going to be good enough," and "suggests exploring other options that will make the parent happier." The Baker Coordinator stated their belief that the Charter School "can serve [the Student] with what they are offering."

    c. The Parent requested PWN indicating that Baker was declining to provide the services in the Student's previous IEP and shared their intent to "file a formal complaint." The Baker Director responded, "It sounds like you do not like what we can offer and we may need to move the student back to brick and mortar. We will write the IEP as the parent wants it with all the minutes the parent wants and place the student back in brick and mortar." The Parent expressed concern about moving the Student to "brick and mortar" but continued to disagree that there was enough data to reduce the minutes of SDI in speech-language.

32. The September 15, 2025 IEP, which was completed on September 29, 2025, includes in part:

    a. <u>Student strengths, interests, and preferences</u>: The Student is a "visual learner" and "understands best with step-by-step models and worked examples." The Student "uses graphic organizers and checklists effectively," and "persists when tasks are chunked and expectations are clear."

"[The Student] is a virtual-only student and is not seen on campus for any classes. The IEP will reflect the virtual-only setting. Suppose the student were to be seen on campus or transition to another setting. In that case, the team should review the IEP to ensure that accommodations, modifications, and services meet the student's needs in the new setting chosen by the family."

b. Parent Concerns: The "original and amended PWN did not state a concrete proposal or refusal (no specific services/minutes), so I cannot tell what action the district is asking us to accept." "The September 3 meeting was labeled as a 'transfer IEP' meeting even though no LEA/district representative who could commit resources was present." "References to 'programming may look different' are program-model statements, not individualized, data-based reasons for change." "As a transfer, [the Student] must receive comparable services to [their] prior IEP until a new IEP is adopted . . . [The Student] has not received IEP services since the start of the 2025-26 school year (September 2, 2025)."

c. Present Levels of Performance: "Through a full inclusion model, which utilizes collaboration between special education staff, general education teachers, and the child's learning coach (usually the parent), special education services and specially designed instruction are provided in the general education setting."

   Teacher Input: The Student is passing all their classes and has responded to 100% of the attendance emails. "There are no concerns at this time."

   Communication: "During two 30-minute speech-language sessions, the SLP observed [the Student's] speech, language and social communication abilities. The SLP observed [the Student's] communication abilities in all areas to be more than functionally adequate." The Student "is capable of making progress towards both [their] speech and language goals when provided 30 minutes/week of speech-language [SDI] *IF the student is motivated and completes daily articulation home carry-over practice."* "*IF the student is NOT motivated to work on [their] articulation,* then the recommended speech-language service minutes are 60 minutes/month to address [their] language goal."

   In addition to the above, the present levels include the academic and other assessment data as written in the February 4, 2025 IEP.

d. Goals: The IEP includes goals in the areas of reading, writing, social/emotional/behavioral, math, language, and articulation that are nearly identical to the goals in the February 4, 2025 IEP.

   i. Reading: The Student will improve their reading fluency by demonstrating clear articulation of words and accurate reading of text passages at grade level with 80% accuracy in 3/5 trials as measured by teacher observation and recorded fluency assessments.

   ii. Writing: The Student will write a multi-paragraph essay using a graphic organizer to plan, with at least 80% accuracy in organization, use of transitions, and editing for

spelling and logical coherence, as measured by a teacher-created rubric in 3 out of 4 trials.

iii. Social/Emotional/Behavioral: The Student will initiate and respond to peer interactions and participate in group activities in 3 out of 5 opportunities, with minimal teacher prompting, as measured by teacher observation and peer feedback.

iv. Math: The Student will solve multi-step word problems involving operations with integers, fractions, decimals, basic algebraic concepts, and geometry with 80% accuracy in four out of five trials, as measured by teacher observations, classwork, and assessments.

v. Language: The Student will demonstrate improved receptive language skills, by responding to complex wh-questions (how, why: making inferences, making predictions) pertaining to reading passages presented in verbal/written form in 4 out of 5 opportunities across 2 out of 3 consecutive sessions.

vi. Articulation: The Student will improve their production of /r/, /r-blends, and /r-vocalic sounds in all word positions at the sentence to conversational level, including practicing articulation skills during therapy sessions and completing carryover home practice most days, at a SLP rubric rating of 2-sometimes needs prompts, across 2 out of 3 consecutive sessions.

e. Specially Designed Instruction: The anticipated location for all SDI is designated as "Virtual Classroom" and the role responsible for monitoring the SDI is identified as either "LEA-SLP" or "LEA".

i. Speech/Language for 30 minutes per week;
ii. Written Language for 120 minutes per week;
iii. Math for 150 minutes per week;
iv. Social Skills for 30 minutes per week; and
v. Reading for 30 minutes per week.

f. Related Services: The Student is not in need of related services.

g. Supplementary Aids/Services; Accommodations: Ability to break testing sessions into smaller chunks of time; Test with a familiar staff member; Check for comprehension when directions are given; Reteach/Pre-teach routines when a new routine is introduced; Access to manipulatives, calculator, scratch paper for math; Visual prompts to support lessons; Read directions, grade level materials and tests aloud; Text to Speech/Speech to Text; Break large projects into shorter goals; Allow for processing time; Test in a separate setting; Movement breaks between academic tasks; and Allow test retakes for tests under a C grade.

h. Supports for School Personnel: Consultation to teaching staff from the case manager regarding services on the IEP for 15 minutes per semester.

i. Non-Participation Justification: "[The Student] will participate 100% in general education." "One-on-one advisory visits are offered for each student, and may include progress checks, instruction, supported work completion, and/or specially designed instruction . . . provided by a general education teacher." "Specially designed instruction will be provided through consultation with special education staff, specialized support in the general education curriculum, vectored instruction, and/or another specialized curriculum targeting the student's needs."

33. According to a Special Education Placement Determination, dated September 29, 2025, the Student's IEP team considered the placement option of "[Student's] Resident Public School" but rejected that option because "The parents have opted into a fully virtual environment by choice and have determined that a brick-and-mortar setting is not the best option for their student at this time." The IEP team selected the placement option of "Full inclusion with Special Education Services embedded into the online curriculum" because "The parents have opted into a fully virtual environment, and the team has determined this is the Least Restrictive Environment for [the Student] at this time."

34. The SLP reported to the Investigator that they have met with the Student online for 30 minutes per week since September 18, 2025 to work on the Student's speech and language goals. When asked why they did not meet with the Student at the beginning of the school year and implement the speech services from their previous IEP, the SLP replied "I don't have a good answer for that." As of January 2026, the SLP has only worked with the Student on their language goal and has not yet worked on their articulation goal because they choose to focus on one goal at a time, and because the Student is resistant to working on articulation. They denied that the Charter School has a particular "service model" for providing speech services and reported that they provide whatever services are required by a student's IEP.

35. The Investigator asked the SLP to explain the basis for the statement in the present levels section of the September 15, 2025 IEP that, "During two 30-minute speech-language sessions, the SLP observed [the Student's] speech, language and social communication abilities. The SLP observed [the Student's] communication abilities in all areas to be more than functionally adequate." The SLP shared that "functionally adequate" means that, in conversational speech, they understood 95-100% of every word that the Student said and that there is "not a significant impact on their ability to be understood." In terms how the Student expressed themselves using grammar, syntax and word choice, the SLP could understand their statements, thoughts, and ideas. They also observed that the Student was "able to communicate adequately for social purposes" with the SLP, although they did not observe the Student communicate with peers.

36. When asked about the information upon which they based their recommendation that the Student receive 30 minutes per week of speech-language services, the SLP shared that they considered the following:

a. The results of the Comprehensive Assessment of Spoken Language, administered to the Student in September 2023. On that assessment, the Student achieved the following scores:

i. General Language Index: Standard Score of 88
ii. Receptive Language Index: Standard Score of 87
iii. Expressive Language Index: Standard Score of 70

b. The present levels from the February 4, 2025 IEP, including notes from the Student's previous SLP;
c. Their own observations of the Student during two 30-minutes therapy sessions;
d. The Student only has two speech and language goals, with no short-term objectives;
e. Given the Student's age and developmental level, they can work more independently and do not require the frequency of services that they previously received.

37. When asked if the Student has made progress on their speech-language goals with the current level of services, the SLP shared that the Student can make inferences and predictions with 90 to 95% accuracy and has met their language goal. While they have not specifically worked on the Student's articulation goal this year, the SLP assessed the Student's "intelligibility rating" in conversation at 98%. This means that "98% of the words were intelligible to this trained listener, even when the context was unknown."

38. When the Investigator asked the Parent to describe the impact of the Student's articulation difficulties, they reported that, when the Student was younger "nobody could understand [them]." Their articulation started to improve after fourth and fifth grade and, currently, while the Student sometimes runs into issues with people not understanding them, if they slow down, then "it's definitely a lot better."

39. When asked about the impact to the Student of not receiving speech-language services at the start of the 2025-26 school year, the Parent shared that the lack of consistent services meant that the Student did not receive regular reinforcement to utilize learned articulation strategies. During the previous school year, the Student made more of an effort to work on their articulation. When they did not receive speech-language services after their transfer to the Charter School, "that all went down the drain." The Parent would not say that the Student's intelligibility declined since transferring to the Charter School, but they believe that the Student would have demonstrated more improvement in articulation if they had received the speech-language services required by their IEP.

40. On September 30, 2025, the Case Manager provided a copy of the completed September 15, 2025 IEP to the Parent along with PWN (dated September 15, 2025) regarding the outcome of the September 29, 2025 IEP. The PWN includes, in relevant part:

a. "[The SLP] recommended 30 minutes of speech services per week to meet [the Student's] current speech goal. The parent disagreed with the reduction in minutes, stating that there is insufficient data to support the change. The team explained that the decision was based on data received from [the SLP], progress reports from the previous IEP and notes from the previous SLP, indicating that the new team should review service minutes due to [the Student's] reluctance to work on articulation. The team, other than the parent, agreed to reduce speech services to 30 minutes per week. The team will reconvene if [the Student] does not make progress toward the speech goal."

b. The Student will continue to receive the amount of SDI in reading, writing and math included in the February 4, 2025 IEP but, "these minutes will be provided through an inclusion model of instruction."

c. The "inclusion model" provides support in reading, writing and math through:

   i. Access to the teacher's office hours for direct support;
   ii. Collaboration between [the Student's] general education teachers and [their] case manager;
   iii. Accommodations embedded into the general education curriculum and instruction;
   iv. Opportunities to meet with teachers individually to ask questions or receive targeted support; and
   v. A teacher provided by [the Charter School] who is available throughout the day to answer questions and teach content.

d. The IEP team also discussed the option of transitioning the Student to "a brick-and-mortar" placement "because some of the services requested by the parent may not be feasible to deliver within [the Charter School's] virtual program structure." This option was "rejected as of right now in order to gather data to show whether [the Student] will make progress towards the annual goals in the virtual setting."

e. Other factors considered by the team were, "Parent input was an essential part of the team's discussion. The team acknowledged both the parents' concern regarding data for speech services and the need to maintain SDI minutes for core academics. The decision balances parent input, professional recommendations, and available data. The IEP team recognizes the importance of maintaining consistency in services while also acknowledging the limitations of a fully virtual program."

41. During interviews, when asked what instructional supports are available to students at the Charter School, both Harney and the Charter School staff described the following:

a. A general education teacher from the Charter School is available online each school day from 7:00-5:00 for a Virtual Study Hall. Various teachers staff the Virtual Study Hall on a rotating basis. Students have the option to enter a queue during this time to seek assistance with the curriculum.

b. Each teacher is also scheduled to be in one of the Learning Centers for approximately four hours each week for Academic Support Hours. During these times, students have the option to "drop-in" or make an appointment to receive in-person instructional support as needed.

c. The Homeroom Teacher holds their Academic Support Hours each Thursday at the Learning Center in Bend. They are available to meet with students from 8:00-9:00, 11:30-12:00, and 1:30-2:00. In addition, the Homeroom Teacher meets with each student on their caseload and their parents once per month. The Student and the Parent regularly attend these monthly meetings.

d. The Charter School also offers limited in-person classes at the Learning Centers. These are characterized as elective or "enrichment" classes and are nearly all at the elementary or middle school level.

42. When asked how SDI is implemented, both generally and for the Student, the Charter School and Baker staff described the following:

a. According to the Asst. Superintendent, SDI should be provided by a student's homeroom teacher during face-to-face Academic Support Hours. By contrast, the online support that is available during the daily Virtual Study Hall would not be considered SDI. If a student with an IEP requires specific times designated for SDI, they can schedule that with the homeroom teacher. The homeroom teacher is tasked with tracking progress on a student's IEP goals and providing that information to the student's assigned case manager from Baker. Additionally, the case manager is responsible for "checking in" with the student's homeroom teacher, particularly "when things are not working well" for the student.

b. The Director of Secondary Education for the Charter School also indicated that a student's homeroom teacher is responsible for implementing SDI, which can be provided during the teacher's Academic Support Hours at the Learning Center. They added that, "If a student requires one-to-one [instruction], it can be arranged."

c. The Baker Coordinator reported that SDI is provided "through consultation" between a student's special education case manager and the general education teachers. SDI is not provided by a special education teacher at the Charter School. It is "served through curriculum choices, teacher office hours, meeting with teachers" and is provided by the general education teachers in consultation with the special education case manager. The case manager and the homeroom teacher work together to determine the appropriate curriculum for a student and, often, "supplementary programs" (e.g., specialized online curriculums in reading or math) are recommended to work on a student's lagging skills. Students may use their "allotted curriculum funds" to purchase these supplementary programs or to pay for tutoring services. The student's homeroom teacher is responsible for monitoring progress on their IEP goals.

When asked why the Charter School could not provide virtual SDI to the Student by a special education teacher, like they had received at the Prior School, the Baker Coordinator replied, "There's not a staff member to provide that." They explained, "I wouldn't feel comfortable putting that on an IEP because . . . I know for a fact that they don't have a hired special education teacher at [the Charter School]." "I wouldn't put that on an IEP and hope that it happened."

d. The English Teacher reported that SDI is provided during the Virtual Study Hall and during optional weekly online "help sessions" that they offer to students in their ninth and tenth grade English courses. When asked if they personally deliver SDI to students with IEPs, the English Teacher replied, "You would have to be the judge on if it's considered specially

designed instruction, but I provide the opportunity by being in a live Google Meet classroom one hour per week to help students specifically who are in my English classes."

When asked how the instruction in their class is individualized for the Student, they shared that the Student receives extended time on assignments and multiple attempts to take tests and quizzes but otherwise receives the same instructional content as the other students in the class.

They reported that they had not specifically worked on the Student's IEP goals for reading and writing, as the Student had not attended any of their "help sessions." They would work on the goals, however, "If [the Student] showed up and wanted to work on that." They added that they did not attend the Student's IEP meetings and did not participate in developing the Student's goals, so they are "not sure what environment they were specifically thinking of for [the Student] to meet that goal."

e. The Homeroom Teacher reported that they did not provide the Student with any of the SDI included in the September 15, 2025 IEP, adding "I don't know who would do that, being that I'm not a highly qualified math teacher . . . our Virtual Study Hall is where [the Student] would get that, I assume." They explained that the Student would need to seek out a math teacher during Virtual Study Hall to receive SDI in math.

   The Homeroom Teacher shared that they had did not have any discussion about how or when the Student receives SDI during their monthly check-in meetings with the Student and the Parent. During these meetings, they ask the Student if they are attending the Virtual Study Halls and they talk about the curriculum, but these sessions are typically spent "building relationships with the families." The Homeroom Teacher has not attempted to schedule any specific time with the Student to provide their SDI.

   The Homeroom Teacher also reported that they do not work with the Student on any of their IEP goals. They explained that they work with their elementary-level students on their IEP goals but they do not know who is responsible for working on a student's goals in high school.

f. The Student's math teacher (Math Teacher) shared that they did not realize they were responsible for implementing SDI to any student and had learned the day prior to the interview that they were responsible for monitoring progress on IEP goals for students assigned to their homeroom. They confirmed that they had not worked on the Student's math goal with them in any capacity during the 2025-26 school year.

g. The Case Manager explained that SDI at the Charter School is "primarily served through curriculum" with the student's "general education teacher there to support them." The Case Manager is available to provide consultation. With the exception of speech and language goals, a student's homeroom teacher is responsible for monitoring progress on IEP goals and entering that information on the student's progress report. The Case Manager then distributes the progress reports to families.

When asked what consultation they had provided on the implementation of the Student's SDI, the Case Manager replied, "I've checked in from time to time" with the English Teacher and the Homeroom Teacher "and they say that things are going well, that [the Student] is making really good progress." They recalled specifically emailing the English Teacher to answer a question about one of the Student's accommodations. They could not recall the specifics of any consultation with the Homeroom Teacher regarding the Student's IEP.

h. When asked generally about the role of the Case Manager, the Homeroom Teacher explained that the Case Manager "tells me what I need to do," and ensures that students' IEPs are being implemented. The Homeroom Teacher shared that they have only spoken with the Case Manager about the Student during the Student's IEP meetings. The only other contact they have had with the Case Manager regarding the Student is when the Case Manager requests information about the Student's progress approximately once per quarter. The progress data that the Homeroom Teacher provides to the Case Manager consists of the Student's current grades in each of their classes.

43. The Homeroom Teacher reported that the Student has made "significant progress" in their general education classes during the school year. As of January 7, 2026, the Student was earning the following grades:

    a. Algebra I: 75.5%
    b. Language Arts 9: 75.8%
    c. Earth and Space Science: 86.4%
    d. U.S. History II: 84.5%

44. According to the Parent, the Student and the Parents have spent an inordinate and unsustainable amount of time on schoolwork to achieve passing grades. In their *Reply*, the Parent included a report from the Student's online math curriculum which details both the "estimated time" for completion of each lesson, assignment, and quiz, and the actual time spent by the Student on the task. This report confirms that the time the Student spends on the curriculum far exceeds the estimated time. For instance, the Student required over four hours to complete the instruction for "Dimensional Analysis," a task which was estimated to take just 26 minutes. Similarly, an assignment for Writing and Solving Equations was estimated to take 15 minutes, but the Student took over 90 minutes to complete it.

45. When asked to review the amount of time that the Student spent on the math curriculum, the Math Teacher confirmed that it was outside the norm of what the Student should be spending. They did not recall addressing this specific issue with the Student or the Parent and shared that they would not know why the Student was spending so much time on math unless the Student came to one of their optional "help sessions."

46. The Charter Agreement between the Charter School and Harney includes the following relevant provisions related to the education of students with disabilities:

a. For any prospective student with an IEP, the Charter School will notify Harney and a representative from the Charter School will attend the IEP team meeting at which the team will determine if the Charter School is an appropriate placement for the student.

b. When a student with an IEP transfers into the Charter School, Harney will implement the student's existing IEP until a new IEP is developed.

c. The Charter School will work closely with Harney to ensure that any required special education and related services are provided and will make any required accommodations. The "framework" for administering IEPs is as follows:

    i. "Harney is responsible for ensuring the provision necessary special education programs and services for any special education student enrolled at the Charter School and will retain all funding for all its special education students. Harney will provide 5 hours of face-to-face [special education] services to the students at the Burns Tutoring Center each week. These services will be provided by Harney Educational Service District (ESD) staff on behalf of Harney. Harney will also arrange, to the extent possible, to provide face to face [special education] services to students through the High Desert ESD in Central Oregon."

    ii. If the IEP team determines that delivery of certain special education services is best provided by the Charter School, the Charter School will (a) ensure that its staff receives any training necessary for the delivery of such services, and (b) negotiate a separate contract with Harney under which Harney will compensate the Charter School for the special education services that the Charter School provides and pay for any training expenses incurred by the Charter School to facilitate delivery of such services.

    iii. For those services that the IEP team determines would be best delivered by Harney employees, the Charter School will cooperate with Harney staff to assist in the effective delivery of the services, which might include on-site or pull-out service delivery and the Charter School will prove a space on-site where students can receive services.

47. When asked if Harney was providing any face-to-face special education services to Charter School students through the Harney or High Desert ESDs, as described in the Charter Agreement, the Superintendent replied, "If we did have kids in Harney County right now that required this service, yes, they would be getting it. We don't, so we are not using that at this point in time."

48. The Baker Director reported that they were not familiar with the Charter Agreement and were not aware that it included a provision for face-to-face special education services provided by ESD staff. When asked if there had been any discussion between Baker and the Charter School about providing SDI with a special education teacher, the Baker Director replied that they "haven't had to have that discussion" because they had not yet had a student at the Charter School who required SDI from a special education teacher. They

maintained, however, that "When we hit that individual who we believe needs that, then we will provide it."

IV. DISCUSSION

When IEPs Must Be in Effect

The Parent alleged that Harney and Baker violated the IDEA by not providing special education and related services in accordance with the Student's IEP. Specifically, Harney and Baker failed to implement the SDI and speech-language services required by the Student's IEP when they transferred to the Charter School at the start of the 2025-26 school year. Additionally, Harney and Baker failed to implement the SDI in the Student's IEP dated September 15, 2025.

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]

Under Oregon law, a "school district" means the public education agency (school district, ESD, or state agency) that is responsible by statue, 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]

When a student with an active IEP transfers to a new school district in the same state within the same school year, the new school district must provide a FAPE to the student, that includes services comparable to those described in the IEP from the previous district, until the new district either: (a) adopts the student's IEP from the previous school district; or (b) develops, adopts, and implements a new IEP for the student.[8]

A district violates the IDEA when it materially fails to implement an IEP.[9] "A material failure occurs when there is more than a minor discrepancy between the services a school provides to

[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)
[6] OAR 581-015-2000(32)
[7] OAR 581-015-2000(37); 34 CFR §300.39(b)(3)
[8] OAR 581-015-2230(1)(a)-(b); 34 CFR §300.323(e)
[9] *Van Duyn v. Baker Sch. Dist. 5J*, 502 F3d 811 (9th Cir. 2007) ("Van Duyn")

a disabled child and the services required by the child's IEP."[10] 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."[11]

When the Student transferred to the Charter School at the start of the 2025-26 school year, Harney (as the Charter School's sponsoring school district) was obligated to provide the Student with services comparable to those described in their February 4, 2025 IEP until it either adopted that IEP or developed a new IEP for the Student. A new IEP was not completed for the Student until September 29, 2025. During that time, Harney failed to provide SDI to the Student, in any area, that was comparable to what was described in the Student's existing IEP. First, the Student's IEP required that they receive speech-language services for 60 minutes per week. The Districts did not provide any speech-language services to the Student from the start of the school year until September 18, 2025. At that time, the SLP began providing 30 minutes per week of services to the Student, which is half of what the Student's IEP required. The Student's IEP also required that they receive SDI in Written Language, Math, Social Skills and Reading. As discussed in more detail below, neither Harney nor Baker established that they provided *any* amount of SDI in these areas to the Student from the date that the Student transferred to the Charter School until a new IEP was developed.

The September 15, 2025 IEP, which was completed on September 29, 2025, reduced the Student's speech-language services to 30 minutes per week. The Parent does not dispute that, since the adoption of the new IEP, the Student has consistently received the required 30 minutes per week of speech-language services. The September 15, 2025 IEP includes the same amount of SDI in Written Language, Math, Social Skills and Reading as the IEP that was in effect when the Student first enrolled at the Charter School. Despite developing a new IEP for the Student, Harney and Baker continued their failure to provide SDI in these areas to the Student.

Harney and Baker argue that, while the method of providing the Student's SDI may look different than what was provided at the Prior School, it still constitutes specially designed instruction. The Districts correctly state that SDI does not necessarily have to be provided one-to-one or face-to-face with a special education teacher. SDI can be provided by a general education teacher or other non-certified staff member (e.g., a paraeducator or instructional assistant) so long as the instruction is both designed and monitored by a special education teacher. In this case, the only involvement by a special education teacher in the design or delivery of the Student's SDI consists of minimal to non-existent consultation by the Case

[10] *Id.*
[11] *Id.*

Manager. Further, the Case Manager's role in monitoring the provision of SDI is limited to collecting of progress monitoring data from the Homeroom Teacher, which appears to be nothing more than the Student's course grades. Instruction can only be characterized as "specially designed" if the content, methodology, or delivery of instruction is adapted to meet the unique needs of the individual student. What Harney and Baker describe as SDI consists of providing the Student with accommodations and offering the Student the same opportunities to receive support from their teachers as is available to any other student at the school. Nothing about the instruction received by the Student is "specially designed" to address their unique educational needs.

Notably, there seems to be significant confusion among Harney, Baker, and Charter School staff regarding how SDI is provided, who is responsible for providing it, and who is responsible for monitoring the Student's progress on their goals. The administrators from Harney and Baker maintain that the Homeroom Teacher is responsible for providing SDI and monitoring the Student's IEP goals. According to the Asst. Superintendent, the SDI should be provided by the Homeroom Teacher during face-to-face Academic Support Hours and would not appropriately be provided during the Virtual Study Hall. The Baker Coordinator agrees that the Homeroom Teacher is responsible for monitoring the Student's progress on their goals but describes SDI as being "served through curriculum choices, teacher office hours, and meeting with teacher" in consultation with the Case Manager. For their part, the Homeroom Teacher reported that they do not provide any of the Student's SDI and that the Student is responsible for seeking out their math teacher during Virtual Study Hall to receive their SDI in math. The Math Teacher appeared surprised to learn that they had any role in providing SDI to students.

Once it is established that there was a failure to implement the Student's IEP, the question then turns to whether it that failure was material. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. The wholesale failure to provide the Student with any of their SDI in Written Language, Math, Social Skills and Reading is certainly more than a "minor discrepancy" and constitutes a material failure to implement the Student's IEP.

Whether or not the failure to implement the Student's required speech-language services from the start of the 2025-26 school year until a new IEP was adopted on September 29, 2025 is more nuanced. During this approximately four-week period, the Student should have received 60 minutes of services per week, for a total of 240 minutes. Instead, the Student did not receive any services for the first two weeks and then only received half of their required services, for a total of 60 minutes of service. Accordingly, during the first four weeks of the school year, the Student only received 25% of their required speech-language services. This also amounts to more than a minor discrepancy and is also a material failure to implement the Student's IEP.

While Harney is responsible for ensuring that students at the Charter School receive their required special education services, Baker is also responsible for providing those services that they agreed to provide by contract. These contracted services include consultation by the Case Manager.

The Department substantiates this allegation as to Harney and Baker.

Content of the IEP

The Parent alleged that Harney and Baker violated the IDEA when they failed to include information in the Student's IEP that is necessary to address the Student's unique educational needs. Specifically, the IEP does not include SDI or speech-language services that are based on the Student's individual needs and that are sufficient to allow the Student to make appropriate progress towards their goals. Additionally, the Student's IEP does not clearly specify the nature and type of SDI and related services that will be provided to the Student such that the Parent can understand what is being offered.

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.[12]

Parents are entitled to a "formal written offer" of the special education placement offered to their student.[13] This requirement for a "formal written offer" has been applied to special education services, as well as placement. Courts have invalidated IEPs that "were insufficiently clear and specific to permit parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing."[14] Appendix A of the IDEA regulations states that "the amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other team members."[15]

Speech-Language Services

The Parent's allegation that the IEP does not include services that are based on the Student's individual needs is limited to speech-language services and does not include the other areas of SDI. When developing the Student's September 15, 2025 IEP, the SLP recommended reducing the Student's speech-language services from 60 minutes per week to 30 minutes per week. While the Parent disagrees that this level of service is sufficient, the evidence does not establish that the Student requires a higher level of service. The SLP described in detail the information that they relied upon when determining that the Student's needs could be met with 30 minutes

[12] OAR 581-015-2205(1); 34 CFR §300.320
[13] *Union v. Smith*, 15 F.3d 1519 (9th Cir. 1994)
[14] *S.H.* v. Mt. Diablo Unif. Sch. Dist., 263 F.Supp.3d 746 (N.D. Cal. 2017)
[15] *Bend-Lapine Sch. Dist. v. K.H.*, 43 IDELR 191 (D. Or. 2005)

of speech services per week. The full range of information considered by the SLP included past evaluation results, progress monitoring data, informal assessments, and observation. The SLP credibly explained how the available information informed their service recommendation. Additionally, since the reduction in service was implemented, the Student has met their language goal and continues to demonstrate functionally adequate articulation skills.

Description of SDI

The Student's September 15, 2025 IEP includes SDI in Written Language, Math, Social Skills and Reading. The IEP indicates that these services will be provided by the "LEA" in a "Virtual Classroom". The IEP also states that SDI "will be provided through consultation with special education staff, specialized support in the general education curriculum, vectored instruction, and/or another specialized curriculum targeting the student's needs." The Parent repeatedly sought clarity regarding what the offered SDI entailed. The District's explanation, as reflected in PWN dated September 15, 2025, does not adequately explain what services the Student will receive. Further, the Parent cannot be expected to understand how the Student's SDI will be provided when the teachers who are responsible for implementing the SDI do not appear to understand how the SDI is to be provided.

The Department substantiates this allegation as to Harney and Baker, in part, as it relates to the description of the SDI in Written Language, Math, Social Skills and Reading.

Prior Written Notice

The Parent alleged that Harney and Baker violated the IDEA by failing to provide clear, accurate and sufficient PWN regarding proposals and refusals related to the provision of special education and related services to the Student.

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.

[16] OAR 581-015-2310; 34 CFR §300.503(a).

The purpose of such detailed PWN requirements is two-fold. First, it assists school personnel to consider options carefully and to make decisions on the basis of articulable criteria or reasoning. Second, it gives parents definitive statements of school district decisions and enables their understanding of exactly what considerations led to those decisions.

The District provided the Parent with PWN after each IEP meeting, and in response to additional requests made by the Parent throughout the year. The September 3, 2025 PWN clearly does meet the statutory requirements. It was quickly rescinded, however, with the explanation that it was sent in error.

The September 15, 2025 and September 16, 2025 PWNs provide significantly more detail regarding the outcome of the Student's IEP meetings and the information that was relied upon when making decisions regarding the Student's special education services. While these PWNs generally satisfy federal and state statutory requirements, they fall short when describing the SDI in Written Language, Math, Social Skills, and Reading. Despite the Parent's repeated requests for specific information regarding the provision of SDI to the Student, Harney and Baker continued to provide vague and confusing explanations that do not adequately describe the services that the Student will receive.

The Department substantiates this allegation as to Harney and Baker.

Free Appropriate Public Education

Due to the alleged IDEA violations detailed above, the Parent alleged that Harney 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.[17] In Oregon, the school district who is responsible for providing FAPE to a student is the student's district of residence.[18] 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.[19]

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.[20] 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.[21]

[17] OAR 581-015-2040(1); 34 CFR § 300.101(a)
[18] OAR 581-015-2040
[19] OAR 581-015-2040; 34 CFR § 300.17
[20] *Endrew F.,* 137 S.Ct. at 999
[21] *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23,* 960 F.2d 1479, 1484 (9th Cir. 1992)

Failure to Provide SDI

In this case, Harney violated the IDEA when it failed to provide the Student with the SDI and speech-language services required by their IEP. As discussed above, this was a significant and material failure and resulted in a loss of educational opportunity to the Student because they did not receive the SDI that would enable them to progress towards meeting the goals in their IEP allow them to access the curriculum.

Description of SDI

As stated in the sections above, parents are entitled to an IEP that is sufficiently "clear and specific to permit parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing." Failure to provide a parent with information regarding the character of their student's special education services can impede their ability to participate in decisions regarding those services.[22] Harney failed to adequately explain to the Parent what the Student's SDI will entail, who will provide it and how progress will be monitored.

Harney failed to describe the offer of SDI in the Student's IEP with sufficient specificity. Further, the PWNs that were provided to the Parent do not adequately describe how the Student's SDI will be implemented. Emails from the Parent and meeting minutes from the Student's IEPs demonstrate the Parent continued to lack understanding as to the SDI the Student was to receive. The confusion surrounding the provision of SDI deprived the Parent of their right to meaningfully participate in the IEP process, resulting in a denial of FAPE to the Student.

The Department substantiates this allegation as to Harney.

ADDITIONAL FINDING

Parent Participation

A school district must provide one or both parents the opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child.[23] School 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] 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."[26]

[22] *S.H.* v. Mt. Diablo Unif. Sch. Dist., 263 F.Supp.3d 746 (N.D. Cal. 2017)
[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 5/21/13), citing 71 Fed. Reg. 46,678 (2006)
[26] OAR 581-015-2190(4); 34 CFR § 300.501(b)(3)

A district crosses the line from permissible preparation into prohibited predetermination when it effectively finalizes a decision before the IEP team convenes. While staff may come prepared with draft proposals and data, when a district presents a placement, service, or goal as the decision, or refuses to genuinely discuss alternative options, it subverts the consensus-based nature of the IEP team. This practice violates parent participation principles by reducing the parent's role from that of an active, equal decision-maker to a mere spectator, thereby denying them the "meaningful opportunity to participate" guaranteed by the IDEA.

In this matter, Baker serves as the administrative oversight for special education for students within Harney's jurisdiction. As such, both Districts have an obligation to ensure parent participation in the IEP process. The record indicates that the Districts approached the IEP with a fixed outcome based on program availability rather than student need. When the Parent asked, "Why are we writing the IEP for what the school offers and not what the student needs?" the Districts responded by citing the curriculum. When the Parent questioned the reduction in Speech-Language Pathology (SLP) services, the Coordinator replied, "…we offer 60 minutes per month," rather than referencing evaluation data or student progress. Then, the District's Prior Written Notice (PWN) cited the "SLP minutes that are available in this setting."

The Director confirmed this systemic approach, stating to the Parent: "ODE considers us a school of choice. ODE says it is okay for us to inform parents of what we offer. If parents do not feel this is appropriate they do not have to keep their student here."

This represents a fundamental misunderstanding of the FAPE obligation. Status as a "school of choice" does not exempt a District from the requirement to individualize services. Services must be determined by the specific needs of the child, not the administrative convenience or existing service menu of the school. By limiting the IEP offer to "what is available," and suggesting the Parent's recourse was to leave rather than for the Team to consider other options, the District predetermined the student's program. An IEP turns on the individual circumstances of the child; only an IEP team – including the parent – can make those decisions.

V. CORRECTIVE ACTION

In the Matter of Baker School District 5J and Harney Union High School District 1J
Case No. 025-054-091

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

Action Required	**Submissions**	**Due As Soon As Possible But Not Later Than**

1. Harney will convene an IEP meeting for the Student to determine appropriate compensatory education services for the loss of educational opportunity caused by the failure to provide the Student with the SDI and speech-language services required by their IEP and the failure to adequately describe the SDI that the Student will receive. 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.	March 15, 2026 August 31, 2026
2. Harney will develop a plan to provide the Student with SDI, in accordance with their IEP, that is designed, supervised and monitored by a credentialed special education teacher.	A written plan for how Harney will provide the Student with SDI that is designed, supervised and monitored by a credentialed special education teacher.	February 27, 2026
3. Harney and Baker will review and revise their Standard Operating Procedures (SOP) that defines clearly how SDI is delivered and documented in students' IEPs and provide training to all staff responsible for implementing IEPs on the revised procedures.	Written procedures on how SDI is delivered and documented in student's IEPs. Training agenda and materials to ODE for review and approval. Sign-in sheet from training.	March 20, 2026 March 20, 2026 June 1, 2026
4. Harney and Baker will develop and conduct training for all staff responsible for implementing IEPs on their responsibility to: a. 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.	March 20, 2026 June 1, 2026

b. Clearly and specifically describe the special education services offered in a student's IEP. c. Provide SDI that is designed, supervised and monitored by a credentialed special education teacher. d. Enable meaningful parent participation in the IEP process.		

Dated: this 3 Day of February 2026



Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: February 3, 2026

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).)