BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of	)	FINDINGS OF FACT,
Lake Oswego School District 7J	)	CONCLUSIONS,
	)	AND FINAL ORDER
	)	Case No. 25-054-096

I. BACKGROUND

On December 18, 2025, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Lake Oswego School District (District). The Complaint requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of the Complaint and forwarded the request to the District.

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

On January 5, 2025, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the District identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of January 20, 2026.

The District submitted a *Response* on January 20, 2026 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, 1/20/26
2. Prior Written Notice (PWN), 1/19/24
3. IEP Meeting Minutes, 1/9/24
4. Individualized Education Program (IEP), 1/9/24
5. Special Education Placement Determination, 1/9/24
6. Notice of Team Meeting, 1/9/24
7. PWN, 6/14/24
8. Parent Meeting Minutes, 6/3/24
9. IEP Amendment, 1/8/25

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

10. IEP Progress Report, 6/10/24
11. PWN, 12/17/24
12. IEP Meeting Minutes, 12/17/24
13. IEP, 12/17/24
14. Special Education Placement Determination, 12/17/24
15. Notice of Team Meeting, 12/9/24
16. Consent for Individual Evaluation, 1/31/25
17. PWN, 1/31/25
18. PWN, 2/6/25
19. Evaluation/Eligibility Meeting Minutes, 1/31/25
20. IEP Amendment, 1/31/25
21. Notice of Team Meeting, 1/19/25
22. Notice of Team Meeting, 1/7/25
23. PWN, 3/10/25
24. IEP Meeting Minutes, 3/6/25
25. IEP Amendment, 3/6/25
26. Notice of Team Meeting, 3/4/25
27. Notice of Team Meeting, 2/17/25
28. Eligibility Summary Statement, 4/2/25
29. Statement of Eligibility for Special Education, ASD, 4/2/25
30. Statement of Eligibility for Special Education, OHI, 4/2/25
31. Psychoeducational Re-Evaluation Summary, 4/2/25
32. Occupational Therapy Evaluations, 4/1/25
33. Sensory Profile 2 Summary Report, 4/4/25
34. Notice of Team Meeting, 3/6/25
35. PWN, 5/14/25
36. Parent Meeting Minutes, 5/14/25
37. PWN, 12/5/25
38. IEP Meeting Minutes, 12/2/25
39. IEP, 12/2/25
40. Special Education Placement Determination, 12/2/25
41. Notice of Team Meeting, 11/12/25
42. Parent Requests to Inspect Educational Records, 12/13/24 & 11/6/25
43. Response to Request for Independent Educational Evaluation (IEE), 12/2/25
44. IEP Progress Report, 2/7/25
45. IEP Progress Report, 6/17/25
46. Emails, 2024-25 and 2025-26 School Years

On January 30, 2026, at the request of the Investigator, the District submitted the following additional documents:

1. OT Service Logs, 2024-25 School Year
2. OT Service Logs, 2025-26 School Year

On January 27, 2026, the Parent submitted a Reply to the District's Response along with the following relevant items:

1. Email Communication with District Staff, 10/23
2. Email Communication with District Staff, 11/2023
3. Parent Square Communication with District Staff, 2023-2024
4. Parent Square Communication with District Staff, 2023-2025
5. Email Communication with District Staff, 05/2024
6. Email Communication with District Staff, Fall 2024
7. District Response to Parent Email, with attachments, 02/2025
8. District Response to Parent Email, with attachments, 03/2025
9. Email Communication with District Staff, 04/2025
10. Meeting Invite and Email from Parent, 04/2025
11. Parent Square Communication with District Staff, Fall 2025
12. Email Communication with District Staff, 10/2025
13. Email Communication with District Staff, 11/2025

On January 2, 2026 and February 3, 2026, the Complaint Investigator interviewed the Parent. The Complaint Investigator interviewed District personnel on January 28, 29, and 30, 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 19, 2024 to the filing of the Complaint on December 18, 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. Specifically, the District failed to implement Occupational Therapy services and accommodations related to counseling, advance notice of major changes, and additional adult support as required by the Student's IEP. (OAR 581-015-2220; 34 CFR § 300.323)	**Substantiated, in Part** The District failed to provide the Student with the OT services required by their IEP during the 2024-25 school year.

Allegations	Conclusions
Content of IEP The Complaint alleged that the District violated the IDEA when it failed to include information in the Student's IEP that is necessary to address the Student's unique educational needs. Specifically, the District failed to include adequate occupational therapy services, counseling services, and an accommodation for advance notice of major changes. (OAR 581-015-2200; 34 CFR § 300.320)	**Not Substantiated** The Student's IEP includes adequate occupational therapy services to address the Student's unique needs. The Student does not require counseling services or an accommodation for advance notice of major changes.
Evaluation and Reevaluation Procedures The Complaint alleged that the District violated the IDEA by failing to conduct an appropriate evaluation of the Student's special education needs in the areas of sensory differences, executive functioning or motor coordination. (OAR 581-015-2110; 34 CFR § 300.304)	**Substantiated** The District failed to conduct an appropriate OT evaluation of the Student.
Parent Participation The Complaint alleged that the District violated the IDEA by interfering with the Parent's ability to participate in decisions with respect to the Student's IEP and the provision of a free appropriate public education to the Student. Specifically, the District did not provide data necessary for the Parent to meaningfully participate in the Student's IEP meeting and made determinations regarding the Student's specially designed instruction, related services and accommodations outside of the IEP process and without the Parent's input. (OAR 581-015-2190; 34 CFR § 300.501)	**Substantiated, in Part** The District failed to include the Parent in the decision to reduce the amount of the Student's additional adult support at the January 31, 2025 IEP Meetings.
Education Records The Complaint alleged that the District violated the IDEA by denying the Parent's access to the Student's education records, including data related to the Student's IEP goals and occupational therapy service logs. (OAR 581-015-2300; 34 CFR § 300.501(a))	**Not Substantiated** The documents requested by the Parent do not meet the definition of education records as they are not maintained by the District.

Allegations	Conclusions
Free Appropriate Public Education (FAPE) Due to the alleged IDEA violations detailed above, the Complaint alleged that the District failed to provide the Student with a FAPE. (OAR 581-015-2040; 34 CFR § 300.101)	**Substantiated, in Part** The District denied the Student a FAPE, by seriously infringing on the Parent's right to participate in the development of the Student's IEP when it failed to include the Parent in the decision to reduce the amount of the Student's additional adult support from the start of the Complaint period until March 6, 2025.

REQUESTED CORRECTIVE ACTIONS

The Complainant requests:

1. Modify the Student's IEP to include counseling as a related service, SDI in the area of occupational therapy, and ensure the IEP is written clearly and explicitly enough to ensure compliance.
2. Provide comprehensive re-evaluation in the areas of Physical and Occupational Therapy, update the IEP and provide compensatory time as appropriate.
3. Provide data and supporting evidence as requested, develop and implement district policy to ensure parent participation.
4. Provide additional staff training, and implement additional support, oversight, guidance and systems necessary for IEP coordination.
5. Provide written acknowledgment of the mishandling of these issues and specific commitments to improving guidance and policy relevant to IEP implementation.

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 19, 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 nine years old and is in the fourth grade. The Student resides and attends school within the District.

2. The Student has current diagnoses of attention-deficit/hyperactivity disorder (ADHD) and autism spectrum disorder (ASD) and is eligible for special education under the categories of Autism Spectrum Disorder and Other Health Impairment (OHI).

3. During the time period relevant to the Complaint, the Student's placement was in the District's ACCESS Program (ACCESS). ACCESS is a specialized program with a focus on social communication and following routines that is designed for students who require more support than is offered in the resource setting. Students in the ACCESS program spend time in the general education setting based on their individual needs, often spending most of the day in their general education classroom. There is a high staff-to-student ratio, which allows students in the program to receive additional adult support when needed. For the 2025-26 school year, the ACCESS program at the Student's school has ten students who are supported by a teacher and eight paraeducators.

4. On January 9, 2024 the Student's IEP team met to develop the Student's annual IEP (January 9, 2024 IEP). The January 9, 2024 IEP includes, in relevant part:

    a. Concerns of the Parent: The Student has had a difficult transition to the current school. They are concerned about the Student "navigating initiating new friendships" and that the Student "struggles to memorize people's faces."

    b. Present Levels of Performance: The Student receives the majority of their core instruction within the general education setting, "with some core work time done within the ACCESS setting in order to decrease sensory input and distractions."

    Academics: In Reading, the Student continues to show challenges in persevering through work that includes a lot of verbal directions or a non-preferred topic. In Writing, the Student can write a personal narrative, fictional story, and informative report with minimal staff support for organization or brainstorming. The Student has demonstrated significant improvement expanding on ideas and providing additional details. In Math, the Student has strong skills in Numbers and Operations and Algebraic Thinking.

    Social Communication: The Student attends a social communication small group for 30 minutes each week "focused on sportsmanship, friendship, listening to friends' ideas, body language, identifying emotions in others, and conversational skills." They are "able to discuss all of these focus skills thoughtfully and understands the concepts" but "continues to need adult prompts and reminders to stay flexible and attentive of peer ideas and feelings."

    Occupational Therapy: The Student "has been working to develop the legibility and sequencing of [their] handwriting and letter formations." They are "agreeable to writing on [their] terms" and "prefers to engage in writing complete sentences as [they] perceive this to be more challenging and at grade level for [them]." The Student "would benefit from continued direct OT support for the development of consistency with sequencing letter formations to increase the legibility of [their] handwriting."

c. Goals: The IEP includes goals in the areas of 1) Communication-Social, 2) Classroom/School Skills, and 3) Social/Behavioral.

d. Specially Designed Instruction:

i. Social/Behavioral for 125 minutes per week;
ii. Communication-Social for 120 minutes per month; and
iii. Classroom/School Skills for 125 minutes per week.

e. Related Services:

i. Transportation;
ii. Occupational Therapy for 60 minutes per month.

f. Accommodations (in relevant part):

i. "Parents will be informed/be given at least 1 months' notice regarding big changes in [the Student's] schedule, routines, placement changes, transportation needs, etc. prior to changes being made";

ii. "Additional adult support to ensure implementation of accommodations, support with problem-solving and communication" for 260 minutes per day.

g. Supports for School Personnel:

i. Autism Specialist consult for 120 minutes per year;
ii. Occupational Therapy consult for 120 minutes per year;
iii. Learning Specialist consult for 120 minutes per year;
iv. SLP consult for 120 minutes per year.

5. The District convened an IEP Amendment meeting for the Student on June 3, 2024 (June 3, 2024 IEP). According to the Meeting Minutes, the meeting was held at the request of the Parent "to be better prepared for the start of next year." The Parent shared concerns that the current school year "has not gone well" and that the Student "is not receiving the support [they need]." The Parent wanted to discuss "transitions," "sensory needs with OT," and "school and home communication." The team discussed that the Student's case manager (Case Manager #1) was going on leave and the District shared its intention to secure one substitute for the duration of the Case Manager's leave, along with providing the substitute with additional support. Additionally, the educational assistant that was currently supporting the Student (EA) would be assigned to support them in the new school year.

6. The Meeting Minutes from the June 3, 2024 IEP also reflect a conversation about the Student's social/emotional needs. The Parent noted that, "Sometimes people will make comments that [the Student] has a big reaction to. [They] may assume things are unkind." The Case Manager #1 added, "For example, when someone says no, or if [the Student] is corrected." The Parent asked, "Can we have a regular appointment with the counselor? Ways to reach out to others so that others don't think [they are] being mean. [The Student] likes to

go to a place where they can talk about [their] feelings." In a summary at the end of the Meeting Minutes, it is noted that there was "discussion about classroom behavior and request for regular counselor check-in to talk about [the Student's] feelings (e.g., lunch bunch)."

7. According to the Meeting Minutes, the IEP team also discussed the amount of writing that will be expected in third grade and the Parent shared that handwriting is difficult for the Student. The option to use typing or other technology was offered as an alternative to writing, and the Case Manager #1 suggested that the Student be allowed to type anything longer than a paragraph. At the conclusion of the meeting, "Parent requested the data from [Case Manager #1 and the SLP] for [the Student's] current progress on IEP goals."

8. Based on discussions at the June 3, 2024 IEP Meeting, the following relevant accommodations were revised and/or added to the Student's IEP:

    a. Behavior Support plan and tools;
    b. Regular check-ins with the counselor with additional visits for emotional processing as needed and available for 45 minutes per week;
    c. Ability to type or use a voice-to-text option for writing assignments exceeding a single paragraph;
    d. Additional adult support to ensure implementation of accommodations, support with problem-solving and emotional regulation, and communication (including unstructured times such as whole class choice, recess, lunch, arrival, and dismissal) for 260 minutes per day.

9. The Student began the 2024-25 school year with a new Case Manager (Case Manager #2) as Case Manager #1 was on leave. Case Manager #1 returned to their position on December 6, 2024 and Case Manager #2 remained at the school and co-taught with Case Manager #1 until Case Manager #2 left in February 2025 to fulfill a military obligation. Case Manager #2 returned to the school and became the Student's sole case manager for the 2025-26 school year.

10. On December 9, 2024, the Parent sent an email to the District's Teacher on Special Assignment (TOSA), who acts as a District-level resource for the Student's IEP team, requesting to "review draft goals and [the Student's] records" prior to the Student's upcoming annual IEP meeting. Following attempts by the TOSA to determine what specific records the Parent was seeking, the Parent clarified, "I was hoping to look at the raw data collected on [the Student]'s IEP goals so that I could better understand how the goals were being tracked, measured and used to inform present levels."

11. On December 11, 2024, the TOSA responded to the Parent's request for data, stating "[The Case Manager #1] utilized the daily reports home to craft the IEP progress reports. You are welcome to see the progress reports. These are available in the official special education file known as the Blue File."

12. When interviewed, the Case Manager #2 shared that they and the Autism Specialist met with the Parent at least three times during the first few months of the 2024-25 school year, outside

of scheduled IEP meetings. They met with the Parent first at the beginning of the school year and then again for 1.5-2 hours for a "check-in" to review how the school year was going. They met with the Parent again in December 2024, prior to the Student's annual IEP meeting, for another 1.5-2 hours, "to create the IEP together" and make sure they drafted goals that were "aligned with what [the Parent] wanted." The Case Manager #2 and the Autism Specialist had a similar meeting with the Parent to create a draft IEP prior to the Student's annual IEP meeting in December 2025. They reported that they allowed the Parent more involvement in creating the Student's IEP than was given to any other parent.

13. On or around December 2024, the Case Manager #1 provided the Parent with a draft of the Student's annual IEP, which was scheduled to be reviewed at an IEP meeting on December 17, 2024 (December 17, 2024 Draft IEP). Notably, the Draft IEP included the following accommodation, "Additional adult support to ensure implementation of accommodations, support with problem-solving and emotional regulation, and communication (including unstructured times such as whole class choice, recess, lunch, arrival, and dismissal)" for 260 minutes per day.

14. The District convened the Student's annual IEP meeting on December 17, 2024 (December 17, 2024 IEP). According to the Meeting Minutes, the following relevant discussions occurred during the December 17, 2024 IEP Meeting:

    a. The District Occupational Therapist reported that they "have been working on some handwriting" with the Student, but the Student "thinks it is too easy" and is "averse" to practicing. Additionally, the Student "is very sensitive to any feedback on [their] writing." The Student "has been engaging more in speech to text" and the Occupational Therapist has provided some training to the EA on utilizing the technology. The EA shared that the Student "is more motivated to use speech to text." The Case Manager #2 added that the Student is "doing some handwriting in a social group" and "some days [they] will go above and beyond." The Parent observed that the Student "squishes letters and doesn't space words out." The Occupational Therapist recommended, "If [the Student] is having difficulty with longer paragraphs to write we would encourage speech to text more."

    b. In the area of study and organizational skills, the Case Manager #1 reported that the Student's "organizational skills are great," they are "clued in on [their] own schedule" and they have "been turning in everything." The Student's third grade general education teacher (3rd Grade Teacher) added, "Sometimes [the Student] turns in things that are already graded."

    c. In a discussion regarding District-wide assessments, the Case Manager #1 explained that "generally the testing has you write about a specific topic . . . we will be working towards this as we know that [the Student] has historically struggled with this." The Student "does well with content. The thing that is holding [them] back is [their] behavioral resistance to the writing about non-preferred topics."

    d. The IEP team discussed how staff work with the Student to encourage "flexibility with content" in the classroom and "getting [them] to follow the group plan more." The 3rd

Grade Teacher noted that difficulties in this area "are most common around writing." The Case Manager #2 added that the Student "will be fine with writing as long as [they don't] have to give you the full sentence." "If I prompt then I get pushback. [The Student] is amazing about making bullet points and getting [their] ideas down." The Parent questioned whether the Student had difficulty holding a pencil and Case Manager #1 explained that the Student's writing is legible and that the Student "doesn't have a difficulty with getting writing down on paper."

e. When discussing OT services, the Occupational Therapist shared, "As long as [the Student] has access to the tools [they are] able to do the work. I will continue to support [them] through consultation. I can push in and help as needed. [Their] resistance is inhibiting [their] participation." The Parent asked if there were other approaches and the Occupational Therapist explained, "[The Student] is getting what [they need] in the classroom – pulling [them] out of class is removing [them] from class. Being in the classroom allows [them] to continue to stay on task and work on the same things [their] peers work on." The Occupational Therapist added that they were considering removing direct OT services after evaluating the Student and would "wait to remove it at the next IEP meeting." It was agreed that OT services "will remain in place at 60 min per month."

f. When reviewing the Student's accommodations, the Parent asked if there were any expected changes with the EA. The Case Manager #1 shared that that Student "has been more independent in the morning" and has "been solo in the mornings." The Parent expressed that the "intention sounds good" but asked, "What happens when [the EA] is not there?" The Case Manager #1 responded that the 3rd Grade Teacher "could call down to ACCESS" if additional support was needed. The Parent questioned whether the Student would continue to receive adult support during unstructured times, adding "I have concerns about splitting up [the EA]." The District Autism Specialist clarified, "We plan on supporting [them] all day. The idea is that [they] will still have adult support."

15. When interviewed, the Parent reported that there was no discussion at the December 17, 2024 IEP Meeting about reducing the amount of time that the Student had adult support. Instead, the Parent was informed that the EA would be assisting another Student in the mornings, and an alternate EA (Alt-EA) would support the Student during this time. The Parent objected to the change, in part, because they had not been provided with sufficient advance notice. The Parent clarified that their objection was to the change in staff member, not because they believed the amount of support was being changed.

16. A final copy of the December 17, 2024 IEP was not provided to the Parent following the IEP meeting, although it was included in documents submitted to the Investigator with the District's *Response*. The December 17, 2024 IEP includes, in relevant part:

a. Concerns of the Parent: "I feel like I need to see more of the goals." "I don't understand how data is collected. I want more transparency there."

b. Present Levels of Performance:

Academics: The Student can complete reading, writing, and math "tasks and standards comparable to the grade level expectation." Accordingly, special education services are not needed in these areas.

Social/Emotional/Behavior: The Student "has demonstrated significant improvement during the 24/25 school year with regards to perseverance on work tasks and flexibility on non-preferred tasks." The Student "needs adult support in navigating social challenges across educational settings. [They] also sometimes need additional motivation to complete new or non-preferred tasks." "During less-structured play opportunities (lunch, recess, free play)" the Student "follows rules/procedures for behavior" in 95% of opportunities.

Gross Motor: The Student "is able to complete gross motor skills comparable to the grade level expectation."

Fine Motor: The Student "is able to complete functional OT tasks such as eating and using the bathroom." "The OT team has been attempting to work with [them] on handwriting activities, but often [the Student] refuses to participate in these activities."

Study/Organizational Skills (Executive Functioning): The Student "is able to complete study/organization skills comparable to the grade level expectation."

Self-Advocacy/Self-Direction: The Student "does need adult support to talk [them] through non-preferred tasks or social challenges."

c. Goals:

i. Communication-Social: When provided with hypothetical social situations, the Student will a) identify the social context or problem, b) demonstrate an understanding of the neurotypical rationale for various expected social skills by stating at least one plausible reason when asked, and c) generate a response to the social context or problem which would be socially acceptable to most audiences, without sacrificing self-determination or self-advocacy, in 80% of opportunities over 3 consecutive sessions.

ii. Social/Behavioral: The Student will engage in preferred and non-preferred social activities demonstrating success by a) deciding on a game between peers, and b) including a positive statement during the play period.

The Student will solve a variety of social and school related challenges by: a) identifying the conflict and its impact on people involved, b) label the impression felt by others, c) identify 2 possible solutions to the conflict, and d) create or enact a plan of steps to reach the proposed solution.

iii. Classroom/School Skills: The Student will flex to meet the expectations of writing content, in order to meet expectations of writing style and main idea.

d. Specially Designed Instruction:

   i. Social/Behavioral for 125 minutes per week;
   ii. Communication-Social for 120 minutes per month; and
   iii. Classroom/School Skills for 125 minutes per week.

e. Related Services:

   i. Occupational Therapy for 60 minutes per month.

f. Accommodations:

   i. "Additional adult support to ensure support with problem-solving and emotional regulation, and communication (including unstructured times such as whole class choice, recess, lunch, arrival, and dismissal)" for 45 minutes per day;

   ii. "Access to check-ins as needed with the counselor with additional visits for emotional processing as needed and available" for 60 minutes per day;

   iii. "Parents will be informed/be given at least 1 months' notice regarding big changes in [the Student's] schedule, routines, placement changes, etc. prior to changes being made."

g. Supports for School Personnel:

   i. Autism Specialist consult for 120 minutes per year;
   ii. Occupational Therapy consult for 120 minutes per year;
   iii. Learning Specialist consult for 120 minutes per year;
   iv. SLP consult for 120 minutes per year.

17. The District was closed for winter break from December 21, 2024 until January 6, 2025.

18. On January 9, 2025, the Parent sent an email to the Case Manager #1, the TOSA, and the Autism Specialist with comments and requested revisions to the December 17, 2024 Draft IEP, stating "I'll leave it up to you three whether the additional modifications can be completed through email or if we need another meeting." The Parent's input included, in relevant part:

    a. Present Levels: The present level for writing does not reflect how challenging it is for the Student and does not discuss challenges with handwriting or staying on topic. Additionally, the fine motor section does not include the Student's present level for handwriting. The Parent disagrees that the Student does not need special education support with executive functioning skills.

    b. Accommodations: The Parent requests an accommodation that they "have advance notice of test days" so they can "better prepare [the Student] for the expectations of the day."

c. The Parent is concerned about the Student having two educational assistants each day, as they believed that "the consistency of a single aide had been a large part of the success this fall." They will "want to revisit this" if they "start seeing big problems again."

d. The Parent is frustrated to hear that a different educational assistant already started working with the Student despite the Student's "30-day advance notice accommodation." They are concerned that other portions of the Student's IEP have not been implemented, such as the accommodation for school counseling.

e. If the District would like to have a meeting to discuss the Parent's input, the Parent requests that it not be scheduled until the end of the month to give them time to see how the Student responds to the Alt-EA.

19. On January 17, 2025, the Case Manager #1 forwarded the Parent's January 9, 2025 email to the TOSA and Executive Director and asked for guidance on how to respond. The Executive Director responded, "I'd like to know your thoughts. What is your response to the parent's question – are the proposed changes reasonable, if so, I suggest making the adjustments, finalizing, and sending it to the parent. If the proposed changes are not reasonable or necessary, then please reconvene the local IEP team to discuss them."

20. On January 28, 2025, the Case Manager #1 responded to the TOSA and Executive Director with their thoughts on the Parent's input. While they agreed with some of the Parent's comments, they did not agree that the Student has a deficit in writing. Rather, the Student has issues with motor functioning that are being addressed by the Occupational Therapist and with "following set expectations which falls more into the self-advocacy/self-direction category." They also had concerns about the Parent's request for advance notice of staff changes and testing as they are not always aware of these ahead of time.

21. On January 29, 2025, the TOSA emailed the Case Manager #1 and suggested convening a meeting to discuss the Parent's request for advance notice of changes because it is an accommodation for the Parent, not the Student. The Executive Director added, "Reminder – we do not put counseling on IEPs. Tell the parent [they are] welcome to arrange check-ins with [the School Counselor] directly, but it is not [Case Manager #1's] responsibility to manage it since it is not part of the IEP . . . And no, we do not provide raw data. We are required to provide progress reports Sem 1 and Sem 2, by law . . . that is it."

22. When interviewed, the Executive Director clarified that school-based counseling is not added to IEPs because it is a universal support that is available to all students. There are special education supports that can be included in a student's IEP if required to address any identified mental health needs.

23. On January 30, 2025, the Case Manager #1 responded to the Parent's January 9, 2025 email stating, "I appreciate your input and we will have time to discuss changes and concerns following our consent to evaluate tomorrow, and I will have an updated draft at that time."

24. On January 31, 2025, the District convened a meeting to conduct evaluation planning for the Student's three-year reevaluation and amend the Student's IEP (January 31, 2025 IEP). The Parent was provided a draft of the January 31, 2025 IEP Amendment at the meeting. According to the Meeting Minutes, the following relevant discussions took place:

    a. As part of the District's proposed evaluation, the Occupational Therapist stated, "I want to do a Sensory Profile and Beery which tests motor/visual perception . . . I would use those scores to determine if [the Student] qualifies for direct services. This requires [them] to score 2 standard deviations from the mean." In addition to the OT evaluation, the evaluation planning team proposed conducting a Speech/Language evaluation, an observation, and a file review.

    b. During the meeting, the Parent signed consent to the District's proposed evaluation of the Student. The discussion then turned to the Parent's requests for revisions to the Student's IEP, as reflected in their email from January 9, 2025.

    c. The Case Manager #1 shared, "We changed [the Student's] present levels specifically looking at writing. I don't see [them] not being able to create the content. It seems to be more [them] flexing to write what the group has to write." The Parent asked, "What about the aspect of [them] having trouble with fine motor skills and stamina," and the Case Manager #1 responded that the Student has an accommodation to type anything exceeding a paragraph. The Autism Specialist asked if the Student can complete writing work if choosing their own topic and the 3rd Grade Teacher responded, "Yes, it is really about preferred writing topics vs. non preferred." They clarified that the Student continued to need "support for organizing and completing [their] writing." The 3rd Grade Teacher also shared that the Student "likes to share [their] ideas and uses the computer a lot to type" and "has done free writing and typing skills on [their] computer."

    d. The IEP Team discussed the Student's executive functioning and study skills. The Case Manager #1 reported, "We don't see [them] needing support turning in [their] work or doing routines." The Parent asked if the Student is still "getting reminders" and whether that should be reflected in the IEP. The 3rd Grade Teacher responded, "Many 3rd graders need reminders" and confirmed that they give the Student "cues" when the EA is not present. The team discussed revisions to the Student's IEP goals to address "cognitive flexibility" around writing and using a planner to support "study/organizational skills."

    e. The IEP team discussed the Student's accommodation for access to the school counselor and the Case Manager #1 shared, "the counseling thing was taken off – that is something that should not be on [their] IEP." The Parent indicated that they did not understand the removal of the accommodation. The TOSA explained, "I was surprised it was there . . . access to our school counselors is a universal support that is available to all of our students in the general education setting." They offered to "follow up with [the School Counselor] about lunch bunch."

    f. The TOSA asked the Parent to share "the context for adding the accommodation" regarding school counseling, when it was first included in the Student's IEP. The Parent

replied, “We were talking about how well [the Student] was doing and the team decided to add the counselor as an accommodation.” They added, “Last year was terrible. That teacher is still here messing kids up.” The TOSA asked if the Parent believed the Student continued to need access to the School Counselor “outside of lunch bunch.” The Parent responded, “We are in January and we are talking about something that should have been happening since the start of school. It seems sketchy to me.” The TOSA shared that “it would make sense” for the Student to see the School Counselor as part of lunch bunch for social skills development. The Parent replied, “I am in favor of lunch bunch. We decided to do lunch bunch, but it never happened.”

25. A final copy of the January 31, 2025 IEP was not provided to the Parent following the IEP meeting, although it was included in documents submitted to the Investigator with the District’s *Response*. The January 31, 2025 IEP includes the following amendments, in relevant part:

    a. Concerns of the Parent: 1) Handwriting and engagement with OT, 2) Concerned for noting level of support needed in IEP, 3) Advanced notice of testing, 4) Update Behavior Support Plan, 5) Wanting to repeat the opportunity for the Student to meet next year’s teacher prior to school in the fall.

    b. Present Levels of Performance:

        Writing: Added “[The Student] is working toward cognitive flexibility with regards to writing on non-preferred topics,” and “is also making use of universal tools in the area of writing such as graphic organizers.”

        Fine Motor: Added “[The Student] has correct letter formation and the majority of [their] writing is legible, but the sizing is rather large and sometimes not aligned correctly.” The Student “continues to get organic fine motor practice through small writing tasks in the general education and special education settings.”

        Study/Organizational Skills (Executive Functioning): Added “[The Student] majoritively [*sic*] organizes and turns in [their] own work, with occasional reminders to check for [their] homework, and some reminders to put incomplete work in [their] binder, rather than just in [their] book box.”

        Self-Advocacy/Self-Direction: Added “[The Student] needs specially designed instruction and adult support in the area of cognitive flexibility in order to flex to engage in non-preferred topics in writing as well as the designated writing style.”

    c. Goals:

        i. Social/Behavioral goals changed to:

            The Student will accept the outcome of preferred and non-preferred social activities by either refraining from making negative comments or excusing themselves from the activity.

The Student will solve hypothetical and/or real-life social and school related challenges by meeting the following criteria in 4/5 observed opportunities: 1) Identify the conflict, 2) Label the impression felt by others, 3) Identify a relationship repairing strategy when possible, and 4) Create or enact a plan of steps to better the situation.

ii. Classroom/School Skills changed to:

Thinking Skills – Cognitive Flexibility: The Student will flex to meet the expectations of writing content, by engaging in both designated topics and writing styles in 75% of opportunities, as observed by staff.

iii. Added Study/Organizational Skills: Given a planner and staff support fading to independence, the Student will note important upcoming dates and the topic of 5 completed weekly activities in 4/5 consecutive observations.

d. Specially Designed Instruction:

i. Social/Behavioral for 125 minutes per week;
ii. Communication-Social for 120 minutes per month; and
iii. Thinking Skills: Cognitive Flexibility for 60 minutes per week.

e. Accommodations:

i. Removed "Access to check-ins as needed with the counselor with additional visits for emotional processing as needed and available" for 60 minutes per day;
ii. Removed "Parents will be informed/be given at least 1 months' notice regarding big changes in [the Student's] schedule, routines, placement changes, etc. prior to changes being made."
iii. Added "Transition Plan for the next school year."

26. On February 1, 2025, the Parent emailed the Case Manager #1 and the TOSA regarding the outcome of the January 31, 2025 IEP. The Parent expressed their disagreement with the decision to remove the accommodations related to "notice for big changes" and "45 min/week support from the school counselor." They noted that their request for a new accommodation for "advance notice of testing days" was also denied. The Parent requests that the District provide PWN "with a detailed explanation of why these accommodations are being removed and/or denied."

27. The District provided PWN to the Parent, dated February 6, 2025, regarding decisions made during the January 31, 2025 IEP meeting. This PWN includes, in relevant part:

a. The District denies the Parent's request to retain accommodations related to 1) The Parent being notified one month in advance of changes in the Student's routine, and 2) The Student having access to the School Counselor.

b. The District's denial is based on the following: 1) Due to potential "unforeseen circumstances" the District cannot commit to anticipating and informing families of all

changes ahead of time; 2) "Accommodations are designed to address student need and written to support the student directly. Accommodations are not commonly written with the parent in mind." The Student has existing accommodations providing them with "pre-warning prior to transitions" and "the IEP team crafted a support that will address the need for informing [the Student] about upcoming tests;" and 3) Access to the School Counselor for "check in support or emotional processing" is available to all students and is not "specifically an IEP support."

c. An IEP amendment will be provided to the Student's family with the two accommodations removed. The "IEP team has devised a way to inform [the Student] of upcoming tests." Additionally, the School Counselor "has introduced [themselves] to the Student and offered the option of joining a weekly group for a period of time."

28. When interviewed, the Parent was unable to identify a specific impact on the Student that resulted from the removal of the accommodation for advance notice of changes to the Student's routine. They shared that the Case Manager #2 and the Student's 4th grade general education teacher (4th Grade Teacher) have been good about providing the Student with notice of any upcoming changes.

29. On February 10, 2025, the TOSA emailed the Parent to confirm that the School Counselor had spoken with the Student. "It sounds like [the Student] is contemplating checking in with [them] and plans to let [the School Counselor] know when/if [they] would like that support." They add that they confirmed with their administrator that, "given this is a school wide support we do not add this as an accommodation."

30. On February 20, 2025, the Principal emailed the Parent to update them on the Student's contact with the School Counselor. They confirmed that the Student and the School Counselor decided to have a weekly counseling session every Wednesday. The Student was informed that these sessions are optional and that the School Counselor's "door is open" to the Student as needed.

31. On February 20, 2025, the District's Assistant Director of Student Services (Asst. Director) emailed the Parent a document detailing the District's responses to the Parent's recent requests and concerns. The document includes the following:

    a. Accommodation for advance notice of changes in the Student's schedule/routine: The school is unable to commit to informing a family 30-days in advance of all changes because "the obligations of running a public school" can require "immediate and unforeseen changes as we balance the needs of all students."

    b. Parent request for acknowledgement that the Student's accommodations related to advance notice of changes and school counseling were not implemented: "The District acknowledges . . . the regular check-ins with the counselor with additional visits for emotional processing as needed and available, did not occur." The Principal has informed the Parent that counseling services will be offered to the Student weekly and the Student "reports that [they] would like the choice of whether to participate or not each week."

c. Parent request to be informed before all tests: The District declines this request but offers to add an accommodation for daily home/school communication and advance notice before District and State testing. Additionally, the District proposes an IEP goal "for Executive Functioning/Self Advocacy that would focus on Organization and Planning" which would assist the Student and family to "be more accurately informed of assignments and tests on the horizon."

32. On February 24, 2025, the Case Manager #1 emailed the Parent final documents from the Student's January 31, 2025 IEP Meeting, including the amended IEP, PWN, and Meeting Minutes.

33. On February 26, 2025, the Parent responded to the Case Manager #1's email stating, "I was just reviewing the IEP and the allotted minutes for some of the accommodations are significantly different than in the December draft, and this wasn't something I remember discussing in either IEP meeting. I see that the changes are on the printed draft I was provided in the 1/31 meeting" but "didn't notice the difference at the time." "I am particularly concerned about the additional adult support accommodation going from 280 min to 45 and pre-warnings for transitions reducing from 380 to 30. Can you help me understand why these changes were made without discussion?"

34. The TOSA responded to the Parent's concerns via email on February 28, 2025. They report, "Regarding the difference in times quoted . . . I peeked at the December IEP (linked below) and it looks like the change occurred in that meeting vs[.] the 1.31.25 IEP Amendment." They go on to explain, "Our school district is scaling the time quoted for accommodations to the amount of time a student is using the accommodation. I think the time got trimmed more than what [the Student] is using." The TOSA agreed that the time listed for the additional adult support accommodation was low. "Let's look at correcting this for sure, our team will continue to provide the amount of time [the Student] needs for [their] accommodation." The TOSA attached the Student's IEPs dated June 3, 2024, December 17, 2024 and January 31, 2025 so the Parent "can compare the docs and see the change in time across the meeting."

35. The Parent responded to the TOSA that evening, stating "The only copy of the 12/17 IEP that I was ever sent was in a . . . message and I'm attaching the screenshot. I didn't even realize it had moved beyond draft stage until our January meeting became an amendment meeting." The Parent describes it as "shocking" to see that the accommodation minutes had been changed on the final version of the December 17, 2024 IEP, but the Parent had not been provided a copy. They ask, "What kind of bait and switch operation are you all running here? When the accommodation time is "trimmed" . . . don't you have a responsibility to talk to the team about it? Am I not part of the team?"

36. On March 3, 2025, the Case Manager #1 sent an email the Parent regarding the change in minutes for the additional adult support accommodation. They explain that the change in minutes "was mentioned briefly in our 1/31 meeting but not discussed on an individual basis." They acknowledge the Parent's frustration and propose that a meeting already scheduled for March 18, 2025 to discuss data be instead used to review the Student's accommodations. "I will justify the minutes put in here, and we can revise if there are times

the team as a whole disagrees about." On the same date, the Parent responded that they did not want to wait until March 18th to discuss the change in the accommodation and offered to make time for a meeting that week.

37. On March 6, 2025, the District convened an IEP Amendment Meeting to discuss data collection and the Student's accommodations (March 6, 2025 IEP Meeting). According to the Meeting Minutes, the following relevant discussions occurred:

    a. The Case Manager #1 reported that there was a "clerical error" on the IEP indicating the amount of time that the Student receives additional adult support. They confirmed that the Student needs adult support for 160 minutes per day, explaining "160 is what I intended to put in that box, I made a mistake." The added "We are phasing out of adult support to build independence." They explained that they were starting by not having the EA with the Student in the morning.

    b. The Parent asked if there are additional times when adult support was reduced. The Case Manager #1 shared that the Student has been more independent during "social/emotional learning" time and that "adults are not shadowing as much at lunch, as [the Student] is doing well." The Student is also having "more success at recess and not needing an adult during that time." The Parent asked if the Student was having any issues coming back in from recess and the Case Manager #1 shared that the Student "has been coming back just fine." The Parent asked if there is data to support that and the Case Manager #1 shared, "We are using anecdotal/qualitative data, we are meeting as a team and reviewing observations."

    c. In reference to the reduction in additional adult support, the Parent asked, "How do you make decisions and how do you look at data to determine a reduction of 100 minutes?" The Case Manager #1 explained, "It was a transition that we have been trialing for increased independence." They confirmed that the Student has been receiving 160 minutes per day of additional adult support, and not 45 minutes as reflected in error on the Student's IEP. The Parent shared that they would "like communication to improve."

    d. The Case Manager #1 shared a form that ACCESS staff use to collect data and explained how it is used. They added that they use the form, as well as the EA and another educational assistant that supports the Student. The Parent asked if there is a "policy not to provide this," and the Case Manager #1 responded that District administrators "do not want us sharing raw data at this time." They explained that they report on the raw data during progress reporting periods and at annual IEP meetings.

38. At the March 6, 2025 IEP Meeting, the Student's IEP was amended to reflect that they will receive the accommodation of additional adult support for 160 minutes per day.

39. On March7, 2025, the Parent sent an email to members of the Student's IEP team summarizing their understanding of what occurred with the Student's additional adult support accommodation. The Parent recalls that the minutes for the accommodation "were in fact reduced following the [December 17, 2024] IEP meeting, and the change has essentially been effect since the start of school in January." The number of minutes listed in

the January 31, 2025 IEP was a mistake and "at no point has [the Student's] additional adult support been reduced beyond 160 min/day." The "team has acknowledged some increase in frustrations and behaviors that may be related to the reduction in support" but prefers to "continue working on building independence" before considering an increase in support. The District and the Parent agreed to "check in about this in early April when we meet to discuss assessments."

40. The District provided PWN to the Parent, dated March 10, 2025, regarding the outcome of the March 6, 2025 IEP Meeting. The PWN states that, "A clerical error was made on the previous IEP amendment regarding [the Student's] minutes of estimated adult support." The District "offered compensatory services."

41. On March 19, 2025, the TOSA sent the Parent a document responding to the Parent's recent concerns. In the document, they confirm that "Yes, the reduction in minutes occurred at the [December 17, 2024 IEP Meeting]," and "[The Student] has not received less than 160 minutes since that time . . . 45 min/day was an error." The TOSA offered to meet prior to their scheduled meeting in April if the Parent wished to revisit the reduction in time. They acknowledged that the District "did not follow the typical process" and "would be open to discussing compensatory education" if the Parent is interested.

42. When interviewed, District staff reported the following regarding the adult support that the Student received from the start of the 2024-25 school year until March 6, 2025 when the Student's IEP was amended to reflect additional adult support for 160 minutes per day:

    a. From the start of the 2024-25 school year until December 2025, the EA supported the Student for the entire school day. When the EA went on breaks, another adult from the ACCESS program would typically be sent to the classroom to support the Student. There were times when the EA was not with the Student at lunch or recess, but there was always at least one staff member from the ACCESS program present during those times to provide additional adult support.

    b. In late November 2024, another student transferred into the ACCESS program with very high behavioral needs. The Case Manager #2 provided support to the other student until mid-December 2024 when the EA started providing some assistance. This started with just ten minutes per day in the morning and gradually increased until the EA was working with the other student for up to an hour. Any time that the EA was outside of the classroom, another educational assistant (typically Alt-EA) was present and supporting the Student. The Student was familiar with Alt-EA.

    c. Although the Student's IEP reflected a reduction in minutes, in reality the Student continued to receive at least 260 minutes per day of additional adult support.

    d. The 3rd Grade Teacher did not recall the Student's adult support being reduced at all during the 2024-25 school year. They reported that the EA was consistently with the Student during the entire school day, except that the Alt-EA was in the classroom "occasionally" when the EA was absent or needed a break.

e. A full school day at the Student's school is 380 minutes long.

43. The District completed a Psychoeducational Re-Evaluation Summary, dated April 2, 2025, as part of its evaluation to determine if the Student continues to meet eligibility criteria for special education (Eligibility Report). The Eligibility Report includes a Pragmatic Skills Checklist, observations (including a direct peer observation), and a review of records. The results of the evaluation include, but are not limited to, the following:

    a. Background and History: The Student is "an intellectually capable student with excellent critical thinking skills," but their "ability to consistently show what [they know] is impacted by both autism and ADHD." The Student "has demonstrated significant improvement this year with regards to perseverance on work tasks and flexibility on non-preferred tasks." The Student "continues to need adult support in navigation [*sic*] social challenges." Their "most challenging behaviors include persistent negativity and some work refusal."

    b. The results of Pragmatic Skills Checklists reveal that the Student demonstrates "overall strengths in [their] speech and language functions, including advocating for [themselves] and expressing [themselves] at home and at school." The Student needs additional support in their "understanding of social nuances and functions that drive conversation, such as understanding others' intentions, perspective taking, and accepting a variety of social rules and concepts." The Student would also "benefit from continued support in [their] Classroom Routines in order to appropriately access [their] academics."

    c. The Autism Specialist completed a direct peer observation of the Student. The observation showed that the Student's social communication "was impacted and consistent in all three areas with Autism Spectrum Disorder (reciprocity, nonverbal language, and [their] ability to maintain and understand relationships.[)]" In addition, the Student "displays restricted, repetitive patterns of behavior that are consistent with Autism Spectrum Disorder."

44. The Occupational Therapist completed an Occupational Therapy Evaluation report, dated April 1, 2025 (OT Evaluation). The results of the OT Evaluation include, but are not limited to, the following:

    a. Beery-Buktenica Developmental Test of Visual Motor Integration (Beery VMI)

        i. Beery VMI: Standard Score 79, 8th percentile, Low
        ii. Visual Perception: Standard Score 94, 34th percentile, Average
        iii. Motor Coordination: Standard Score 51, 0.08th percentile, Very Low

    b. The OT Evaluation notes that "difficulty with motor coordination can lead to difficulty with writing and legibility." The report recommends providing the Student with opportunities to handwrite during the day and allowing accommodations for the use of assistive technology to allow the Student to type and use speech-to-text.

c. The Sensory Profile School Companion: This assessment is described as "a standardized assessment tool for measuring a student's sensory processing abilities and their effect on the student's functional performance in the classroom and school environment. The Teacher Questionnaire was completed by the 3rd Grade Teacher and generated the following scores:

i. Section Scores

(1) Auditory: Just Like the Majority of Others
(2) Visual: Just Like the Majority of Others
(3) Touch: Just Like the Majority of Others
(4) Movement: Just Like the Majority of Others
(5) Behavior: More than Others

ii. Quadrant Scores

(1) Seeking: Just Like the Majority of Others
(2) Avoiding: Much More Than Others
(3) Sensitivity: Just Like the Majority of Others
(4) Registration: Just Like the Majority of Others

iii. According to the results, the 3rd Grade Teacher reported that the Student "presents 'just like the majority' of [their] peers when considering auditory, visual, tactile, and movement sensory input. Behavior in this case is related to [the Student's] tendency to argue or avoid classroom assignments in favor of [their] own ideas." The Quadrant scores "confirm [the 3rd Grade Teacher's] concern related to [the Student's] pattern of arguing and avoiding the classroom task in favor of [their] own ideas."

d. Based on the results of testing, the Occupational Therapist concludes that the Student "may benefit from Occupational Therapy consultation to support [their] learning in the classroom." They suggest possible accommodations for the Student, including a visual timer, discussing task expectations in advance, specific instructions for organization of materials and personal space, the use of a planner, and visual reminders of classroom rules.

45. While the report for the OT Evaluation was written by the Occupational Therapist, the Beery VMI was administered by a substitute occupational therapist (Sub-OT) as the Occupational Therapist was on parental leave. The Occupational Therapist was asked to write the report because they knew the Student better. When interviewed, they acknowledged that the report was "underwritten" and does not adequately explain the justification for their conclusions.

46. A meeting to determine the Student's continued eligibility for special education took place on April 2, 2025 (April 2, 2025 Eligibility Meeting). At the meeting, it was determined that the Student continues to be eligible for special education under the categories of ASD and OHI.

47. According to the Meeting Minutes from the April 2, 2025 Eligibility Meeting, the following relevant discussions took place:

    a. The Parent shared concerns about their access to data collected by school staff regarding the Student's progress. The TOSA explained that "raw data is collected and then calculated for progress notes." The Parent expressed that, "as an equal member of the IEP team I should have access to the raw data as well." The TOSA indicated that the Parent could meet with the Case Manager #1 to review the progress reports, but the District would not share raw data with the Parent.

    b. The 3rd Grade Teacher confirmed that the Student no longer had additional adult support during math instruction and "is doing well." When asked about the rest of the Student's day, the 3rd Grade Teacher reported that the Student struggles more in the morning if they don't arrive to class with an EA and "benefits from starting off immediately with an adult for direct support to get [them] started with [their] day."

    c. The Sub-OT reviewed the results of the OT Evaluation. They explained the results of the Sensory Profile and the Parent expressed that they were "surprised by what the staff has reported," particularly that the Student does not exhibit auditory sensitivity. The Case Manager #1, as well as other District staff at the meeting, agreed that the Student "has needs in auditory sensory input." The Sub-OT explained that often students present differently at school than they do at home. They offered to send the Sensory Profile questionnaire home for the Parent to complete and add the information to the report.

    d. The Sub-OT reviewed the results of the Beery VMI and shared that the Student "would have scored higher if [they] had taken a bit more time to copy" but "due to standardization we have to take the first score." They noted the Student's difficulties with body awareness and hand-eye coordination and confirmed that the Occupational Therapist "plans on continuing services."

48. On April 4, 2025, after the Eligibility Meeting, the Parent completed the Sensory Profile-2. A "Summary Report" was generated and reflects the results of the Parent questionnaire as follows:

    i. <u>Section Scores</u>

        (1) Auditory: Much More Than Others
        (2) Visual: Just Like the Majority of Others
        (3) Touch: More Than Others
        (4) Movement: Much More Than Others
        (5) Body Positioning: More Than Others
        (6) Oral Sensory Processing: More Than Others

    ii. <u>Quadrant Scores</u>

        (1) Seeking: More Than Others
        (2) Avoiding: Much More Than Others

(3) Sensitivity: Much More Than Others
(4) Registration: Much More Than Others

49. During May 2025, there were several email exchanges between the Parent and the Asst. Director regarding the Parent's ongoing requests for raw data that was collected to track the Student's progress on their IEP goals. The Parent asked for justification for the District's denial of their request and the Asst. Director shares that they will consult with the District's "legal team."

50. On May 5, 2025, the Asst. Director sent the Parent an email explaining the District's reliance on the judicial decision from *T.K. v Mercer Island School District* (WD Wa March 17, 2020) as the rationale for not providing raw data to parents. The email summarizes a portion of the decision stating, "A school district did not violate the IDEA by declining to provide parents with the raw data it used to create the student's periodic progress reports. Specifically, the court stated that the denial of raw data would not significantly impede the parents' ability to participate in the IEP process. The court found no legal authority to support that the parents were entitled to any more than meaningful participation in the IEP development process beyond regular progress reporting." The Parent disagreed with the District's interpretation of this case.

51. A meeting with the Parent, the TOSA, the Case Manager #1 and the 'Asst. Director took place on May 14, 2025 (May 14, 2025 Parent Meeting). According to the Meeting Minutes, the following relevant discussions took place:

    a. The purpose of the meeting was to discuss the Parent's request to review data. The Asst. Director shared that there was a private discussion about "ways to improve communication for parents looking for more information about what's happening day to day as well as big changes in schedule." They added, "We are still working on clarifying legalities around sharing raw data." The Parent thanked the District for the "offer of summer support (comp education)" but declined.

    b. The Parent noted that the reduction in time for additional adult support "is a great example of where data should have been provided." The Parent asked how the decision to reduce time was made. The Case Manager #1 shared that they collaborate with the ACCESS staff and consult with the Student's teacher. The TOSA added that 160 minutes per day of additional adult support "reflected what [the Student] was needing and using at the time." The group discussed how and when data is typically gathered and potential changes to how information is communicated to parents.

    c. The Asst. Director offered, at the next progress reporting period, "to sit down and review the data that produces progress report(s)." They explained that this offer was "an olive branch" to "move us back to a more trusting relationship." The Parent expressed appreciation for the offer, adding "if you commit to this, I will expect it." The TOSA asked if the District was committing to meet with the Parent quarterly to review data and the Asst. Director responded that the District was "not going to do that." The Parent indicated they would be "going to [the] school board" if the issue around sharing data isn't resolved.

52. The District provided PWN to the Parent, dated May 14, 2025, regarding the outcome of the Parent Meeting. The PWN includes the following information:

    a. The District offered compensatory education for "changing the amount of [additional adult support] time quoted in [the Student's] IEP without informing the parent during the annual IEP meeting." The Parent declined the District's offer.

    b. The District "considered not offering compensatory education," but "wanted to confirm the communication lapse and provide some remediation for the error."

53. When the Investigator asked why the District offered the Student compensatory education even though the additional adult support actually provided to the Student had not been reduced, the TOSA and the Asst. Director explained that it was offered to be responsive to the Parent's concerns and try to rebuild trust with the family.

54. In an email dated June 9, 2025, at the request of the Parent, the Case Manager #1 describes how data is collected in the ACCESS program. In summary, the educational assistants and the Case Manager make notes on a joint daily data sheet throughout the day. There are weekly opportunities for the ACCESS team to review the data and discuss any challenges the Student may be facing. The data is incorporated into the Student's progress report and the physical data forms are shredded at the end of each term.

55. The District issued an IEP Progress Report, dated June 17, 2025, which describes the Student's progress on their December 17, 2024 IEP goals (as amended on January 31, 2025) as follows:

    a. Communication-Social: Progress has been made towards the goal, and it appears that the goal will be met by the next IEP review. When provided with hypothetical social situations, the Student can: a) identify the social context or problem in 66% of opportunities, b) typically generate at least one plausible reason someone may respond to a social situation or say something in a given way , and c) inconsistently generate a response to the social context or problem which would be socially acceptable to most audiences, without sacrificing self-determination or self-advocacy. When getting to act out scenarios involving a given emotion, they can generate a response with 80% accuracy or more. In more "analysis-based, open-ended activities" the Student "demonstrates more variability." (Specific baseline not reported)

    b. Social/Behavioral #1: Progress has been made towards the goal, and it appears that the goal will be met by the next IEP review. Given trials across 2 consecutive weeks, the Student accepts the outcome of preferred and non-preferred activities by either refraining from making negative comments or excusing themselves from the activity in 70% of observed opportunities. (Baseline: 30%)

    c. Social/Behavioral #2: Progress has been made towards the goal, and it appears that the goal will be met by the next IEP review. The Student solves hypothetical or real-life social and school related challenges by meeting the following criteria: 1) Identifying the conflict in 4/5 opportunities (Baseline: 4/5), 2) Label the impression felt by others in 3/5 opportunities (Baseline: 2/5), 3) Identify a relationship repairing strategy when possible

in 2/5 opportunities (Baseline: 1/5), and 4) Create or enact a plan of steps to better the situation in 2/5 opportunities. (Baseline: 1/5)

d. Thinking Skills-Cognitive Flex: Progress has been made towards the goal, and it appears that the goal will be met by the next IEP review. The Student flexes to meet the expectations of writing content, by engaging in both designated topics and writing styles in 55% of opportunities. (Baseline: 40%)

e. Study/Organizational Skills: Progress has been made towards the goal, and it appears that the goal will be met by the next IEP review. Given a planner and a visual or verbal cue from staff, the Student will note important upcoming dates, and the topic of 3 completed weekly activities in 4/5 consecutive observations. (Baseline: The Student has just been introduced to a planner as a tool)

56. During an interview, when asked to the describe the Student's progress during the 2024-25 school year, the Case Manager #1 reported that they observed the Student "branch out with [their] social peer group" and demonstrate an increased ability to communicate and engage with their peers. They also saw an increase in the Student's engagement with their schoolwork and fewer refusals when asked to write.

57. When interviewed, the 3rd Grade Teacher recalled that the Student made progress in writing during the 2024-25 school year. Specifically, they were "able to write more" and, when asked to write about a specific topic, their ability to "stick to that topic" improved.

58. The Parent met with the District Superintendent on July 2, 2025 to discuss their request to view "the data collected and utilized for [the Student's] IEP." On July 10, 2025, the Superintendent sent an email to the Parent indicating that, following their meeting, they spoke with the Executive Director and Asst. Director regarding the Parent's request to view data collected on the Student's IEP goals. They confirmed that, "the IEP goal data collected during [the Student's] 2nd and 3rd grade years is no longer available, as the [Case Manager #1] analyzed and used that data to generate [the Student's] June IEP Progress Report."

59. There are several additional emails between the Parent and the Superintendent in July 2025 regarding the Parent's ongoing requests for data, District policy regarding education records, and whether classroom data sheets qualify as "sole possession records" under the Family Educational Rights and Privacy Act (FERPA).

60. At the start of the 2025-26 school year, the Parent questioned the Case Manager #2 and the EA about the provision of OT services to the Student. When they could not provide sufficient detail regarding how services were provided, the Parent became suspicious that the Student was not receiving the OT services required by their IEP.

61. The Occupational Therapist sent an email to the Parent on October 17, 2025 after hearing from the Case Manager #2 that the Parent had concerns about the Student's OT services. They assure the Parent that the Student "has been and will continue to be supported by OT in the school setting," and describe both the direct and consult services they have provided for the Student since the start of the school year. They describe sharing strategies with the

4th Grade Teacher to help the Student engage in writing and providing "push-in OT support" in the afternoons during English-Language Arts instruction. During these sessions, they "focus on helping [the Student] build [their] confidence, stamina, and redirection to remain on topic," and collaborate with the Student's teachers and EA "to ensure that strategies are carried over throughout the day."

62. In an email response to the Occupational Therapist, the Parent shares that the Student has reported seeing the Occupational Therapist "watching in class" but that the Occupational Therapist "doesn't do lessons" with them this year. The Parent asks for clarification on the difference between direct and consult services and for more information on how they support the Student.

63. On October 20,2025, the Occupational Therapist responded to the Parent via email and assures them that the Student has been receiving "direct OT support." They explain that "the push-in model I use is considered *direct OT service*. It allows me to the work with [the Student] in [their] natural classroom environment, where I can observe how [they] approach [their] daily writing activities and provide real-time strategies to help [them] participate successfully." During their time with the Student, they report focusing on the Student's cognitive flexibility goal to help them "become more open and willing to engage in writing, even when the topic isn't [their] preference. Moving forward, they plan to work with the Student in the ACCESS classroom along with the Case Manager #2 to work on the same goal.

64. As reflected in services logs completed by the Occupational Therapist, the Student received the following OT services during the time period of the Complaint[3]:

    a. January 2025: Direct 30 minutes;
    b. February 2025: Direct 60 minutes;
    c. March 2025: Direct 20 minutes;
    d. April 2025: Direct 55 minutes/Consult 60 minutes;
    e. May 2025: Direct 30 minutes/Consult 35 minutes;
    f. August 2025: Consult 30 minutes;
    g. September 2025: Direct 60 minutes;
    h. October 2025: Direct 60 minutes;
    i. November 2025: Direct 100 minutes/Consult 40 minutes;
    j. December 2025: Consult 60 minutes.

65. Another District occupational therapist began working with the Student in December 2025 (Occupational Therapist #2). In an email on December 8, 2025, the Case Manager #2 informed the Parent that the Occupational Therapist #2 worked with them and the Student on a writing assignment for 30 minutes on December 5, 2025. They describe how the Occupational Therapist #2 "had [the Student] use the sentence starters, which was very helpful and brought down [their] anxiety." They plan to have their next session with the Student and the Occupational Therapist #2 that week.

[3] The Occupational Therapist also provided the Student with 30 minutes of direct OT services on December 19, 2024.

66. The Occupational Therapist continued to email updates to the Parent regarding their services throughout Fall 2025. In an email on November 7, 2025, the Parent notes that the April 2025 OT Evaluation had only found deficits in the Student's fine motor skills and questions why the Occupational Therapist is focusing on the Student's cognitive flexibility goal. They wonder if there should be a "writing-focused goal" on the IEP and if the Student can work on mazes or color-by-number sheets to practice their fine motor skills.

67. The Occupational Therapist responded to the Parent's questions in an email dated November 14, 2025. They share that the activities the Parent suggests do not address the Student's cognitive flexibility goal and "don't directly support writing," adding "For handwriting to improve, you must practice writing." As to whether the Student should have a writing goal, they explain "Writing is difficult for [the Student], but [they] can do it. Cognitive flexibility is the big picture area where [they have] more lagging skills." They are providing strategies such as sentence starters and sentence frames to the EA to help the Student initiate writing tasks and support their understanding of the writing process. Addressing the OT Evaluation, they clarify that the Sub-OT completed the Beery VMI with the Student because they were on leave and "The test was invalid because [the Student] didn't want to follow the directions provided that make it a standardized test. [They] wanted to draw pictures instead of the shapes provided." They add that the Student's inability to "follow simple directions for the assessment" supports the need for a cognitive flexibility goal.

68. On November 16, 2025, the Parent requested that the Occupational Therapist provide them with the data or notes from the Sub-OT's assessment of the Student that showed that the test was invalid. The following day, the Occupational Therapist emailed the Parent to clarify their use of the term "invalid" to describe the assessment. "I meant that the results were not a reliable reflection of [the Student's] true abilities." During the assessment, the Student refused to follow directions, creating their own drawings instead of completing the test items. "Because standardized tests rely on very specific procedures, behaviors like these can make the scores inaccurate."

    The Occupational Therapist goes on to explain, "Standardized tests are just one tool we use to understand a student's skills . . . we also rely on clinical judgment, observations, interviews, classroom work samples, and other information." When the Student refuses to write for non-preferred tasks, "this appears to be more related to behavior or task avoidance rather than lack of skill." The Student "has demonstrated that [they have] the underlying motor skills to write when [they are] engaged."

    Addressing the Parent's disagreement with the results of the Sensory Profile, the Occupational Therapist goes on to explain that "it's very common for students to present differently at home and at school." This doesn't mean that a set of results is invalid, "rather, they help us understand how a child's behavior may change across settings and what supports might be needed in each place." The Occupational Therapist shared that they are "open to re-administering portions of the assessment" but is "not sure that repeating the tests would give us much additional information."

69. On November 19, 2025, the Parent sent an email to the Executive Director regarding the provision of OT services to the Student. They express skepticism that the Occupational Therapist provided anything other than consult services. They asked if the Executive Director has service logs or other documentation that OT services were provided and requested other data related to the OT Evaluation. The Executive Director responded that there are service logs that they "verbally discussed" with the Occupational Therapist and confirmed that OT services were provided in accordance with the Student's IEP. They decline to provide any additional data to the Parent stating, "You are entitled to the written OT evaluation report, which is attached again for your review and records (but not the raw data or notes used to complete the evaluation[])]."

70. On December 1, 2025, the Parent emailed the District requesting an Independent Educational Evaluation (IEE) in the area of Occupational Therapy.

71. The Executive Director sent the Parent a letter, dated December 2, 2025, confirming receipt of their disagreement with the OT Evaluation. The letter reflects the District's approval of the Parent's request for an IEE at District expense. Included with the letter were the District's IEE Criteria and Procedures and an Authorization to Use and Disclose Educational and Protected Health Information form.

72. The District convened the Student's next annual IEP meeting on December 2, 2025 (December 2, 2025 IEP). The December 2, 2025 IEP includes, in relevant part:

    a. Concerns of the Parent: The Parents "would like to see [the Student] make progress in the areas of social interaction, flexible thinking strategies, executive functioning, writing mechanics, and fine motor skills." They would also like to continue to receive daily communication reports from the ACCESS staff and "consistent documentation" of the completion of related services.

    b. Present Levels of Performance:

    Academics: The Student can complete reading, writing, and math "tasks and standards comparable to the grade level expectation." Accordingly, special education services are not needed in these areas. In the area of writing, however, the Student "needs consistent prompting and support from support staff and the classroom teacher."

    Social/Emotional/Behavior: The Student "demonstrates an ability to identify inappropriate behavior of others" and "has demonstrated significant improvement during the 25/26 school year with regards to perseverance on work tasks and flexibility on non-preferred tasks." The Student "needs adult support in navigating social challenges across educational settings" and "sometimes needs additional motivation to complete new or non-preferred tasks."

    Gross Motor: The Student "is able to complete gross motor skills comparable to the grade level expectation."

Fine Motor: The Student "has correct letter formation, and the majority of [their] writing is legible, but the sizing is rather large and sometimes not aligned correctly." "The OT team has been attempting to work with [the Student] on handwriting activities, but often [the Student] refuses to participate in these activities." They continue to receive "organic fine motor practice through small writing tasks in the general education and special education settings."

Study/Organizational Skills (Executive Functioning): The Student "is able to complete study/organization skills comparable to the grade level expectation."

Self-Advocacy/Self-Direction: The Student "has made significant progress this year in following directions." They have also made progress with checking their schedule for the day, "but still needs support from staff to break away from tasks when the scheduled changes." In addition, the Student needs adult support "to talk [them] through non-preferred tasks or social challenges."

c. Goals:

i. Social/Behavioral: The Student will solve real-life social and school related challenges by meeting the following criteria in 4/5 observed opportunities: 1) Identify the conflict, 2) Label the impression felt by others, 3) Identify a relationship repairing strategy when possible, and 4) Create or enact a plan of steps to better the situation.

The Student will practice and match expected language for the type of disagreement during role plays with adults and peers by independently identifying the following in 2/3 scenarios: 1) A difference of opinion, 2) A lack of agreement, 3) Whether it was an argument/quarrel, and 4) an unlikeness.

ii. Thinking Skills – Cognitive Flexibility: The Student will flex to meet the expectations of writing content, by engaging in both designated topics and writing styles in 75% of opportunities, as observed by staff.

iii. Study/Organizational Skills: When given a planner and staff support with fading independence, the Student will note important upcoming dates and the topic of 5 completed weekly activities in 4/5 consecutive observations.

iv. Communication-Social: When provided with hypothetical social situations through role-play, videos, or short stories, the Student will: 1) Identify the main topic and the purpose of the conversation, 2) State at least one plausible reason why staying on topic is important to the other person, and 3) Generate a topic-appropriate response that maintains the conversation while still supporting their self-advocacy and preferred communication style, in 80% of opportunities across 3 consecutive sessions.

When provided with hypothetical social situations through role-play, videos, or short stories, the Student will: 1) Identify the expected turn-taking pattern or breakdown, 2) Explain at least one reason why taking turns helps conversations work smoothly for others, and 3) Generate a turn-taking behavior that supports a smooth conversational

exchange without compromising their autonomy or communication preferences, in 80% of opportunities across 3 consecutive sessions.

When provided with hypothetical social situations through role-play, videos, or short stories, the Student will: 1) Identify what connection the speaker is trying to make, 2) Explain at least one reason why people try to make conversational connections, and 3) Generate a response that builds or acknowledges the connection, while still supporting their self-determined communication style, in 80% of opportunities across 3 consecutive sessions.

d. Specially Designed Instruction:

i. Social/Behavioral for 125 minutes per week;
ii. Communication-Social for 120 minutes per month;
iii. Study/Organizational Skills for 30 minutes per week; and
iv. Thinking Skills: Cognitive Flexibility for 60 minutes per week.

e. Related Services: Occupational Therapy for 60 minutes per month.

f. Accommodations:

i. "Additional adult support to ensure support with problem-solving and emotional regulation, and communication (including unstructured times such as whole class choice, recess, lunch, arrival, and dismissal)" for 160 minutes per day;

ii. "Ability to type or use a voice-to-text option for writing assignments exceeding a single paragraph."

g. Supports for School Personnel:

i. Autism Specialist consult for 120 minutes per year;
ii. Occupational Therapy consult for 120 minutes per year;
iii. Learning Specialist consult for 120 minutes per year;
iv. SLP consult for 120 minutes per year.

73. According to the Meeting Minutes, the following relevant discussions occurred during the December 2, 2025 IEP Meeting:

a. When reviewing their concern, the Parent shared that they "don't feel like the team agrees upon what OT services/supports [the Student] needs."

b. When discussing the Student's behavior, the 4th Grade Teacher reported that "most of the negative verbal comments are around transition times, especially if [the Student] thinks [they are] going to be late." The Parent noted that the Student's behavior is related to anxiety and suggested that counseling be added back to the IEP as an accommodation to work on the Student's anxiety around being late. The Principal shared that the School Counselor met with the Student during the previous year, but the Student "did not seem like [they] wanted it." The School Counselor informed the Student "that the door was

always open, if [they] wanted to talk." The Case Manager #2 added that the Student "went to a couple of lunch bunches but has tapered off because there are a lot of students there."

c. The Parent shared that they believe counseling can be included as a related service in an IEP, and they were upset that the District would not add it to the Student's IEP. The Case Manager #2 asked if the Parent wanted counseling in a small group or one-to-one. The Parent responded that they "don't really know" and that "it should be up to the person who is going to support [the Student]." " The Parent requested that the School Counselor "connects with [the Student's] teachers and then determine what [they] should do," followed by an IEP meeting "to add it to the document." The Asst. Director reiterated that the School Counselor "serves/supports all students, regardless if they are in special education or not," and declined to include counseling as a related service on the Student's IEP.

d. When reviewing the Student's challenges with writing, the Case Manager #2 reported that the Student does better when working in a smaller setting. They offered a time when the Student could come to the ACCESS classroom to work on writing if they wanted to and noted that the Occupational Therapist had provided them with "a ton of sentence starters." When the Parent asked who is "providing the direct supports" for writing, the Case Manager #2 shared that multiple staff provided direct support, in consultation with the Occupational Therapist. The 4th Grade Teacher added that, sometimes, adults in the classroom will "scribe for [the Student] if it seems that [they are] overwhelmed." The Parent asked if consultation is considered a related service and the Case Manager #2 clarified, "I will be providing the direct service time" and "the motor team would give supports with materials and supporting the SDI."

e. In regard to the OT Evaluation, the Parent noted that "the assessments did not support executive functioning support or sensory" but did show that the Student "needs to work on motor coordination." The Asst. Director stated that, after completion of the OT IEE, the team may need to amend the Student's IEP. Until that evaluation is completed, OT services will remain as a related service for 60 minutes per month.

f. The Case Manager #2 confirmed that the accommodations remain unchanged from the Student's previous IEP.

74. The District provided PWN to the Parent, dated December 5, 2025, regarding the outcome of the December 2, 2025 IEP Meeting. The PWN includes, in relevant part:

a. "The team discussed adding 1:1 counseling time with the school counselor, and that will be implemented weekly for a 20-minute period, but it will not be reflected on the IEP. No new accommodations or modifications will be added to the IEP at this time."

b. "The team approved that [Case Manager #2] would service the 60 SDI minutes per month for [the Student's] writing goal. This will include consulting minutes served by the OT team. The team also agreed to complete an outside independent OT evaluation to ensure that [the Student] is currently receiving support in OT that reflects all of [their] needs."

75. In an interview, when asked why they believe the Student requires counseling in their IEP, the Parent explained that it is needed to address the Student's anxiety. The Parent acknowledges that the School Counselor is providing regular counseling to the Student and is generally satisfied with the provision of these services. They remain mistrustful, however, that the District will continue to implement the service if it isn't documented in the Student's IEP.

76. In an interview, when asked to describe any progress that the Student has made during the 2025-26 school year, the 4th Grade Teacher shared that the Student has been "really successful in class" and "seems better able to roll with changes and transitions." In particular, they have improved in their ability to be flexible, particularly around time and not wanting to "be late." They are spending more time in the general education classroom than they did at the beginning of the school year and "looks just like any other kiddos in my class."

77. On December 18, 2025, the Parent filed this Complaint.

IV. DISCUSSION

When IEPs Must Be in Effect

The Parent alleged that the District violated the IDEA by not providing special education and related services in accordance with the Student's IEP. Specifically, the District failed to implement OT services and accommodations related to counseling, advance notice of major changes, and additional adult support as required by 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.[4] 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.[5] "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."[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]

"Related services" includes transportation and such developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education, and includes orientation and mobility services, speech-language pathology and

[4] OAR 581-015-2220(1)(a); 34 CFR § 300.323(c)
[5] OAR 581-015-2220; 34 CFR § 300.323
[6] Questions and Answers on *U.S. Supreme Court Decision Endrew F. v. Douglas County Sch. Dist.* Re-1, 71 IDELR 68 (EDU 2017)
[7] OAR 581-015-2000(37); 34 CFR § 300.39(b)(3)

audiology services, interpreting services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, school health services and school nurse services, counseling services including rehabilitation counseling services, social work services in schools, parent counseling and training, school health services and medical services for diagnostic or evaluation purposes.[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 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]

As an initial matter, it must be determined which of the Student's IEPs was in effect at the start of the Complaint period (December 19, 2024). While the Student's annual IEP meeting was convened on December 17, 2024, and the IEP from that meeting was "finalized" by the District, the Parent did not receive the final copy of that IEP until it was provided at the January 31, 2025 IEP Meeting. Accordingly, the June 3, 2024 IEP was the Student's effective IEP until January 31, 2025.

OT Services

The evidence provided, including OT service logs and interviews with District staff, demonstrate that the Student has received all the OT services required by their IEP during the 2025-26 school year. The evidence does not demonstrate, however, that the Student was provided with the services required by their IEP during the 2024-25 school year. During the five-month period from January 2025 to May 2025, the Student should have received 300 minutes of direct OT services. Instead, as reflected in the OT service logs, the Student received only 195 minutes of services, which is less than two-thirds of the services to which the Student was entitled. This amounts to more than a "minor discrepancy" and constitutes a material failure to implement the Student's IEP.

Additional Adult Support

[8] OAR 581-015-2000(29); 34 CFR § 300.34
[9] *Van Duyn v. Baker Sch. Dist. 5J*, 502 F3d 811 (9th Cir. 2007) ("Van Duyn")
[10] *Id.*
[11] *Id.*

In their Complaint, the Parent specifically alleged that the District failed to implement the Student's accommodation for additional adult support during December 2024 and January 2025. The Student's June 3, 2024 IEP, which included additional adult support for 260 minutes per day, was in effect during December 2024 and January 2025. It is undisputed that the District made significant errors in both documenting and notifying the Parent of a proposed reduction to the Student's adult support during IEP meetings in December 2024 and January 2025. Despite these errors, however, the evidence shows that the Student continued to receive at least 260 minutes of additional adult support during this time. There are 380 minutes in a school day. At the most, the Student was without additional adult support for 120 minutes each day. While the Student may not have been provided with one-to-one adult support during some unstructured times, such as lunch and recess, their IEP does not require that level of support and additional adults from the ACCESS program were consistently present and available to support the Student during those times.

Advance Notice of Major Changes

The Parent alleged in their Complaint that, during December 2024 and January 2025, the District did not provide them with at least 30 days of notice before changing the staff member who provided the Student with additional adult support. The Student's June 3, 2024, IEP, which was in effect during this time period requires that "Parents will be informed/be given at least 1 months' notice regarding big changes in [the Student's] schedule, routines, placement changes, transportation needs, etc[.] prior to changes being made." On December 17, 2024, the Parent was informed that a different educational assistant would provide a portion of the Student's additional adult support. The Parent believes that the change in personnel occurred prior to them being notified when, in light of the Student's accommodation, should not have taken place until January 17, 2025, at the earliest.

First, the Complaint period began on December 19, 2024, just two school days before the school closed for winter break. Nevertheless, District staff credibly established that, in mid-December, the EA first started providing services to another student for just ten minutes per day. This gradually increased to one hour per day as the school year progressed. During the time that the EA was out of the classroom, the Student was supported by Alt-EA, who often provided support to the Student when EA was absent or taking a break, and who was familiar to the Student. The change in staff was so minimal that the 3rd Grade Teacher did not recall that a change occurred at all. This does not appear to have been a 'big' or 'major' change that would have triggered the District's obligation to provide the Parent with notice a month in advance.

Counseling

The accommodation regarding counseling, as stated in the June 3, 2024 IEP, requires the Student to receive "Regular check-ins with the counselor with additional visits for emotional processing as needed and available" for 45 minutes per week. The District acknowledges that these check-ins with School Counselor did not occur. There were four weeks of school from the start of the Complaint period until the accommodation was removed from the Student's IEP on

January 31, 2025. Accordingly, the Student presumably missed four 45-minute counseling sessions.

Once it is established that there was a failure to implement the Student's IEP, the question then turns to whether that failure was material. It's important to note that, while required by the Student's IEP as an accommodation, this was not SDI or a related service that the Student's IEP team determined was necessary for the Student to make progress on their IEP goals. While the District did not proactively schedule sessions for the Student, access to the School Counselor is a support that is available to all students at the school. The Student had the opportunity to meet with them at any point during the school year. Additionally, as the Parent stated in their Complaint, the intent of this accommodation was "not to provide regular treatment," but to allow the Student to "develop a positive relationship with someone qualified to help [them] with emotional overwhelm if needed." The accommodation was added, in part, because the Student did not have such a relationship with their teacher during the 2023-24 school year. During the 2024-25 school year, however, the Student had a number of positive relationships with adults at school, including the 3rd Grade Teacher, Case Manager #1, and the EA, who could fulfill that role. Accordingly, the District's failure to implement this accommodation was not material.

The Department substantiates this allegation, in part, as it relates to the provision of OT services during the 2024-25 school year only.

Content of IEP

The Parent alleged that the District violated the IDEA when it failed to include information in the Student's IEP that is necessary to address the Student's unique educational needs. Specifically, the District failed to include adequate OT services, counseling services, and an accommodation for advance notice of major changes.

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]

The specific special education, related services, and supports to be provided must enable the student to: 1) advance appropriately toward attaining their annual goals, 2) be involved and make progress in the general education curriculum, and 3) be educated and participate with

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

other students with and without disabilities.[13] The IDEA "requires an education program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."[14] In considering this standard, "Advancement from grade to grade is appropriately ambitious for most children in the regular classroom."[15]

OT Services

While the Student's IEP has included sixty minutes of OT services throughout the time period of the Complaint, the Parent does not believe that the services adequately address the Student's needs. The Parent specifically takes issue with the fact that the OT services are focused on improving the Student's cognitive flexibility rather than focusing on the Student's handwriting and fine motor needs. Related services, such as OT, are designed to support the Student in meeting their IEP goals. In this case, the OT services focus on cognitive flexibility because the Student has a goal for increasing cognitive flexibility when writing. The Student does not have a goal that addresses handwriting or other specific fine motor needs. While it is undisputed that the Student has challenges with writing, the consensus of the educators who work with the Student is that this is primarily because of deficits in cognitive flexibility, rather than an inability of the Student to engage in the physical act of writing. The District does acknowledge that handwriting is a challenge for the Student, but the Student's IEP team has reasonably concluded that these challenges are best addressed by accommodations and assistive technology rather than direct OT services.

Counseling Services

As discussed previously, counseling services are a universal support that are available to all students. While there are special education services that are designed to address mental health needs, the Student's IEP does not presently identify any specific needs or contain any goals that would warrant such services. The Parent's desire to have counseling services documented in the IEP so they have a means for enforcing their provision is not sufficient justification for adding counseling as a related service.

Advance Notice of Major Changes

There was no evidence provided that the Student requires this accommodation.

The Department does not substantiate this allegation.

Evaluation and Reevaluation Procedures

The Parent alleged that the District violated the IDEA by failing to conduct an appropriate evaluation of the Student's special education needs in the areas of sensory differences, executive functioning or motor coordination.

[13] OAR 581-2200(1)(d); 34 CFR § 300.320(a)(4)
[14] *Endrew F. v. Douglas Cty. Sch. Dist.,* 137 S.Ct. 988, 1001 (2017)
[15] *Id.* at 1000

The public agency must ensure that a reevaluation of each child with a disability is conducted if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation, or if the child's parents or teacher requests a reevaluation. A reevaluation for each child with a disability may occur not more than once a year, unless the parent and public agency agree otherwise; and must occur at least every three years, unless the parent and public agency agree that a reevaluation is unnecessary.[16]

Children should be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. In conducting evaluations, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent. Assessment and evaluation materials should include those tailored to assess specific areas of educational need. The school district should not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate education program for the child. Assessment tools should be technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. Additionally, school districts must ensure that assessments and other evaluation materials used are: 1) appropriately selected and administered; 2) used for the purposes for which the assessments or measures are valid and reliable; 3) administered by trained and knowledgeable personnel; and 4) administered in accordance with any instructions provided by the producer of the assessments.[17]

With this allegation, the Parent specifically objects to the appropriateness of the District's April 1, 2025 OT Evaluation. The OT Evaluation satisfied all of the IDEA's requirements as described above, with the exception that the Beery VMI was not administered in accordance with the instructions provided by the producer of the assessment. That does not necessarily mean that the results of the Beery VMI were incorrect, or that the evaluator was negligent in any way when administering the test. Nevertheless, for an evaluation to be appropriate, it must satisfy the criteria set forth in the IDEA. The District has already agreed to fund an independent OT evaluation of the Student, which is an appropriate remedy for this violation.

The Department substantiates this allegation.

Parent Participation

The Parent alleged that the District violated the IDEA by interfering with the Parent's ability to participate in decisions with respect to the Student's IEP and provision of a FAPE to the Student. Specifically, the District did not provide data necessary for the Parent to meaningfully

[16] OAR 581-015-2105(4); 34 CFR § 300.303
[17] OAR 581-015-2110; 34 CFR § 300.304

participate in the Student's IEP meeting and made determinations regarding the Student's SDI, related services and accommodations outside of the IEP process and without the Parent's input.

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.[18] 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.[19] "[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."[20] 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."[21]

In this case, the District did not include the Parent in the decision to reduce the amount of additional adult assistance, as reflected in the December 17, 2024 IEP and January 31, 2025 IEP Amendment. While there was mention at the January 31, 2025 IEP Meeting that the Student had "been solo in the mornings," there was not a specific discussion regarding changing the minutes of support in the IEP, nor did the District provide PWN to the Parent regarding the change in the accommodation. They did, however, include the Parent in these decisions at the March 6, 2025 IEP Meeting.

As discussed in more detail below, the District's failure to provide requested data to the Parent did not result in their inability to participate in the Student's IEP meeting because the Parent was not entitled to the requested data. The Student's IEP Progress Reports provided sufficient information for the Parent to meaningfully participate in the IEP process.

The Department substantiates this allegation, in part, as to the District's failure to include the Parent in the decision to reduce the amount of the Student's additional adult support at the January 31, 2025 IEP Meeting.

Education Records

The Parent alleged that the District violated the IDEA by denying the Parent's access to the Student's education records, including data related to the Student's IEP goals and OT service logs.

The IDEA incorporates by reference the requirements of the Family Educational Rights and Privacy Act (FERPA).[22] These provisions require that a school district must comply with parental requests to inspect and review their child's education records without unnecessary delay.[23] In Oregon, this means that education records requested by a parent must be provided before any

[18] OAR 581-015-2190(1); 34 CFR § 300.501(b)
[19] OAR 581-015-2205(1)(b) and (d); 34 CFR § 300.324(a)(1)
[20] Letter to Northrop (OSEP 5/21/13), citing 71 Fed. Reg. 46,678 (2006)
[21] OAR 581-015-2190(4); 34 CFR § 300.501(b)(3)
[22] OAR 581-015-2300; 34 CFR § 300.501(a); 34 CFR §§ 99.1 to 99.38
[23] OAR 581-015-2300(2); 34 CFR § 300.501(a)

meeting regarding an IEP, and in no case more than ten business days after the request has been made.[24] Under FERPA, "education records" are defined as those records that are (1) directly related to a student; and (2) maintained by an educational agency. This does not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

The Supreme Court has interpreted the term "maintain" as "to keep in existence or continuance; preserve; retain" suggesting the purposeful and intentional keeping of records, such as those "kept in a filing cabinet in a records room at the school or on a permanent secure database."[25] In *Owasso*, the Supreme Court further reasoned that additional procedures dictated by FERPA for how student records should be treated, such as requiring districts to document requests to access a student's records and charging a "school official" with responsibility for the records, "implies that education records are institutional records kept by a single central custodian."[26]

There was much discussion between the Parent and the District as to whether the data requested by the Parent qualified as a "sole possession" record or if the Parent required access to the data in order to meaningfully participate in the development of the Student's IEP. The threshold question, however, is if the requested data qualifies as an "education record" under FERPA. If it does not meet that criteria, then any further analysis becomes unnecessary. Based on the evidence in this case, the District did not maintain the data in question in the manner required to qualify as an educational record. Accordingly, the District is not obligated to provide this information to the Parent.

Similarly, the OT service logs are also not maintained by the District in a manner that would characterize them as educational records under FERPA. While the service logs are kept in a shared drive accessible to the District's motor team, the drive is not intended as a repository for student records in general and their storage there does not imply the "purposeful and intentional" keeping of records required to qualify them as educational records.

The Department does not substantiate this allegation.

Free Appropriate Public Education

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

Each school district is responsible for providing a free appropriate public education to school age children with disabilities for whom the school district is responsible.[27] In Oregon, the school district who is responsible for providing FAPE to a student is the student's district of residence.[28]

[24] OAR 581-015-2300(3)(a)
[25] *Owasso Indep. Sch. Dist. No. 1-011 v. Falvo,* 536 U.S. 426 (2002)
[26] *Id.*I
[27] OAR 581-015-2040(1); 34 CFR § 300.101(a)
[28] OAR 581-015-2040

The IDEA defines FAPE as special education and related services that: 1) Are provided at public expense, under public supervision and direction, and without charge; 2) Meet the standards of the state educational agency; 3) Include an appropriate preschool, elementary school, or secondary school education; and 4) Are provided in conformity with an IEP.[29]

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.[30] 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.[31]

In this case, the District committed procedural violations when it: 1) Failed to conduct an appropriate OT evaluation of the Student; 2) Failed to provide OT services required by the Student's IEP during the 2024-25 school year; and 3) Failed to include the Parent in the decision to reduce the amount of the Student's additional adult support at the December 17, 2024 and January 31, 2025 IEP Meetings.

There is no evidence that the District's failure to conduct an appropriate OT evaluation resulted in a loss of educational opportunity to the Student or seriously infringed on the Parent's opportunity to participate in the development of the IEP. Upon Parent's request, the District timely agreed to publicly fund an IEE in Occupational Therapy. Further the District has maintained the existing level of OT services in the Student's IEP pending the results of the IEE.

There is also no evidence that the District's failure to provide OT services required by the Student's IEP during the 2024-25 school year resulted in a loss of educational opportunity to the Student or seriously infringed on the Parent's opportunity to participate in the development of the IEP. The OT services in the Student's IEP are related services designed to support the Student with their Thinking Skills-Cognitive Flex goal, which targets the Student's difficulties with writing. This goal is also supported by the Student's case manager through the provision of SDI. As reflected in the Student's June 17 2025 IEP Progress Report, as of the end of the 2024-25 school year, the Student had made progress on this goal and it was anticipated that the goal would be met by the Student's next annual IEP. The Student's progress on this goal was confirmed by the 3rd Grade Teacher and Case Manager #1. As such, the Student did not experience a loss in educational opportunity due to the failure to implement all of their OT services.

Finally, the evidence does not demonstrate that the District's failure to include the Parent in the decision to reduce the amount of the Student's additional adult support at the December 17, 2024 and January 31, 2025 IEP Meetings resulted in the loss of educational opportunity to the Student. As discussed in the sections above, while the District did not properly document

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

or notify the Parent of the proposed reduction in the Student's adult support, the District did not, in fact, reduce the amount of adult support that the Student received during this time.

This violation did, however, seriously infringe on the Parent's opportunity to participate in the development of the Student's IEP. The District did not reflect the proposed reduction of adult support in the Draft IEP provided to the Parent in advance of the December 17, 2024 IEP, did not discuss the proposed reduction at either the December 17, 2024 or January 31, 2025 IEP Meetings, and did not clearly document the proposed reduction in the Student's IEP, or provide the Parent PWN of the reduction in services until March 6, 2025. As a result, the Parent had no opportunity to participate in the decision regarding the level of additional adult support that the Student was to receive. It should be noted that the Parent has been given the opportunity to participate in decisions regarding the Student's additional adult support both during and subsequent to the March 6, 2025 IEP Meeting.

The Department substantiates this allegation as it relates to the District's failure to include the Parent in the decision to reduce the amount of the Student's additional adult support from the start of the Complaint period until March 6, 2025.

V. CORRECTIVE ACTION

In the Matter of Lake Oswego School District 7J
Case No. 025-054-096

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

Action Required	**Submissions**	**Due As Soon As Possible But Not Later Than**
1. The District will develop and conduct training for all staff responsible for implementing IEPs on the District's responsibility to: a) Provide educational services to special education students in accordance with their IEPs; and b) Provide parents with an opportunity to participate in decisions regarding their student's special education supports and service.	Training agenda and materials to ODE for review and approval. Sign-in sheet from training.	April 3, 2026 June 12, 2026
2. The District will develop and conduct training for all staff responsible for evaluating special education students on the District's responsibility to administer	Training agenda and materials to ODE for review and approval.	April 3, 2026

assessments in accordance with any instructions provided by the producer of the assessments.	Sign-in sheet from training.	June 12, 2026
3. The District will convene an IEP meeting to review and consider the results of the Occupational Therapy IEE within thirty (30) days of the District's receipt of an evaluation report.	Evidence that an IEP meeting was convened to review and consider the results of the Occupational Therapy IEE.	Forty-five (45) days from the District's receipt of an evaluation report from the IEE.
4. The District must provide the Student with a Compensatory Education Plan to make up for Occupational Therapy not provided pursuant to the Student's IEP.	The District shall submit the following: Formal documentation of all offers of compensatory services: including hours owed, service type, delivery method, provider, and correspondence with Parent. Provide documentation notifying the Parent in writing of all available options for compensatory services, including reimbursement or direct instruction, and request acknowledgment of receipt of the offer. Evidence showing compensatory education was provided.	 March 6, 2026 March 6, 2026 August 28, 2026

Dated: this 13 Day of February 2026



Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: February 13, 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).)