BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of David Douglas School District 40	))))	FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER Case No. 26-054-028

I. BACKGROUND

On February 26, 2026, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the David Douglas School District 40 (District). The Parents requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

On March 3, 2026, the Parents submitted an additional allegation to the Complaint Investigator which occurred after the complaint was filed. The Department combined the additional allegation with the original complaint, establishing a new complaint filing date of March 3, 2026.

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

On March 5, 2026, 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 March 19, 2026.

The District submitted a *Response* on March 19, 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, 3/19/26
2. Notice of Team Meeting, 1/7/25
3. Individualized Education Program (IEP) 1/9/25
4. Placement Determination, 1/9/25
5. Prior Written Notice, 1/9/25
6. Meeting Summary, 1/9/25

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

7. IEP at a Glance, 1/9/25
8. Notice of Team Meeting, 2/26/26
9. IEP 3/2/26
10. Placement Determination, 2/6/26
11. Placement Determination, 3/2/26
12. Meeting Summary, 3/2/26
13. Written Access to Medicaid, 3/2/26
14. IEP At A Glance, 3/2/26
15. Consent for Individual Evaluation, 3/13/26
16. Prior Written Notice, 3/2/26
17. Notice of In-School Suspension, 2/11/26
18. Discipline Log Incident 163398, 1/12/26
19. Discipline Profile, 2025-2026
20. Attendance records
21. Nurse office records
22. 5th grade report card
23. 4th grade report card
24. Email correspondence between District professionals from February 2025 through March 17, 2026
25. Email correspondence between District and The Parents from September 4, 2025 through March 4, 2026

The Parents did not submit a *Reply*.

The Complaint Investigator interviewed the Parents on March 22, 2026. On March 27, April 1, and April 7, 2026, the Complaint Investigator interviewed thirteen District personnel. Virtual interviews were conducted instead of on-site interviews. The Complaint Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Complainant's allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from March 4, 2025 to the filing of this Complaint on March 3, 2026.

Allegations	**Conclusions**
IEP Content 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	**Not Substantiated** The District addressed the Student's behavioral needs in their January 2025 IEP.

educational needs. Specifically, the District failed to include a behavior support plan, safety plan and accommodations regarding the Student's safety. (OAR 581-015-2200; 34 CFR §300.320)	
IEP Team Membership The Complaint alleged that the District violated the IDEA when it failed to include all required members of the Student's IEP team to attend an IEP team meeting on March 2, 2026. (OAR 581-015-2210; 34 CFR §300.116)	**Substantiated** The District did not assemble the required IEP team members for the Student's March 2, 2026 IEP meeting
Review and Revision of IEP The Complaint alleged that the District violated the IDEA when it failed to complete an IEP review at least once every 365 days and did not convene the IEP team to meet in response to the Parents' request to do so. (OAR 581-015-2225(1); 34 CFR §300.324)	**Substantiated** The District did not complete an annual review of the Student's IEP within the regulatory timeframe.
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. This included failing to implement the Student's IEP goals, specially designed instruction, accommodations and access to and engagement in the general education setting in accordance with the Student's IEP. (OAR 581-015-2220; 34 CFR §300.323)	**Substantiated in Part** The District did not provide the Student with the SDI required by their January 2025 IEP.
Prior Written Notice The Complaint alleged that the District violated the IDEA by not providing the Parents with prior written notice (PWN) within a reasonable period of time before the District proposed or refused to initiate or change the identification, evaluation, educational placement, of provision of a free appropriate public education to the Student. This included the failing to provide PWN in response to the Parents' requests for the District to convene an IEP meeting and	**Substantiated** The District did not issue PWN to respond to the Parents' requests for an IEP meeting or to explain the next steps after an annual review meeting was cancelled.

request for an FBA. (OAR 581-015-2310; 34 CFR §300.503)	
Discipline and Informal Removals The Complaint alleged that the District violated the IDEA through use of improper disciplinary and informal removal practices, thereby depriving the Student of instructional time. (OAR 581-015- 2405; 34 CFR §300.530)	**Not Substantiated** The District's action of one informal removal did not trigger disciplinary procedural protections.
Free Appropriate Public Education (FAPE) The Complaint alleged that that the District's failed to provide the Student with a free appropriate public education. Additionally, the Complaint alleges that the District denied the Student a FAPE by failing to appropriately address bullying and disability-based harassment of the Student. (OAR 581-015-2040; 34 CFR §300.101)	**Substantiated in Part** The District failed to implement the SDI in the Student's January 2025 IEP resulting in deprivation of educational benefit and a denial of FAPE.

REQUESTED CORRECTIVE ACTION
1. Scheduling annual IEP meetings in a timely manner and scheduling IEP meetings upon the Parents' request. 2. Ensure all teachers, staff and administrators have copies of the Student's IEP and are trained to implement the IEP positive accommodations with fidelity. 3. The Parents will be provided will all special education documents and file and moving forward all documentation is saved in a secure manner. 4. The school will report behavioral concerns, including disciplinary decisions, to the Parents in a timely manner and will convene an IEP meeting if two or more concerns have occurred. 5. The school will conduct an FBA and create a BPSP. 6. The school will ensure the Student attends their TAG program and that behavioral concerns should not be a barrier to accessing this program. 7. The school will provide a safe environment with minimal distractions to ensure learning can occur.

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 March 4, 2025.

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 eleven years old and in the fifth grade.

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

2024-25 School Year

3. The Student's January 9, 2025 IEP (January 2025 IEP), included the following information, in relevant part:

    a. The Parents' Concerns: The Parents are concerned about "bullying". The Parents are "aware that [other] kids may see [the Student] as different, however, [they] wanted to know what steps were taken regarding safety during those incidents". The Student has reported incidents and "teachers didn't seem to do anything". The Parents feel "that [the Student] internalizes all feelings; [they] have been in counselling for 4 years" and they "have shared with [their] counselor feelings of not being heard, seeks revenge, shut downs and exhibiting suicidal ideation".

    b. Present Levels:

    Academic Achievement: No concerns in this area. The Student was identified as talented and gifted for the academic areas of reading and math.

    Social/Emotional Skills: The Student "had difficulty communicating [their] frustrations with peers and adults when [they] participated in competitive play and activities when they were in a losing position". The Student's perception of events "did not always reflect reality, for example, internalizing or perceiving losing as being bullied" Their 4th grade classroom teacher reported concerns with the Student's "ability to regulate when stressed or anxious; that [they] had never requested a break". The Student was reported to have "refused use of the calming space within the classroom and had started taking breaks in a building break room with an adult".

    The team recommended that the Student work on learning appropriate self-regulation during competitive play/activities and developing self-awareness of their interactions with peers.

    c. How disability affects involvement and progress in the general education curriculum: [The Student's] disability impacts their ability to maintain social and emotional and self-management skills within the school environment.

    d. Special Factors: None.

e. Annual Goals: Included two Social/Emotional goals (independently demonstrate self-regulation by using calming strategies); and (demonstrate self-awareness by identifying 1-2 things to improve on to practice appropriate responses).

f. Progress reporting: Progress is to be reported via data collection and during the school's regular written report time, projecting progress reports would be due to the Parents on February 28, April 20, June 30, and November 30, 2025.

g. Specially Designed Instruction (SDI): Social Emotional Skills (90 minutes per month; location school wide).

h. Accommodations: Prompting to begin assignments and for next steps; option to take a scheduled or requested movement break throughout the day; option to choose flexible seating; use of fidgets as needed; access to quiet/safe place to self-compose or decompress; positive reinforcement system to encourage expected behaviors; acknowledgement of on-task and appropriate behaviors through positive verbal praise, access to sound cancelling headphones; preferential seating away from distractions; acknowledgement when their hand is raised so they know teachers have seen them and will call on them eventually; repetition and clarification of directions as needed; organizational tools to help categorize and/or store materials effectively and opportunities for journaling.

i. Supports for School Personnel: None.

j. Non-Participation Justification: "The Student will receive 90 minutes per month for social/emotional specially designed instruction." It was noted by the IEP team that the Student's "SDI anticipated location is labeled as 'school wide' to allow for flexibility of service to provide the Student with instruction that best meets their needs to provide adequate academic growth toward benchmark standards (pull-out and/or merge). The Student would be removed from non-disabled peers if they are being instructed in small group setting with other disabled peers."

4. In the January 9, 2025 Special Education Placement Determination, the IEP team selected "Inside General Education class 80% or more of the day," from the three options listed. **(D81).**

5. According to District records, the Special Education Teacher 4[3] was to deliver the services identified in the Student's IEP for the remainder of the 2024-25 school year.

6. Nursing records for the relevant investigative period indicate that the Student visited the school nurse's office on ten occasions between April 11, 2025 and June 11, 2025. In one event

[3] Multiple special education teachers worked with and on behalf of the Student during the 2025-2026 school year; they are designated by number to distinguish each from the others. Special Education Teacher 1 was located at the Student's school but was never assigned to provide services to them, Special Education Teacher 2 was assigned to provide services to Student from August through November of 2025, Special Education Teacher 3 began working with Student after the March 2, 2026 IEP meeting and Special Education Teacher 4 was assigned to provide services from March through June of 2025 during the Student's 4th grade school year.

on April 30, 2025, the Student reported being hit by another Student who had thrown an object.

2025-26 School Year

7. On September 3, 2025, the Student started attending 5th grade at a District elementary school. At that time they were eligible for special education services in accordance with their January 2025 IEP and eligible for the Talented and Gifted (TAG) program.

8. The September 2025 Student TAG Personalized Education Plan indicated that "TAG services were provided by the classroom teachers with daily modifications to core curriculum and instruction". According to the TAG Teacher (TAG Teacher), Student TAG Plans were to be shared with all parents at fall conferences and that, according to the Oregon Department of Education guidance, the plans need not be signed by parents each year."

9. In a September 2, 2025 email to the Student's general education teachers, the Special Education Teacher 1 provided a copy of the Student's IEP Snapshot. On the same date, one of the Student's general education teachers responded acknowledging receipt of the document.

10. In a September 12, 2025 email to the Student's general education teachers, the TAG Teacher requested access to TAG students, including the Student, to discuss the TAG program for the 2025-2026 school year, embedded activities in the general education classroom and joining the Oregon Battle of the Books.

11. In a text communication dated September 9, 2025 between the Parents and the Student's Teacher 2[4], the Parents indicates that the Student should attend TAG "no matter what they say" and the Teacher 2 responded that the Student had "yet to return their permission slip for the Battle of the Books activity".

12. In a September 25, 2025 email conversation, the TAG Teacher advised the Teacher 2 that the Student had opted out of joining the OBOB enrichment activity.

13. In a text communication dated October 29, 2025 between the Parents and the Teacher 2, the Parents stated that the Student had "an issue with a peer who [sat] nearby, [and] who the Student reports is 'always a bully'". The Teacher 2 suggested to the Parents that they encourage the Student to bring concerns directly to Teacher 2.

14. In a November 10, 2025 email to the Special Education Teacher 1, the School Psychologist noted the Student was due for an annual IEP by January 8, 2026 and asked, "whether the team was going to reevaluate for exit to 504". On the same date, the Special Education Teacher 1 responded that the Special Education Teacher 2 was case managing the Student.

[4] There are three general education teachers serving the Student during their 5th grade year. The teachers are referenced as Teacher 1, Teacher 2 and Teacher 3.

15. On November 26, 2025, the Special Education Teacher 2 sent an email invitation to the Parents, the Student's three general education teachers, the Assistant Principal, the Principal, the School Psychologist and a Counselor to attend an IEP meeting scheduled for December 17, 2025.

16. In a text communication dated December 2, 2025 between the Parents and the Teacher 2, the Parents state that the Student reported that a peer called the Student "rude", used an expletive and threatened to "beat [them] up." The Teacher 2 responded that they had addressed the behavior with both the students, discussing how to respect boundaries and that the Student's response to the peer had escalated the situation.

17. In a December 3, 2025 email to the TAG Teacher and the Special Education Teacher 1, the Special Education Teacher 2 provided the TAG Teacher with a copy of the Student's IEP.

18. On December 17, 2025, the Student's scheduled IEP meeting did not occur due to a power outage at the school.

19. District records indicate that, on January 12, 2026, the Student was reported to have become enraged at a peer with whom they had issues earlier in the day, that the Student reported "the peer made faces at [them]" and "in response, [the Student] threw a book at the peer, almost hitting a teacher". The behavior incident record indicates that the Parents were called, and the Parents requested a reschedule of the Student's IEP meeting.

20. In an email to the Behavior Specialist dated January 13, 2026, the Parents requested a meeting to address concerns about the Student's behavior.

21. In a January 13 to 14, 2026 text conversation with the Parents, the Behavior Specialist explained that, following the January 12, 2026 behavior incident, the Student expressed they were unsure if they could return to their classroom and "be safe in class." As a result, the Student was offered several classroom options as an alternative environment for the last hour of the school day and they selected a first-grade classroom.

22. In an email conversation with the School Psychologist dated January 14, 2026, the Counselor explained that the Special Education Teacher 2 had discussed exiting the Student from special education services. On the same date, the School Psychologist confirmed that "I think we're waiting for information about case manager status[5] in order to make a plan for [the Student]."

23. At the end of the grading period, on or about January 23, 2026, the Student's report card was completed and issued. The report card indicated the Student had demonstrated a 98.2% attendance rate, was approaching or at proficiency in all academic areas and needed to show improvement in two success skills (listening attentively and following directions; and appropriate transition between activities).

[5] There is no indication a special education teacher was serving as Student's case manager or implementing their IEP from November of 2025 through March of 2026.

24. In a text communication dated February 4, 2026 to the Parents, the Teacher 2 confirmed that:
    a. The Student can use their classroom calming space "instead of remaining in the Reading class if [they] feel dysregulated, but [the Student] must check in with [the Teacher 2] before exiting a class as it is a safety issue".
    b. The delay in holding an IEP meeting for the Student was related to the Special Education Teacher 2, who had been the Student's case manager, leaving their job.

25. On February 11, 2026, the District provided the Parents with a notice of in-school suspension for one school day on February 12, 2026 for physical aggression. In the letter, the Assistant Principal stated that the administration had "considered [the Student's] age and past pattern of behavior when they assessed the appropriate level of discipline for this conduct".

26. In an email dated February 11, 2026 to the Principal and the Special Education Director, the Parents wrote that the Student's IEP was "due for renewal and update" in December 2025 but needed to be rescheduled due to a power outage. They asked school staff [the Teacher, the Counselor and the Principal] several times for an IEP meeting, but no one contacted them to reschedule the annual IEP. In their email, the Parents requested prior written notice (PWN) to explain why the District had not convened an annual IEP meeting. In response, the Special Education Director explained that the "computer system…appears to be missing some information regarding [the Student]" and that the Special Education Director would follow up with the Parents by Friday, February 13, 2026 with "an update and plan for scheduling an IEP meeting."

27. In an email conversation dated February 12, 2026 between the Parents, the Special Education Director and the Assistant Principal, all conversation members agreed that the cancelled IEP meeting was to have occurred in December of 2025.

28. In a February 17, 2026 email to the Student's general education teachers, a new special education teacher (Special Education Teacher 3), the Principal and the Assistant Principal, the District Teacher on Special Assignment (TOSA) requested to schedule the Student's overdue annual IEP meeting on either February 19 or 26, 2026. Recipients responded with their availability and recipient responses indicated the 26th would be best for their schedules.

29. On February 18, 2026, the TOSA sent an email to the Parents and other IEP team members with an attached Google Meet invitation and Notice of Meeting for an IEP meeting on February 26, 2026.

30. In a February 26, 2026 email to all three of the Student's general education teachers, the TOSA indicated a need to reschedule the Student's IEP meeting to the following Monday, March 2, 2026. On the same date in an email to the Student's Parents and IEP team, the TOSA explained that they and Special Education Teacher 3 were both ill. This email included a Google Meet invitation to a meeting on March 2, 2026 and a revised Notice of Meeting.

31. In a February 28, 2026 email to the Student's Parents, the Special Education Teacher 3 provided a revised Notice of Meeting, confirming the meeting for March 2, 2026.

32. On March 2, 2026, the District convened a meeting to develop the Student's annual IEP. District staff from the School attended, including the Special Education Teacher 3; one of the Student's general education fifth grade teachers; the TOSA, acting as district representative, and the School Psychologist. The Parents also attended this meeting.

33. The Student's March 2, 2026 IEP (March 2026 IEP), included the following information, in relevant part:

    a. Strengths: The Student has enjoyed "budding friendships with peers [they] have been able to connect with, [was] growing independence in seeking help during challenging situations, especially as it relates to peer conflict and [was] working to use skills learned in their check-in/check-out sessions with staff". The Student was reported to use noise cancelling headphones when their "environment [became] too busy and throughout the school day as needed". The Parents shared that the Student is outgoing when they "feel safe, [is] a helper and a very emotional child". The Parents also observed that the Student is "a very sensitive individual who is caring, bright and wants to be accepted".

    k. The Parents Concerns: The Parents were concerned about "the lack of documentation over a two-year period" and about "[the School] staff not following [the Student's] IEP as it is written". They shared that a recent suspension "raised more questions than answers regarding discipline" and the Parents were "requesting additional meetings to address the ongoing concerns prior to this meeting."

    l. Present Levels:
    In social/emotional skill development, the team included information from discipline incidents in January and February of 2026. The January incident was described to have involved the Student "throwing a large object at a peer after conflict". The February incident was noted as "description incomplete". Staff reported that, when frustrated, the Student "may pace, stomp, or show dysregulation". They participate in Check-In/Check-Out with a designated adult "to help [the Student] manage emotions and stay on track."

    The team believes the Student's goals should "focus on developing self-awareness, self-regulation and safe peer interactions so they can access learning independently".

    m. How disability affects involvement and progress in the general education curriculum: The Student's challenges occur "in competitive or unstructured activities, such as recess, sports and group work". In these situations, the Student can become dysregulated because they are "still learning to recognize the early signs of stress or frustration and to use strategies to calm [themselves] before emotions escalate".

    n. Annual Goals: Included four Social/Emotional goals (safe response to peer conflict or competitive situations; independent use of calming strategies, engagement in emotional

reflection and re-engagement with classroom instruction within 10 minutes after becoming upset).

o. Specially Designed Instruction (SDI): Social Emotional Skills (190 minutes per month; location school wide, specifically 90 minutes a month with a special education teacher or social emotional learning provider focusing on coping strategies, conflict resolution and self-awareness).

p. Progress Reporting: Progress reports are anticipated April 30, 2026, June 30, 2026, and November 30, 2026.

q. Accommodations: Use of fidgets as needed; acknowledgement of on-task and appropriate behaviors through positive verbal praise, access to sound cancelling headphones, including all spaces schoolwide; adult support when needed for co-regulation; organizational tools to help categorize and/or store materials effectively; opportunities for journaling; prompting to begin assignments and for next steps; repetition and clarification of directions as needed; access to quiet/safe space to self-compose or decompress; preferential seating away from distractions/peers as needed; encourage the Student voice/choice; acknowledgement of when the Student's hand is raised; positive reinforcement system to encourage expected behaviors in all settings throughout the school day; option to take scheduled or requested movement breaks; and options of choosing flexible seating.

r. Non-Participation Justification: The Student will receive 190 minutes per month for social/emotional SDI. The Student's anticipated location is labelled as "schoolwide" to allow flexibility of service to provide the Student "with instruction that best meets their needs to provide adequate academic growth toward benchmark standards". The Student would only "be removed from non-disabled peers if [they] are being instructed in a small group with other disabled peers".

34. A meeting summary of the March 2, 2026 IEP team discussion indicates:

a. An acknowledgement from the Special Education Teacher 3 that the Student was overdue for the annual review.

b. The Parents shared concerns regarding the "handling" of the Student's discipline, citing a lack of documentation and a lack of services as there was no special education teacher for the Student since November of 2025. The Parents acknowledged that the Paraprofessional[6] has rapport with the Student because they have "worked with [the Student] for two school years and have been consistently implementing the plan created by the last case manager".

[6] Although not serving as a 1:1 provider, the Student received paraprofessional support from one adult in this role during the 4th and the relevant portions of 5th grade.

c. The Parents shared concerns of ongoing bullying. The Parents noted frustration "regarding a prior incident in which [the Teacher 2] left a comment using an exclamation mark to describe [the Student] as a distraction to the learning environment" which the Parents considered unacceptable. The Parents expressed concern that the Teacher 2 did not attend the IEP meeting and had requested the IEP team reconvene.

d. The team reviewed discipline documentation, one included the Student being placed in a kindergarten classroom for an in-school suspension which the Parents expressed "was inappropriate and caused significant distress." The team acknowledged the Parents' concerns regarding this placement and documentation. The Parents also "strongly opposed" that the Student was made to ask permission to use the classroom "Calming Corner" to take breaks.

e. The team reviewed the Student's social-emotional support needs and agreed to increase their social emotional service time from 90 minutes per month to 190 minutes per month to provide the Student with more regular opportunities to practice self-regulation strategies, receive adult check-ins and reflect on peer interactions while remaining actively engaged in the general education setting.

f. The team specified that Wednesdays are shortened school days for all students and "is not a service day." On Wednesdays, the Student would participate in their general education classroom for the majority of the school day and would continue to have access to their supports.

g. The Parents provided verbal consent to initiate a Functional Behavioral Assessment (FBA); written consent will be completed and finalized as soon as possible.

h. The team also discussed next steps and post-meeting tasks, including scheduling an FBA/Behavior Support Plan meeting.

35. In an email dated March 2, 2026 to the TOSA and the Student's IEP team members, the Parents requested that an additional IEP meeting be convened with a specific general education teacher who was not present at the March 2, 2026 IEP.

36. Nursing records for the relevant investigative period indicate that the Student visited the school nurse's office on seven occasions between September 24, 2025 and February 17, 2026. On only one occasion, September 30, 2025, did the Student report an injury sustained from another student's conduct.

37. The TAG Teacher also confirmed that the Student attended each of the TAG sessions on October 24, November 14, December 12, December 19, 2025, and January 9, 19 and 30, and February 27, 2026.

38. On February 26, 2026, the Parents filed this Complaint and on March 3, 2026, the Parents reported an additional allegation regarding IEP team membership at the March 2, 2026 IEP meeting.

39. In the Parents's interview, they clarified the following:

    a. The Student's January 2025 IEP did not include a positive behavior support plan, which "in their perspective, would have prevented in school suspension and getting removed to a lower grade classroom". The Parents also asserted that the Student "should not have to ask for access to their noise cancelling headphones as [the Parents] had verbally requested of [the Student's] teacher, assistant principal and principal".

    b. The Parents had no concerns with the content of the March 2026 IEP, however, the Parents disagreed that the decision to allow the Teacher 2 to not attend the meeting, in spite of the Parents' request for that teacher's attendance.

    c. The Parents confirmed that they were "verbally informed by the Special Education Director that the Student's 2025 IEP was in place and active until the March 2026 was completed", however, the Parents stated that they did not receive PWN of continuation of the 2025 IEP beyond its annual review date.

    d. The Parents asserted that the Student did not receive social emotional SDI from any of the special education teachers, specifically the Special Education Teachers 2 and 4, who were assigned to provide SDI during the period of this investigation.

    e. The Parents explained that the Student told them that one of their general education teachers did not allow him to go to TAG meetings scheduled during their class.

    f. Regarding informal removals, the Parents shared that once a general education teacher removed the Student to a lower grade classroom and on a second occasion, the Student was placed in a lower grade classroom during an in-school suspension.

    g. Regarding the Parents' reports of bullying, the Parents explained that they "brought it to the teachers' attention multiple times at conferences and via Parent Square yet [the Student] continues to be bullied".

40. Staff interviews were completed with the Special Education Director, the Principal and Assistant Principal, the TOSA, the Special Education Teachers 1 and 3, the 4th Grade Teacher, General Education Teachers 1, 2 and 3, the Counselor and the Behavior Specialist. With regard to each of the issues in this complaint, the staff responded:

    a. The District staff all explained that the Student's IEP goals and accommodations were sufficient for them to make progress with social skill development, use of self-regulatory strategies and to access the general education setting. All general education teachers, the Paraprofessional, the Counselor, the Behavior Specialist and the building administrators

gave specific examples of their individual use of the Student's IEP accommodations to support their access to the general education curriculum and setting.

b. Several interviewees provided examples regarding the manner in which they provided the Student access to their headphones and that the headphones were located in multiple settings for the Student to access. Additionally, interviews reveal that the Parents' request for headphones in each of their grade level classrooms was supported by the Assistant Principal. The Assistant Principal and the Paraprofessional also described the Student's use of the headphones in non-classroom locations, including the cafeteria and assemblies.

c. The majority of the District staff interviewees, including building administration, believed the Student's behavior had not required a formal behavior plan or safety plan. Several staff described in detail how the Student did not pose a danger to themselves or others because the Student was "able to regulate in the classroom using a calm down center, headphones and teacher co-regulation." One staff member explained that a "safety plan" might have warned the teacher that the Student could be aggressive, but the staff member did not indicate the safety plan was required by the Student's demonstrated behaviors.

d. The Special Education Director confirmed that one of the Student's general education teachers attended the March 2026 IEP meeting.

e. The Special Education Teacher 3 and the TOSA both confirmed that neither of them had provided services to the Student prior to attending the March 2026 IEP meeting.

f. The Special Education Director agreed that the Student's annual IEP had not been completed prior to the one-year due date from the previous IEP.

g. The Special Education Director indicated that the District provided no progress reports to the Parents during the period of the investigation, that no progress reports could be created, and that the District could provide no data collection, schedules for SDI implementation or other documentation regarding IEP implementation during that time. Several staff noted in their interviews that the Paraprofessional had continued to provide the Student with breaks. In their interview, the Paraprofessional confirmed that they assisted in the provision of the Student's accommodations but had not provided the Student with any SDI.

h. The TAG Teacher and the Teacher 2 both indicated that Student was able to access their general education setting activities, including involvement in their TAG activities, within the Teacher 2's classroom.

i. The Special Education Director confirmed that PWN was issued to the Parents following the March 2026 IEP meeting but no PWN was issued to the Parents when the December

2025 IEP was cancelled or in response to the Parents' January 2026 requests for an IEP meeting.

j. The Principal and the Assistant Principal confirmed the Student's discipline records and that the Student had not been suspended for more than 10 calendar days during the 2025-2026 school year. The Behavioral Specialist confirmed that the Student's in-school suspension was served outside of their classroom. All of the Student's general education teachers denied that the Student had been informally removed from their classrooms with the exception of one incident described in an email with the Parents.

k. All building-level staff, with the exception of Special Education Teacher 3, described that the Student did have peer relationship issues but that these concerns did not rise of the level of bullying or harassment. The Special Education Teacher 3 was not asked this question in their interview as they had not begun working with the Student until after the March 2026 IEP meeting.

IV. DISCUSSION

IEP Content

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 Parents stated that the District failed to include a behavior support plan, safety plan and accommodations regarding the Student's safety.

An IEP must contain (1) a statement of the student's present levels of achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum; (2) measurable annual goals and a description of how the student's progress toward meeting the annual goals will be measured and reported; (3) a statement of the specific special education and related services and supplementary aids and services to be provided to the student; (4) the projected dates for initiation of services and the anticipated frequency, amount, location, and duration of the services; and (5) an explanation of the extent to which the student will not participate with children without disabilities in the regular class and activities.[7]

There were two IEPs developed for the Student during the complaint period, the January 2025 IEP, and the March 2026 IEP. The Parents' interview clarified that their concern pertains to the content of the January 2025 IEP. The Parents' Complaint focuses on the requirement that an IEP include supplementary aids. "Supplementary aids and services" is defined in the IDEA Part B regulations as "aids, services, and other supports that are provided in regular education classes, other educational-related settings, and in extracurricular and nonacademic settings, to enable

[7] OAR 581-015-2200(1); 34 CFR §300.320(a).

children with disabilities to be educated with nondisabled children to the maximum extent appropriate."[8]

The January 2025 IEP references the Student's use of noise cancelling headphones in the Present Levels section of the IEP and in the Supplementary Aids section. In the Present Levels, the team observed that "[the Student] is reported to use noise cancelling headphones when their environment becomes too busy and throughout the school day as needed." The IEP also includes "access to noise cancelling headphones" as an accommodation for the Student while included in the general education environment. The language of the IEP itself does not require the Student to request access to the noise cancelling headphones.

The Parents also alleged that the IEP should have a behavior intervention plan (BIP) and a safety plan. The IDEA does not require every student who demonstrates behavioral or social emotional regulation issues to have an FBA and/or BIP. Rather, in developing an IEP, the IDEA requires that IEP teams consider behavior management whenever the student's behavior interferes with the child's ability to benefit from their educational programming. Specifically, the IDEA states that the IEP team must consider the student's need for the use of "positive behavioral interventions and supports" in the case of a student with a disability whose "behavior impedes his learning of that or of others."[9] Here, the January 2025 IEP team found that the Student's behavior did not interfere with their learning or the learning of others, it did not specify that the Student required a BIP but did include reference to positive behavior reinforcement. When interviewed, multiple District staff shared their professional opinions that the Student did not require a BIP.

Finally, the term "safety plan" is not referenced or defined by the IDEA. Generally, safety plans may be completed as part of behavior plan development or as a general education intervention. Here, interviews yield only one staff member who indicated a safety plan might have advised them that the Student could display aggressive behavior. The remainder of the professionals interviewed indicate that the Student's behavior concerns did not rise to the level of needing to develop a safety plan.

The Department does not substantiate this allegation.

IEP Team Membership

The Complaint alleged that the District violated the IDEA when it failed to include all required members of the Student's IEP team to attend an IEP team meeting on March 2, 2026 IEP.

Under the IDEA, the IEP team of a student with a disability must include the Parents of the child, at least one general education teacher of the child, at least one special education teacher of the child or, where appropriate, at least one special education provider of the child, a district representative, an individual who can interpret the instructional implications of evaluation

[8] OAR 581-15-2200(1)(d); 34 CFR §300.42, 34 CFR §§300.314-16.
[9] OAR 581-15-2205; 34 CFR §300.324(a)a(2)(i)

results, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate, and whenever appropriate, the child.[10]

In their interview, the Parents specifically disagreed with a District decision to proceed with the IEP meeting without the Teacher 3 in attendance. Their Complaint and District records, including meeting summary notes, confirm that the Parents had requested that the Teacher 3 attend the IEP meeting. The District, however, is correct in its response that the IDEA requires that only one general education teacher of a student attend an IEP team meeting.

Evidence submitted in this case indicates that the Special Education Teacher 3 acted as the required special education teacher for the March 2, 2026 IEP meeting. While decisions regarding which teachers serve as members of the Student's IEP team are within the purview of the District[11], school districts must select professionals who meet the criteria in the regulation cited above. Specifically, the special education teacher who attends the meeting must be or have been a teacher of the child. The Ninth Circuit Court of Appeals has explicitly interpreted this regulation to mean that the special education teacher need not be the Student's current special education teacher, but that professional must have taught or currently be a teacher of the Student.[12] Failure to include all required IEP team members has been found to render an IEP deficient.[13] District interviews indicate that the Special Education Teacher 3 had never taught the Student prior to this meeting. Thus, the IEP team assembled on March 2, 2026 did not meet the state or federally required criteria for attendance of a special education teacher of the Student.

The Department substantiates this allegation.

Review and Revision of IEP

The Complaint alleged that the District violated the IDEA when it failed to complete an IEP review at least once every 365 days and did not convene the IEP team to meet in response to the Parents request to do so.

The IDEA does not require a school district to schedule an IEP meeting anytime one is requested by a parent, however, the IDEA requires school districts to ensure that IEP teams review every IEP at least once per year to: (a) determine whether a the Student with a disability is achieving their IEP goals, and (b) to revise the IEP as appropriate.[14] In this matter, the District Response, email correspondence and March 2, 2026 IEP team meeting summary reflect that the Student's IEP was not updated within the one year timeframe required by the IDEA.

The Department substantiates this allegation.

When IEPs Must Be in Effect

[10] OAR 81-015-2210; 34 CFR § 300.321(a).
[11] 71 Fed. Reg. 46540, 46669-46670 (Aug. 14, 2006)
[12] *F.B. v. Napa Valley Unified Sch. Dist.,* 496 F.3d 932, 940 (9th Cir. 2007)
[13] *M.L. v. Federal Way Sch. Dist.*, 387 F.3d 1101, 9th Cir. 2004), *amended by*, 394 F.3d 634 (9th Cir. 2005), *cert. denied*, 545 U.S. 1128 (2005)
[14] OAR 581-015-2225(1); 34 CFR 300.324(b)

The Complaint alleged that the District violated the IDEA by not providing special education and related services in accordance with the Student's IEP. This included failing to implement the Student's IEP goals, specially designed instruction, accommodations and access to and engagement in the general education setting in accordance with the Student's IEP.

School districts must provide special education and related services to a student with a disability in accordance with the student's IEP.[15] 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.[16] "IEP Teams and other school personnel should be able to demonstrate that, consistent with the provisions in a student's IEP, they are providing special education and related services and supplementary aids and services."[17]

A district violates the IDEA when it materially fails to implement an IEP.[18] A material failure occurs when the services a school provides to a disabled child fall significantly short of the services required by the child's IEP. Minor discrepancies between the services provided and the services called for by the IEP do not give rise to an IDEA violation.[19] 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."[20]

The Student's January 2025 IEP required the District to provide the SDI, as well as accommodations and behavioral supports, contemplated by their IEP team. SDI is defined as adaptation, as appropriate to the needs of an eligible student, of the content, methodology, or delivery of instruction to address the child's unique needs resulting from the disability.[21] Not every type of instruction meets the requirement of the specialized instruction intended by SDI.[22]

In their interview, the Parents' focus was that the Student was required to ask permission to use their noise cancelling headphones. Interviews with District personnel, including the Counselor, the Behavior Specialist, four general education teachers and the Paraprofessional, clearly indicate the Student was provided their IEP accommodations and was present in the general education setting as set forth in their IEP. Headphone use was observed by multiple District professionals during their interviews. No professional indicated that they required the Student

[15] OAR 581-015-2220(1)(a); 34 CFR §300.323(c)
[16] OAR 581-015-2220; 34 CFR §300.323
[17] Questions and Answers on *U.S. Supreme Court Decision Endrew F. v. Douglas County Sch. Dist.* Re-1, 71 IDELR 68 (EDU 2017)
[18] *Van Duyn v. Baker Sch. Dist. 5J*, 502 F3d 811 (9th Cir. 2007) ("Van Duyn")
[19] *Id.*
[20] *Id.*
[21] OAR 581-015-2000(37); 34 CFR §300.39(b)(3)
[22] *County of San Diego v. California Special Educ. Hearing Office*, 93 F.3d 1458 (9th Cir. 1996).

to request to use the headphones, rather the detailed interviews indicate the headphones were immediately available to the Student or close by. Additionally, interviews reveal that the Parents' request for headphones in each of their grade level classrooms was supported by the Assistant Principal. The Assistant Principal and the Paraprofessional also recall the Student using the headphones in non-classroom locations, including the cafeteria and assembly. The plain language of the IEP and information provided by several professionals during interviews indicate that the Student is not required to ask before they are allowed to use their noise-cancelling headphones. This evidence indicates that the accommodations at issue in this matter were implemented.

Conversely, there was no evidence presented by the District that either the Special Education Teacher 2, the Special Education Teacher 4, or any other District staff member provided SDI to the Student during the time period of the Complaint. While the Paraprofessional may have intended to continue implementing the Student's special education supports after the Special Education Teacher 2 resigned and left the District, the District's Response, records and interview responses provide no evidence that the Student actually received SDI in a manner consistent with the Student's IEP. The Paraprofessional specifically indicated that they only provided breaks and check-ins but no instruction. The District's failure to provide the Student with any SDI for the entire period of the Complaint constitutes a material failure to implement their IEP.

The Parents also assert that the Student was not allowed to attend their TAG sessions, which was part of the Student's general education setting. Attendance records, explanation of the structure of the 5th grade TAG program and District staff interviews do not support the Parents' assertion.

The Department substantiates this allegation, in part, as to the District failure to provide the Student with the SDI required by the January 2025 IEP.

Prior Written Notice

The Complaint alleged that the District violated the IDEA by not providing the Parents with prior written notice within a reasonable period of time after receipt of The Parents' requests for the District to convene an IEP meeting and request for an FBA.

School districts must provide PWN to parents within a reasonable period of time before the district proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to a child.[23] PWN must include a description of the action proposed or refused; an explanation why the action was proposed or refused; a description of each evaluation procedure , assessment, record, or report used as the basis of the proposal or refusal; a description of other options the IEP team considered and the reason why they were rejected; a description of other relevant factors; and notice of procedural safeguards.[24]

The purpose of PWN is to inform parents of a district's final action on a proposal or refusal to initiate or change elements of a student's special education program.[25] The formal requirement of written notice "has an important purpose that is not merely technical… [it] creates a clear

[23] OAR 581-015-2310(2); 34 CFR §300.503.
[24] OAR 581-015-2310(3); 34 CFR §300.503.
[25] Letter to Lieberman (OSEP 2008).

record" to eliminate future factual disputes, and assists parents in presenting complaints related to an action proposed or refused by the district.[26] PWN must be provided "whether or not the proposal or refusal is made during the course of an IEP meeting."[27] PWN must also be provided when a district agrees or disagrees with a change proposed by a parent.[28] A parental request for an IEP meeting is the type of request that requires a school district to issue PWN.

On November 10, 2025, internal email correspondence indicates the District professionals were aware that the Student's IEP review would be due in early January of 2026. While a meeting was scheduled for December 17, 2025, the interviews and email correspondence document that the meeting was cancelled due to a power outage at the school building, Thereafter, this meeting was not rescheduled nor was PWN issued to the Parents explaining when or whether the next meeting would be scheduled. While the District explains a computer system issue and that the Special Education Teacher 2's resignation interfered with re-scheduling the IEP meeting, none of that information was communicated via PWN to the Student's Parents.

Email correspondence to the Behavior Specialist dated January 13, 2026 confirms that the Parents requested an IEP team meeting. During the period of January 13 through February 12, 2026, District professionals emailed about the Parents' concern and request for an IEP meeting, but no PWN was issued in response to the Parents' request to schedule a meeting. There was no evidence provided that the Parents requested an FBA of the Student prior to the March 2026 IEP meeting.

The Department substantiates this allegation regarding the District's failure to issue PWN in response to the Parents' request for an IEP team meeting.

Discipline and Informal Removals

The Complaint alleged that the District violated the IDEA through use of improper disciplinary and informal removal practices, thereby depriving the Student of instructional time.

Informal removal, while not defined in the IDEA or its implementing regulations, means action taken by school personnel in response to a child's behavior that excludes the student for part or all of the school day, or even an indefinite period of time.[29] These exclusions are considered informal because the school removes the student from class or school without invoking IDEA's disciplinary procedures.[30] In general, the use of informal removals to address a student's behavior, if implemented repeatedly throughout the school year, could constitute a disciplinary removal from the current placement.[31]

Interviews and review of the Student's discipline records indicate that the Student was informally removed once from their educational environment at a teacher's request. A second incident of the Student being assigned to a different classroom for the day coincides with a single day's in-

[26] *Union Sch. Dist. v. Smith*, 20 IDELR 987 (9th Cir. 1994).
[27] Letter to Chandler (OSEP 2012).
[28] Letter to Lieberman (OSEP 2008).
[29] Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions, (OSEP 2022).
[30] Id.
[31] Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions, (OSEP 2022).

school suspension and thus was not an informal removal. A single informal removal does not reach the level of repeated use that would trigger IDEA procedural safeguards.

The Department does not substantiate this allegation.

Free Appropriate Public Education (FAPE)

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

Each school district is responsible for providing a free appropriate public education to school age students with disabilities for whom the school district is responsible.[32] In order to determine whether a student has been denied a FAPE, the courts review a district's compliance with the procedural and substantive components of the Student's education, specifically 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.[33]

Not every procedural error is sufficient to rise to a denial of FAPE.[34] The procedural test consists of three pivotal procedural errors: (1) whether the Student suffers a loss of educational opportunity;[35] (2) whether the Parents's right to participate in the IEP process was infringed;[36] or (3) whether the procedural error caused a "deprivation of educational benefit."[37] The Department has substantiated the allegation that the Student's IEP was not implemented for the entirety of the investigation period. Failure to provide the Student with any SDI for an entire year clearly caused a deprivation of educational benefit.

Additionally, the Complaint alleged that the District denied the Student a FAPE by failing to appropriately address bullying and disability-based harassment of the Student. The United States Department of Education has advised that the bullying of a student with a disability that results in the student not receiving "meaningful educational benefit" constitutes a denial of FAPE.[38] According to the U.S. Education Department, "bullying" is characterized by aggression used within a relationship where the aggressor has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated. Bullying is physical, verbal, or psychological actions inflicting or attempting to inflict discomfort upon another through a real or perceived imbalance of power.[39] Bullying can involve overt physical behavior or verbal, emotional, or social behaviors (e.g., excluding someone from social activities, making threats, withdrawing attention, destroying someone's reputation) and can range from blatant aggression to far more subtle and covert behaviors.[40] Whether or not the bullying is related to a student's

[32] OAR 581-015-2040(1); 34 CFR §300.101(a).
[33] *Endrew F.*, 137 S.Ct. at 999.
[34] *Amanda J. v. Clark Co. Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001) (citing *Roland M. v. Concord 13684 Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990)).
[35] *Target* Range, 960 F.2d at 1484.
[36] *Id.*
[37] *Amanda J.*, 267 F.3d at 892 (citing *Roland M.,* F.2d at 994).
[38] Dear Colleague Letter, (OSERS/OSEP 2013) and Dear Colleague Letter, (OCR/OSERS 2000)
[39] Dear Colleague Letter, (OSERS/OSEP 2013)
[40] *Id.*

disability, any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of FAPE under the IDEA that must be remedied.[41]

Among the professional interview responses, there are clearly references to peer conflicts, yet there is no indication these conflicts went unaddressed by staff or that professionals have perceived any student conflict rose to the definition or level of "bullying".

The Department does substantiate this allegation regarding implementation of the Student's IEP but does not substantiate this allegation as it relates to failure to address bullying or disability-based harassment.

V. CORRECTIVE ACTION

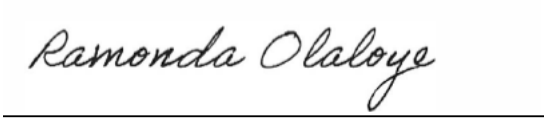
In the Matter of David Douglas School District 40
Case No. 26-054-028

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

Action Required	Submissions	Due Date
1. The District must ensure that all District staff involved in the development and implementation of the Student's IEP receive training in each of the following areas: • IEP team membership; • IEP content and implementation; • Prior Written Notice.	Training agenda/materials to ODE for review/approval. Sign-in sheet for training.	**August 1, 2026** **October 15, 2026**
2. The District must convene a meeting with the Parent(s) to determine appropriate compensatory education services for the District's failure to provide SDI to the Student and develop a plan for the delivery of those services. Unless the parties agree otherwise, the compensatory services offered to the Student shall include 900 minutes of SDI in Social/Emotional learning.	Written plan for delivery of compensatory education services developed in a meeting with the Parent(s); and Evidence showing compensatory education services were provided.	**May 31, 2026** **January 31, 2027**

[41] Dear Colleague Letter: Responding to Bullying of The Students with Disabilities, (OCR 2014)

Dated: this 1 Day of May 2026



Ramonda Olaloye
Assistant Superintendent
Office of Enhancing The Student Opportunities

E-mailing Date: May 1, 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).)