BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Lincoln County School District 10	))))	FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER Case No. 26-054-031

I. BACKGROUND

On March 3, 2026, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Lincoln County School District 10 (District). The Parent requested 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.

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

On March 11, 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 April 8, 2026.

The District submitted a *Response* on April 8, 2026, denying the allegations, providing an explanation, and submitting documents supporting the District's position. The District submitted the following relevant items:

1. District's Written *Response* to Complaint, 04/08/26
2. Prior Written Notice - Eligibility, 12/05/25
3. Prior Notice and Consent for Initial Provision of Special Education Services, 12/09/25
4. Parent/Guardian Consent for Individual Evaluation, 09/03/25
5. Special Education Assessment Report, 11/24/25
6. Functional Behavior Assessment, 10/20/25
7. Email, re: IEP Schedule, 12/10/25-01/26/26
8. Letter, re: IEP Recommendations for [the Student], 01/14/26
9. Individualized Education Program Amendment, 12/09/25
10. Prior Written Notice, 03/06/26, 12/09/25, 12/10/25

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

11. Individualized Education Program, 12/09/25
12. Individualized Education Program Meeting Notes, 03/06/26, 12/09/25
13. [The Student's] Schedule and Assistance, no date
14. Parent/Guardian Consent for Individual Evaluation - Evaluations for Educational Needs, 12/05/25
15. Occupational Therapy Evaluation, 01/27/26
16. Occupational Therapy Screening Form, 10/24/25
17. Incident Report, 09/17/25-11/04/25
18. [The Student's] Behavioral Data, 2025-26 School Year
19. Positive Behavior Support - Intervention Plan: Update, 08/28/25
20. Email, re: Follow-Up to 10-8-25 Meeting - URGENT: Procedural Violations and Unsafe Plan for [the Student] Return, 10/29/25-10/30/25
21. Parent Agenda and Request for Services Updated, 12/09/25
22. Email, re: URGENT: Comprehensive Safety Requests, Liability Notice, and Clarifications for [the Student] (Meeting Follow-Up), 12/10/25-01/07/26
23. Email, re: [the Student's] Treatment Plan, 12/08/25-04/07/26
24. Email, re: [the Student's] Goals, 04/06/26
25. Email, re: Consent, 04/06/26
26. 504 Accommodation Plan, 09/04/25
27. Email, re: Additional information needed (ODE 26-054-031)
28. [The Student's] Semester 1 Report Card, 2025-26 School Year
29. [The Student's] IEP Tracking Data: Goal 3, 02/01/[26]-03/03/[26]

The Parent submitted a *Reply* on April 8, 2026, providing an explanation and rebuttal and documents in support of the Parent's position. The Parent submitted the following relevant items:

1. Parent's *Reply* to the District's *Response* to *RFR*, 04/08/26
2. Prior Written Notice, 03/06/26, 12/09/25, 12/10/25
3. Individualized Education Program Amendment, 12/09/25
4. Individualized Education Program, 12/09/25
5. Notice of Authorization of Services, 03/27/25
6. Individualized Education Program Recommendations Letter, 01/14/26
7. Medical Notes, 08/28/25-12/09/25
8. Email, re: Mental Health Letter for IEP Documentation, 12/10/25-01/19/26

The Complaint Investigator interviewed the Parent and the Parent's Advocate on April 8, 2026. From April 15 to April 20, 2026, the Complaint Investigator interviewed District personnel. 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 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 March 4, 2025 to the filing of this Complaint on March 3, 2026.

Allegations	Conclusions
When IEPs Must Be In Effect The Complaint alleged 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 provide the Student with "required 1:1 support, using a shared classroom aid instead." (OAR 581-015-2220; 34 CFR § 300.323)	**Not Substantiated** The District provided special education and related services in accordance with the Student's IEP.
Prior Written Notice The Complaint alleged the District violated the IDEA when it failed to provide the Parent with prior written notice (PWN) regarding an increase in 1:1 services. (OAR 581-015-2310; 34 CFR § 300.503)	**Not Substantiated** The District provided the Parent with PWN clarifying the provision of adult support to the Student. It was not required to provide PWN regarding an increase in services because an increase had not occurred.
Content of IEP The Complaint alleged the District violated the IDEA when it failed to develop an IEP that included services and supports that are necessary to address the Student's unique educational needs. Specifically, the IEP did not include Occupational Therapy (OT) services and did not include 1:1 Applied Behavior Analysis (ABA) services by the Parent's preferred provider. (OAR 581-015-2200; 34 CFR § 300.320)	**Not Substantiated** The District developed an IEP that included services and supports that were necessary to address the Student's unique educational needs.

Free Appropriate Public Education	Not Substantiated
Due to the alleged IDEA violations detailed above, the Complaint alleged that the District failed to provide the Student with a free appropriate public education (FAPE). (OAR 581-015-2040; 34 CFR §§ 300.17, 300.101)	The District provided the Student with a FAPE.

REQUESTED CORRECTIVE ACTION
1. "Immediate assignment of a dedicated, trained adult 1:1 aide who is not shared with the classroom." 2. "Allow private [Outside Agency] therapist into the school immediately, if unavailable the District must fund a certified ABA therapist." 3. "Immediate start of Occupational Therapy." 4. "Compensatory education for lost learning time in the office and severe regression in fine motor skills."

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 the context necessary to understand the Student's disability and special education history.

1. The Student is five years old and attends an elementary school in the District (the School) .

2. The Student has a wide vocabulary, and is generally positive, empathetic, and creative.

3. A Notice of Authorization of Services from a coordinated care organization for the Student's health insurance provider, dated March 27, 2025, approved a request for positive behavior support services for the Student from an Outside Agency. It included services to be provided from April 1, 2025 through October 1, 2025, and then from October 2, 2025 through April 2, 2026.

4. A letter from the Student's medical provider, dated August 28, 2025, stated the Student had been diagnosed with autism spectrum disorder (ASD) and attention-deficit/hyperactivity disorder (ADHD), which resulted in "significant behavior issues." They stated the Student's preschool program determined the Student's behavior could only be satisfactorily managed with a 1:1 aide in the classroom. The medical provider stated the Parent had informed them

the School would not offer the same level of support when the Student started kindergarten. They agreed with the Parent that the School "will likely be unable to manage [the Student's] behavior without a one on one aid in [their] classroom."

5. Relevant information from an Intervention Plan from the Outside Agency, dated August 28, 2025, included:
   a. A statement that collaboration between the Board-Certified Behavior Analyst (BCBA) and the Student's providers would be important in ensuring effective treatment goals and strategies were being implemented across environments.
   b. Long-term goals:
      i. Social Interaction goal: "[The Student] will participate in social interactions that are functional, age appropriate, and safe for [the Student] and others in [their] environment for no less than 60 consecutive minutes. The skills will maintain in the absence of maladaptive behavior(s) and/or passive compliance, with accuracy in 80% or more of opportunities across targets when presented randomly and/or in vivo [demonstrating the skills in a real world setting], and across 4 consecutive weeks of data collection opportunities, as measured by therapist collected data and supervisor observation."
      ii. Receptive Communication goal: "[The Student] will identify preferred and non-preferred/neutral items in [their] common surroundings by responding to questions with functional receptive behavior, without prompt. The skills will maintain in the absence of behaviors targeted for reduction and/or passive compliance, with accuracy in 80% or more of opportunities across targets when presented randomly and/or in vivo, and across 4 consecutive weeks of data collection opportunities, as measured by therapist collected data and supervisor observation."
      iii. Expressive Communication goal: "[The Student] will identify preferred and non-preferred/neutral items in [their] surroundings, and advocate to get [their] wants and needs met by using functional expressive behavior skills, without prompt[s]. The skills will maintain in the absence of behaviors targeted for reduction and/or passive compliance, with accuracy in 80% or more of opportunities across targets when presented randomly and/or in vivo, and across 4 consecutive weeks of data collection opportunities, as measured by therapist collected data and supervisor observation."
      iv. Health and Safety goal: "[The Student] will follow simple instructions provided by known adults that promote safe and healthy behaviors. The skills will maintain in the absence of behaviors targeted for reduction and/or passive compliance, with accuracy in 80% or more of opportunities across targets when presented randomly and/or in vivo, and across 4 consecutive weeks of data collection opportunities, as measured by therapist collected data and supervisor observation."

6. The District completed a Parent/Guardian Consent for Individual Evaluation form, dated September 3, 2025, proposing to evaluate the Student for special education. According to this form:

a. The evaluation was proposed because of the Parent's request and would be used to determine the Student's eligibility for special education under the categories of ASD and Other Health Impairment (OHI).
b. The District proposed the following assessments: Observation of Learning Environment, Social/Emotional Assessment, Functional Behavior Analysis, Speech/Language Evaluation, Fine Motor Assessment, Developmental History, File Review, Interviews, Medical Statement, Hearing Screening, Vision Screening, and Language Sample. The list of specific assessment tools to be used included an "Occupational Therapy fine motor screening."
c. The Parent provided consent and signed the form on September 4, 2025.

7. A 504 plan was developed for the Student on September 4, 2025, with an implementation date of September 5, 2025. Relevant information included, "[The Student] requires adult supervision as [the Student] elopes. All students have adult supervision, but it is important that [the Student] have an adult escort to and from the restroom or other periods of transition. During the lunch room an adult will need to be within line of sight and close proximity."

8. A Functional Behavioral Assessment (FBA) for the Student was completed on October 20, 2025. The functional hypothesis explained when the Student was denied access to a preferred item, activity, or adult attention, or when presented with a non-preferred or difficult academic task, they were likely to engage in unsafe physical contact, such as hitting, kicking, biting, and throwing objects. Recommendations included:
   a. A function-based behavior plan.
   b. Instruction in emotional regulation.
   c. A positive reinforcement system.
   d. Adult attention delivered proactively by providing scheduled non-contingent adult attention (brief positive interactions) to reduce attention-seeking through physical contact.

9. The Student's teacher (Kindergarten Teacher) emailed the Principal on October 30, 2025 to share a conversation they had with the Parent that day. The Kindergarten Teacher explained the Parent stated they perceived the Student would have a 1:1 aide starting the following Monday. The Kindergarten Teacher said, "[The Parent] made it very clear that [they] will continue to advocate for [the Student] and that [they] will not stop until [the Student] has a 1:1."

10. Relevant information from a Special Education Evaluation Report, dated November 24, 2025 (2025 Evaluation Report), included:
    a. The Parent initiated the referral due to concerns about the Student's behavioral and developmental needs, noting a history of impulsivity, aggression, and difficulty following classroom routines. Previous information in the educational record indicated the Student had a history of emotional and behavioral dysregulation resulting in physical aggression, elopement, and difficulty maintaining attention and compliance with adult

directions. Those behaviors had required intensive adult support to ensure safety and access to instruction.

11. The District provided prior written notice (PWN), dated December 5, 2025, to the Parent. Relevant information included:
    a. The Student underwent an evaluation and was found to be eligible for special education under the categories of ASD and OHI.
    b. The explanation for the District proposing or refusing to take the action stated the IEP team reviewed the psychologist's report and determined that, based on the data and team reports, the Student qualified for services under the aforementioned categories.
    c. The type of data used as a basis for the decision included "Psych report 2025" and team reports.
    d. A description of other options considered and refused stated the IEP team reviewed the data, discussed if the Student qualified for services, and determined they did qualify.
    e. The decision was proposed to be implemented on December 8, 2025.

12. A Parent/Guardian Consent for Individual Evaluation form, dated December 5, 2025, stated:
    a. The evaluation was proposed by the Parent. The IEP team determined an OT evaluation would benefit the Student.
    b. The evaluation would include a fine motor assessment.
    c. The Parent gave their consent and signed the form on December 5, 2025.

13. On December 8, 2025, School Psychologist 1 emailed the Parent and asked to have the Student's private BCBA contact them prior to the IEP meeting scheduled for the next day. They wanted to obtain a copy of the Student's current treatment plan. On December 8, 2025, the BCBA emailed School Psychologist 1 and included a copy of the Student's most current treatment plan. Through an email exchange during the same day, School Psychologist 1 and the BCBA agreed to a phone call the following morning to discuss the Student's treatment plan.

14. On December 8, 2025, the Parent sent an email to members of the Student's IEP team regarding the upcoming IEP meeting. Attached to the email was a "Parent Agenda" which the email described as, "the FINAL comprehensive list of services and accommodations [the Student] requires to access [their] education safely." Relevant information from the Parent Agenda for the December 9, 2025 IEP meeting included:
    a. The District would "immediately contract with or sign [a] [Memorandum of Understanding]" with the Outside Agency to allow the Student's established registered behavior technician (RBT) to accompany them in the classroom. This service was fully funded by insurance and was "zero cost" to the District. The Outside Agency had the RBT assigned and was ready to start immediately. If the District refused this option, they must "immediately hire and train a dedicated 1:1 [p]araprofessional with equivalent RBT-level certification to ensure safety."
    b. A request for direct OT services. A goal for handwriting (writing name), pencil grasp, and sensory regulation was included. A note stated that if the evaluation was not completed, the Parent requested consultation minutes to be added that day.

c. A request for a "consistent adult" to support transitions. The Parent wrote, "[The Student] must be met by [their] specific 1:1 aide (or [Outside Agency] RBT), not a random staff member."

15. The District convened an IEP meeting for the Student on December 9, 2025. Relevant information from the Student's December 9, 2025 IEP included:
    a. The Student's eligibility categories were ASD and OHI.
    b. Information from the Present Levels of Academic Achievement and Functional Performance (PLAAFP) section included:
        i. The writing category stated the Student's teacher currently supported them by offering opportunities for the Student to trace their name, letters, and words. It said, "The team has concerns regarding [the Student's] fine motor skills and have begun the process to provide Occupational Therapy services to support [the Student's] writing."
        ii. The social and play skills category stated the Student needed additional support with following social rules, with understanding and consistently following classroom expectations and social conventions in group settings, with emotional regulation during social interactions, and with social reciprocity.
        iii. The behavioral and emotional regulation category stated the Student needed support with following classroom rules and routines, with using self-calming strategies when experiencing emotional distress, and with managing impulse control.
        iv. The communications and language skills category stated the Student needed support with understanding social cues and communication flexibility.
        v. The description of how the Student's disability affected their involvement and progress in the general education curriculum said, "[The Student's] autism impacts learning in kindergarten by affecting [the Student's] ability to regulate emotions in the general education classroom. [The Student] needs support with emotional regulation … . In the kindergarten setting … [the Student] needs assistance with impulse control, including waiting for turns and refraining from interrupting others. … Additionally, [the Student] needs support following social rules and expectations in group settings, as [the Student] may understand the rules but find it challenging to consistently apply them during classroom activities, particularly during transitions or unexpected changes in routine."
    c. The Student had four Social/Emotional/Behavioral goals:
        i. Goal 1: "By December 2026, given structured opportunities and practice, when upset at school, [the Student] will independently choose and use a self-calming strategy from a visual coping menu in 4 out of 5 opportunities."
        ii. Goal 2: "By December 2026, during structured group activities with pre-taught visual rules, [the Student] will follow 2-3 key social rules for 10 minutes in 3/5 opportunities across 2 settings, and explain or define the rules when prompted."
        iii. Goal 3: "By December 2026, given structured opportunities and practice, [the Student] will wait up to 5 minutes after making a request (activity, item, attention) in 4/5 opportunities with no more than one prompt."

iv. Goal 4: "By December 2026, given structured opportunities and practice, [the Student] will participate in non-preferred activities and follow non-preferred directions for up to 5 minutes with no more than one prompt in 4/5 opportunities."

d. The Student had one Social/Pragmatic goal:
   i. Goal 1: "By December 2026, given structured opportunities and practice, [the Student] will respond to a peer (another student) or staff member (teacher, aide, specialist) and maintain 2-3 exchanges on the other person's topic without shifting topics in 4/5 opportunities."
e. The Student would receive specially designed instruction (SDI) for behavior/social skills for 150 minutes per week, provided by the case manager in the special education setting.
f. The Student would receive Speech/Language Therapy for 90 minutes per month.
g. Among other accommodations, the IEP included an accommodation for, "Additional adult support during transitions, whole group, small group, recess, lunch and other meals, and specials" for 360 minutes per day in the classroom.

16. Relevant information from IEP meeting notes, dated December 9, 2025, included:
    a. The meeting participants included the Case Manager, the Kindergarten Teacher, the Parent, School Psychologist 1, the Advocate, and the Assistant Principal.
    b. The IEP team reviewed the Student's present academic levels and areas of need. The Student was currently performing within the range of their peers in reading and math, but their ability to write could hinder their work production.
    c. The IEP team reviewed proposed goals and objectives and proposed social/emotional/ behavioral goals. It was stated the goals were generated based on the Student's current ABA therapeutic plan from "[the Outside Agency]." It was noted School Psychologist 1 and the BCBA spoke and collaborated on goals to present at the December 9, 2025 meeting. The notes stated the IEP team would continue to collaborate so the in-home therapist could work on the same strategies and goals at home with the Student and the Parent. The IEP team reached a consensus on the proposed goals and service minutes.
    d. The Parent signed their consent for the District to provide special education services to the Student.

17. Relevant information from PWN, dated December 9, 2025, included:
    a. The IEP team considered the Parent's request for applied behavior analysis (ABA) therapy in the school setting and declined.
    b. The explanation for the District proposing or refusing to take the action stated the IEP team believed their collaboration with the current therapist and alignment with the therapeutic plan would ensure the Student received the services they needed, focused on their specific areas of need.
    c. The description of the type of data used as a basis for the action included the current IEP, parent input, ABA reports, and collaboration with the current therapist.
    d. A description of other options considered and refused stated the IEP team considered providing additional service time or different goals, but agreed the goals currently proposed and service time were reasonably calculated for educational benefit.
    e. The Student was recently found eligible for services as a Student with ASD and OHI.

f. The decision was proposed to be implemented on December 11, 2025.

18. On December 10, 2025, School Psychologist 1 emailed the Student's IEP goals to the BCBA and stated they were agreed to at the December 9, 2025 meeting. The BCBA replied and acknowledged receipt of the IEP goals.

19. The Parent emailed the Special Education Director and the IEP team on December 10, 2025 and stated the District denied the contract with the Outside Agency due to an error in believing the service was remote. The Parent clarified the staff member they were requesting for the classroom was an RBT who provided in-person support. The Parent stated the District believed educational supports such as OT, speech, and special education would replace the need for 1:1 ABA support, which the Parent disagreed with. The Parent indicated speech and OT services did not manage safety as an ABA therapist would. They stated the current classroom aides were not trained to de-escalate situations. The Parent requested a dedicated 1:1 aide, either contracted through the Outside Agency or a District-hired equivalent, for the Student's full school day. The Parent asked for PWN if the District continued to deny a 1:1 aide.

    a. The Special Education Director replied that day and explained the IEP team had considered most of the aforementioned requests at the meeting the previous night and stated the Parent would receive PWN. They explained that the IEP team believed they had reached a consensus with regard to the additional adult assistance on the Student's IEP and their reasoning for continuing the assistance at the same level as written on the Student's 504 plan.
    b. The Parent replied on December 11, 2025 and stated there was no consensus regarding the level of adult assistance for the Student. The Parent wrote they "explicitly stated" the level of assistance in the Student's 504 plan during peak times and transitions was insufficient because it failed under the previous plan. The Parent stated they disagreed with the decision to limit support to "peak times" and maintained their request for a full day 1:1 aide.

20. Relevant information from PWN, dated December 10, 2025, included:
    a. The IEP team met on December 9, 2025 to draft the Student's IEP and agreed to continue providing additional adult assistance at the same level as had been provided through the Student's 504 plan. The IEP team received a request from the Parent the following day requesting a 1:1 aide for the Student's full school day. As stated at the IEP meeting, the IEP team did not believe the Student needed additional adult assistance at all times while at school.
    b. The explanation for the District proposing or refusing to take the action included, "Behavioral data, parent and teacher indicate [the Student's] classroom behavior has improved and we anticipate further improvement with the addition of specially designed instruction."
    c. The description of the type of data used as a basis for the action included a psycho-educational evaluation, the current IEP, and parent and teacher input.

d. A description of other options considered and refused stated, “The team considered the times of day that [the Student] is most likely to engage in unsafe behavior based on data collected and ensured additional adult assistance was provided during these times.”
e. The Student was recently found eligible to receive special education services.
f. The decision was proposed to be implemented on December 11, 2025.

21. Relevant information in a letter to the “IEP Coordinator” from a Clinical Nurse Specialist at the Student’s “Mental Health and Pediatric Psychiatry” provider, dated January 14, 2026, included:
    a. The Parent had shared with the Clinical Nurse Specialist the Student had “persistent and significant challenges within the school environment,” which included impulsive aggression toward adult staff, elopement behaviors, dysregulation during transitions, and distress when asked to complete tasks which exceeded the Student’s current fine motor abilities.
    b. The Clinical Nurse Specialist stated the Student had difficulty when asked to perform tasks involving writing or fine motor output, as the Student was unable to hold a pencil or write their name. They indicated those expectations frequently triggered “emotional and behavioral outbursts.”
    c. IEP recommendations were made:
        i. Occupational therapy (OT) services to address fine motor delays, sensory processing needs, self-regulation skills, and adaptive classroom participation.
        ii. “Consistent 1:1 Support or Dedicated Behavioral Support During Peak Times.” It was written the Student demonstrated improved regulation with consistent staffing and that rotating or unfamiliar staff significantly increased dysregulation. The letter stated a consistent support person during transitions, academic demands, and high-stimulation periods was medically and “educationally indicated.”

22. The District completed an OT evaluation of the Student dated January 27, 2026. Relevant information in the evaluation included:
    a. The Parent requested a referral for special education services due to the Student’s behavioral needs and an outside evaluation.
    b. The assessments administered were a file/record review, a parent/teacher interview, a classroom and functional observation, and the Short Sensory Profile 2.
    c. The Student was observed on January 27, 2026 for 30 minutes during a transition from the resource room to their general education classroom for “math table top work alongside [their] peers and staff.” The Student followed instructions such as “hold your writing utensil up” when repeated by staff after initially stated by the teacher. The Student brought a water bottle to their mouth and drank from it independently with no spillage. The Student used their right hand in a loose digital grasp to hold their pencil but primarily used a “fisted palmar supinate” grasp with their right hand when writing. The Student gripped their pencil at mid-shaft rather than closer to the writing end. They used their left hand to stabilize the paper. The Student fluctuated between using a loose digital grasp and a fisted grasp to manipulate their pencil with their right hand during observation.

d. During an interview, the Parent discussed concerns about the Student's elopement, transitions, self-regulation, and fine motor tasks. Interviews with the Student's teacher and school support staff noted handwriting was a non-preferred fine motor activity and often triggered emotional dysregulation.
e. The results of the assessment indicated the Student's sensory processing might interfere with their ability to participate in school activities.
f. The summary stated the Student demonstrated the ability to follow adult directions and transition to class activities when they were regulated and motivated. It was noted the Student benefited from consistent reminders and close supervision to sustain attention towards completing classroom tasks. At the time of the assessment, the Student's grasp was not sustainable for the stamina needed as academics would progress. It was written that elopement, which was decreasing in frequency per recent reports, was a concern of the Parent. OT consultation services were recommended to support the Student's fine motor performance, self-regulation, and sensory needs as it related to school-based occupations, pending discussion with the Parent and IEP team.
g. Possible suggestions included the Student using theraputty to support manual strength, and grip aids for their pencil, which could also support their fine motor performance and pre-writing readiness.

23. On January 28, 2026, the OT emailed the Student's completed OT evaluation to the Parent and the Case Manager.

24. An IEP amendment, dated March 6, 2026, included the following relevant changes to the December 9, 2025 IEP:
    a. The present levels section contained an OT report, which stated, "Handwriting is a non-preferred activity and often stimulates bouts of dysregulation per interviews with teachers and staff. [The Student's] primary grasp at this time is not sustainable for the stamina needed as academics progress. … Elopement, though decreasing frequency per recent reports, is also an area of concern expressed by [the Parent]. Occupational therapy consultation services are recommended to support [the Student's] fine motor performance, self[-]regulation, and sensory needs as it relates to school-based occupations pending discussion with parents and the IEP team. Suggested supports for the IEP team to consider included "Forms of alternative seating, fidgets, or sensory breaks for movement can also provide the sensory input [the Student] may be seeking. … Theraputty to support manual strength and grip aids for [the Student's] pencil may also support [their] fine motor performance and pre-writing readiness."
    b. New accommodations included a positive reinforcement system, a pencil grip, and access to fidgets in the classroom.
    c. A new item in the supports for school personnel section included:
        i. OT consultation for 120 minutes per year, from March 9, 2026 through December 8, 2026. The District OT was listed as the provider.
        ii. In the interview with the Special Education Director, they confirmed the aforementioned 120 minutes was a typo, and the team had agreed to 150 minutes per year of OT consultation services.

25. Relevant information from IEP meeting notes, dated March 6, included:
    a. The meeting participants included the Parent, the Advocate, the Special Education Director, the Case Manager, and the Principal.
    b. The IEP team reviewed the OT report, added consultation services, and considered accommodations recommended by the occupational therapist.
    c. Accommodations added included a pencil grip and access to fidgets.
    d. The Parent requested a discussion regarding adult assistance. It was noted the Parent wanted the same adult present with the Student all day and did not believe the Student had support throughout the day.

26. Relevant information from PWN, dated March 6, 2026, included:
    a. The IEP team met that day to review the Student's OT evaluation and determine if services were warranted. The IEP team added 150 minutes of consultation services and accommodations which included access to fidgets and a pencil grip.
    b. The explanation for the District proposing or refusing to take the action included that the IEP team believed the OT assessment was valid and the Student needed the consultation of an OT.
    c. The description of the type of data used as a basis for the action included an OT evaluation, and teacher and parent input.
    d. A description of other options considered and refused stated, "The team considered not providing OT consultation services but decided this was not in [the Student's] best interest."
    e. The decision was proposed to be implemented on March 7, 2026.

27. Relevant information from a second March 6, 2026 PWN included:
    a. The IEP team met on March 6, 2026 to discuss the Student's OT report. At that time, the IEP team clarified that in providing additional adult assistance for all of the activities listed on the Student's December 9, 2025 IEP, an adult was essentially with the Student during all of their school activities.
    b. The explanation for the District's proposed or refused action included, "The school met on 12/9/2[5] and determined the activities in which [the Student] needed an additional adult. These activities are listed on the 12/9 IEP. Although at the time, it did not appear to result in an additional adult 'all day,' in practice this is what it is."
    c. The description of the type of data used as a basis for the action included parent and teacher input, and the classroom schedule.
    d. A description of other options considered and refused stated, "The team could have considered reducing the time an additional adult is available by removing an activity (for example, 'specials') but does not believe this is warranted at this time."
    e. It was written that this PWN document did not indicate a change in service level, but a clarification of services already agreed upon.
    f. The decision was proposed to be implemented on March 6, 2026.

28. An undated document showed the Student's daily schedule from 7:45 a.m. through 2:55 p.m. Staff coverage showed five different staff members were present with the Student throughout the day. One of the staff members was the Case Manager. Staff were assigned

to the Student on a rotating basis such that three staff members were with the Student three different times each throughout the day, and two staff members were with the Student four times each throughout the day.

29. An undated behavior incident document, ranging from September 11, 2025 through November 4, 2025, showed the Student was the "offender" in 17 major incidents and five minor incidents. Most of the major incidents were coded as "physical contact: aggression" and one was listed as "inappropriate display of affection." The minor incidents were coded as "defiance" and "property misuse."

30. The Student's profile showed they were enrolled for 112 days between September 2025 and March 2026, were present for 60 days, and had 52 daily absences. The Student was present 78% of the time in September 2025, 40% in October 2025, 67% in November 2025, 83% in December 2025, 50% in January 2026, 41% in February 2026, and 17% in March 2026 (prior to March 3, 2026).

31. Relevant information from the Student's report card for the first semester of the 2025-26 school year included:
    a. The Student's attendance percentage was 60.13%, which was described as "severely chronically absent," as characterized by Oregon Department of Education Standards.
    b. The Academic Performance Key noted a "2" was "developing: is progressing towards grade level standards and expectations with support," a "3" was "proficient: consistently meets grade level standards and expectations independently," and an "X" was "standard was not assessed during this reporting period." The Characteristics Performance Key indicated a "D" was "developing" and an "S" was "satisfactory."
    c. In Foundational Skills (phonics, word recognition, and fluency), the Student had a "2" in all four subsections.
    d. For Literature Text and Informational Text, the Student had one "2" and three "X's" in each category.
    e. In Science/Health, the Student had two "3's" and one "X."
    f. For Physical Education, the Student had four "3's" and one "2."
    g. In Writing, the Student had two "2's" and one "X."
    h. In Language and Speaking and Listening, the Student had two "2's" in each category.
    i. In Mathematics, the Student had three "2's," one "X" and one "3."
    j. The Student had one "2" and one "X" in Social Science.
    k. For Music Education, the Student had three "3's."
    l. The Student had an "S" in Music Education Characteristics and a "D" in Physical Education Characteristics. The Student had five "D's" and one "S" for their Characteristics of a Successful Learner.

32. An IEP data tracking sheet for the Student indicated:
    a. For goal #3: "By December 2026, given structured opportunities and practice, [the Student] will wait up to 5 minutes after making a request (activity, item, attention) in 4/5 opportunities with no more than one prompt."

b. The instructional sequence directed a staff person to show the Student 2-3 toys or play items they knew the Student would want to play with. They would ask the Student which one they wanted to play with and then state they were going to play "the waiting game," and "waiting" meant the Student left the toy on the table until the staff person gave it to them. A timer would then start.
c. The purpose of the data tracking sheet was to record the amount of time that elapsed before the Student grabbed the item or walked away. If they did, the staff person would stop the timer and say, "Oh! We made it ____ seconds. Let's try one more time. Can you wait longer next time? Let's see!"
d. Two dates, February 1, [2026] and March 3, [2026] were recorded. The amount of time for both days was five minutes. The first day recorded two prompts and the second day showed six prompts.

33. Another IEP data tracking sheet indicated:
    a. For goal #2: "By December 2026, during structured group activities with pre-taught visual rules (raise hand to speak and stay in spot), [the Student] will follow 2-3 key social rules for 10 minutes in 3/5 opportunities across 2 settings, and explain or define the rules when prompted."
    b. The instructional sequence explained a staff person would show the "raise hand to speak" visual and say, "This rule is raise your hand to talk. What's this rule?" Then, show the "stay in spot" visual and say, "This rule is to stay in your spot. What is this rule?" Third, they would place both cards in front of the Student and say, "Point to _____." Fourth, they would show alternate cards until the Student was 100% accurate.
    c. On January 27, [2026], the Student had 4/6 correct responses each for stay in spot and to raise their hand. On January 29, [2026], the Student achieved 4/5 correct responses for stay in spot and 1/3 correct responses for raise hand. On January 30, [2026], the Student achieved 2/3 correct responses for stay in spot and 0/2 correct responses for raise hand.

34. The Parent filed the Complaint on March 3, 2026.

35. In an interview with the Complaint Investigator, the Parent and the Advocate stated the Student's 1:1 support had not been sufficient. They explained when they enrolled the Student, the School told the Parent they "could cover all the issues [the Student] had," but the Parent perceived this did not occur. The Parent explained the Student's autism impacted their ability to handle their emotions, which resulted in the Student getting upset easily, lashing out, hitting, and running.

36. The Parent stated the Special Education Director and the IEP team said they never read the Student's OT evaluation reports. The Parent also shared their request for an RBT was ignored. The Parent stated it had been "proven" the Student required an RBT. The Parent stated that because of the Student's thought process, they needed someone to be with the Student constantly to help teach the Student how to deal with their emotions.

37. The Parent indicated the preschool brought in the Outside Agency to help the Student, and the preschool told the Parent the Student's autism was so severe that they required an RBT. The Parent stated the use of a RBT was paid for by insurance.

38. The Advocate expressed confusion about the reasoning behind the IEP team declining the Parent's request for ABA therapy during the December 9, 2025 IEP meeting. The Advocate and the Parent stated other reports and experts indicated the Student required ABA therapy and they did not understand why the School did not authorize it.

39. The Parent perceived everything was fine for the first two months of the 2025-26 school year, but they later learned the Student had been in the office and staff were having to chase the Student "all the time." The Advocate also believed the situation was fine during the Student's first two months at the School because there was an extra person, an aide, for the kindergarten class. The Advocate stated they learned there was an aide in the kindergarten classroom for the first time at the March 6, 2026 IEP meeting. They explained during the meeting, the Principal stated the Student had 1:1 support and "had one all day." The Advocate explained this was confusing because they perceived the IEP team previously stated they did not believe 1:1 support was necessary and the Student would only receive it during certain times. They stated it was at this time they and the Parent learned the Student was receiving 1:1 support services, but it was unclear if the Student was receiving that help all of the time. (The Parent stated they were the Student's 1:1 support for a couple of days at the start of the 2025-26 school year.

40. The Parent stated they spoke with the Principal and the Case Manager on February 13, 2026 about 1:1 services for the Student. They indicated no paperwork was completed regarding their request at that time, and paperwork was not generated until the March 6, 2026 IEP meeting.

41. The Parent stated they asked the IEP team to change the Student's 1:1 support and believed that was the purpose of the March 6, 2026 IEP meeting. The Advocate stated a member of the IEP team indicated during the March 6, 2026 IEP meeting they had not read the OT reports, but it was determined at that meeting the Student would receive OT services. The Parent indicated around March 2026, the Student was having anger issues, and the Parent still wanted the Student to have an RBT.

42. During the interview, the Parent and the Advocate referenced the March 6, 2026 PWN which stated the Student, in practice, had an adult with them all day due to how the December 9, 2025 IEP was written. The Advocate stated after they learned the Student was receiving 1:1 support services all day, they told the Special Education Director they were unaware of it because they had no documentation.

43. The Parent shared they attended one of the Student's classes to see what their OT and writing skills were like and observed the Student could not hold the pen correctly. They stated an unidentified staff member watched the Student and said the Student needed to be tested and would likely qualify for OT services. The Parent believed the OT testing was complete at

that point but learned from the Special Education Director that the Parent had to provide consent for it.

44. The Advocate stated they had asked the Case Manager how many people worked with the Student in a week, and the Case Manager did not know.

45. The Parent indicated they did not know about the Student's elopement issues for the first two months of the 2025-26 school year, and believed the Student was being isolated. The Advocate and the Parent explained the Student started eloping as soon as they started at the School and their behavior had regressed. The Advocate believed the Student had started to regress around the first week of school during the 2025-26 school year. The Parent added that without 1:1 adult support in the classroom, nobody was watching or talking to the Student.

46. The Parent stated the Student was crying in their sleep and told the Parent it was because of school. The Parent and the Advocate shared the Student was in a smaller class at the preschool, and at the School, "All these kids are everywhere and nobody's sitting down … and [the Student's] face is just wide and is pale and [the Student] just doesn't know what to do."

47. The Advocate said, "... it seems like they've slowly been giving [the Student] what we've asked or not even what we've asked, what the doctor, the psychiatrist … everybody has said and recommended, they've slowly been giving it to us, but we've had to go through this … ."

48. In an interview with the Complaint Investigator, the Special Education Director explained that during the December 9, 2025 IEP meeting, the team discussed the Student's pattern of behavior throughout the day and identified the activities for which the Student needed additional adult assistance, which resulted in what was written in the accommodation section of the IEP. They said, "... our IEP system asks us to determine the amount of minutes … so we identified 360 minutes, and yet after the fact, it became apparent that once you identify all of those activities, it is essentially the full day. … although the IEP was in effect as written … we were providing assistance during all of those activities, which meant that there was an additional adult available to [the Student] all day long … ." The Special Education Director indicated PWN stated the adult assistance was not for the Student's entire day because they had to enter an amount of time for the accommodation and chose to write in 360 minutes. They stated this created confusion when the IEP team discovered during the March 6, 2026 IEP meeting that what was happening in practice versus what was on the PWN was confusing for the Parent. The Special Education Director stated the normal length of a kindergartener's day was from 7:00 a.m. to 3:00 p.m.

49. The Special Education Director stated the Student had a "unique space" in the kindergarten classroom and assistants were in the area with the Student, supporting them during the time they were assigned to the classroom. They explained the assistants "specifically prompt [the Student] to engage in self-calming strategies, and they're taking data when [the Student] gets escalated to say whether [the Student] is actually using a self-calming strategy. And those self-calming strategies are on a laminated visual on [the Student's] desk." The Special

Education Director did not recall any issues and stated the Student had an adult with them at all times from December 9, 2025 forward.

50. The Special Education Director described PWNs as "extremely timely" and they did not recall any issues with the Parent receiving PWNs, which were sent electronically. The Special Education Director recalled a time when the Parent was confused after an IEP meeting because the Parent asked to revoke the Student's services. The Special Education Director called the Parent to get clarification and learned the Parent disagreed with parts of the IEP and how it was worded. They indicated the confusion was regarding the Student receiving "adult assistance," but not an "assistant," as in one person. They stated they offered to meet with the Parent about the issue.

51. The Special Education Director indicated the Parent had several concerns at the evaluation planning meeting. They explained that the IEP team heard the Parent's concerns about the Student eloping, the Student not being able to hold a pencil, and how the Student's ASD diagnosis possibly related to sensory needs. They stated this indicated to the IEP team to look into the issue further by starting with a screening, because the team had no evidence of the Student's ability to write or hold a pencil other than the sensory information provided by the children's hospital.

52. The Special Education Director stated the Parent had shared early on about the ABA therapy the preschool provided and how the Student benefited from it. They discussed with the Parent how the Student could have ABA therapy after school, but the Parent claimed it was a "hardship" on them to figure out how to schedule it after school. The Special Education Director explained they had also stated how the School could not allow outside mental health clinicians in their buildings because it was a violation of their policy. The Special Education Director indicated the IEP team agreed the Student could benefit from the techniques and methodologies used in ABA therapy. They also stated the IEP team thought it was beneficial to collaborate with the BCBA on the Student's goals, which occurred. The Special Education Director stated School Psychologist 1 spoke with the BCBA after receiving the Student's treatment plan and wrote goals aligned with the goals in the treatment plan, and perceived they were almost identical. The Special Education Director explained that the IEP team used similar methodology in terms of using visuals and discrete trials with the Student. The Special Education Director did not view the team's decision as a rejection. They perceived it as the Student being able to work on similar goals in the School setting with "highly qualified people" while also working on goals at home.

53. The Special Education Director recalled the Parent stating several times in meetings that the School needed to work with the Outside Agency, which they stated they did. They explained that School Psychologist 1 used the ABA treatment plan when they helped develop the Student's IEP.

54. The Special Education Director explained part of the March 6, 2026 IEP meeting was focused on the Parent's concern regarding the way services were stated in the IEP. They indicated they told the Parent, from the School's perspective, they had one item on their agenda that

day, which was to ensure the Parent understood the OT report they received and discuss potentially adding OT services for the Student. They stated the Parent agreed to that.

55. The Special Education Director shared the Parent stated during the March 6, 2026 meeting that they felt the Student was not safe at the School, which led to a discussion about the School only providing the Student with adult assistance during peak times. The Special Education Director said they did not know where "peak times" emanated from, because the team did not have it noted, it was not on the IEP, and staff did not recall using it. They indicated there was a letter from a physician which discussed the School only providing an assistant during peak times. The Special Education Director stated they were confused at the March 6, 2026 meeting because they were unsure whether the Parent was concerned the Student did not have the same assistant all day or that the Student did not have an adult available to them all day. The Special Education Director then showed the Student's schedule to the Parent which showed there was someone assigned to the Student, in addition to their teacher, throughout the day. They indicated the Parent stated they did not want to see the schedule, they did not trust the Special Education Director, and they wanted to be in the classroom to see an assistant was being provided.

56. Regarding the March 6, 2026 meeting, the Special Education Director said, "... [the Advocate] kept interjecting, 'You said [the Student] wouldn't have one all day.' And I was like, '[The Advocate], you're right. You got a prior written notice that was probably confusing.'" The Special Education Director explained a previous PWN was confusing because it stated several activities and then it stated the adult assistance was not for the full day. The Special Education Director understood the Parent's confusion and explained, in practice, the Student ended up receiving adult assistance for the full day. The Special Education Director stated they apologized to the Parent and the Advocate for the confusion, and stated the Student had adult assistance throughout their entire day.

57. The Special Education Director believed the Student was assisted by four different adults on a typical day. The Special Education Director did not observe any negative impacts on the Student from having different adult assistants with them throughout the day. They stated the Student's teacher did not note any negative impacts and there was none in the data. They indicated the Student was making steady progress towards reducing their aggression and elopement behaviors.

58. The Special Education Director explained the Student was "easily triggered," which was why the Student had an assistant with them during the day. They indicated the Student was often triggered when they were told "no," which could happen at any point during the day.

59. In an interview with the Complaint Investigator, when asked why the IEP team determined the Student did not need a 1:1 aide for their full school day, the Case Manager explained there was a difference in how the IEP was written and what was actually happening. They stated the IEP listed every part of the day in which the Student needed a 1:1 aide, which ended up being the Student's entire day.

60. When asked what type of adult assistance the Student received, the Case Manager stated the Student had a support person with them for the entire day. They explained when the Student was in class, the support person sat at the same table as the Student and gave them reminders if they were experiencing any emotional distress or if the Student was off task. They did not recall any issues with the Student being provided adult assistance.

61. When asked about the December 9, 2025 IEP present levels section describing the team starting the process of providing OT services to the Student, the Case Manager said, "... the wording of that process was that it was determined that [the Student] needed an evaluation for occupational therapy. So, my understanding is … the intention was to meet as soon as the evaluation was done, but those meetings continued to get rescheduled due to parent availability, outside provider availability … ." The Case Manager explained the need for an OT evaluation was triggered due to reports of the Student's sensory needs from the Parent and the Student's teacher, as well as some potential handwriting issues. They indicated the IEP team reviewed the evaluation and decided the Student would benefit from OT services.

62. The Case Manager stated the IEP team declined the Parent's request for ABA therapy in the school setting primarily due to the safety and privacy rights of the other students in the building.

63. The Case Manager stated the Student received 1:1 assistance from four different adults during a typical day. They said, "I think [the Student] made a lot of progress no matter who [they] [were] with. … I saw people working really hard with [the Student]."

64. In an interview with the Complaint Investigator, School Psychologist 1 stated they spoke with the BCBA about the Student's treatment plan before the December 9, 2025 IEP meeting, in part because School Psychologist 1 had questions about an assessment that was used. School Psychologist 1 explained they asked for clarification on the assessment and discussed goal areas. School Psychologist 1 indicated some of the goal areas they discussed with the BCBA were following directions, how long the Student could wait for reinforcement, and possible response strategies.

65. School Psychologist 1 stated they and the BCBA were "on the same page" with the Student's basic skills, getting them ready to be a student, how to be a learner, how to follow directions, and what types of visuals would be helpful for the Student. School Psychologist 1 described the conversation as collaborative.

66. School Psychologist 1 stated they used classroom data, and the Student's FBA, Behavior Support Plan (BSP), and treatment plan as a framework when they crafted the Student's IEP goals. School Psychologist 1 perceived their goals and the BCBA's goals for the Student were aligned. They described the main difference as the IEP being more "teacher-friendly" in its language, but the content was the same.

67. In an interview with the Complaint Investigator, the Kindergarten Teacher explained, when the Student was at school, they spent the majority of the day with the Student. They indicated

it was their responsibility to teach the Student grade level instruction and support them in the areas in which they needed support.

68. The Kindergarten Teacher explained they interacted with the Student inside and outside of the classroom, on the playground, during small group and whole group instruction, during conversations, and helping the Student with schoolwork.

69. According to the Kindergarten Teacher, after the Student's December 9, 2025 IEP was in place, the Student had four different adult assistants who worked with them. They indicated the assistants sat beside the Student and helped them with their work, helped the Student regulate their emotions, reminded the Student to use their calming strategies, helped the Student stay safe in the classroom, and reminded the Student to keep their hands to themself.

70. The Kindergarten Teacher stated the assistants were with the Student for about an hour at a time, but it depended on what time the Student arrived at School. They indicated the Student had one assistant for about an hour, then a new assistant, and then later in the day the same assistant would return. They stated it was the "same every day" but the person would change based on the Student's schedule. The Kindergarten Teacher shared it was the same four assistants every day.

71. The Kindergarten Teacher did not recall any issues with the adult assistance the Student was provided. They recalled the Parent was upset because there was not one specific person supporting the Student. They stated the assistants were "always reliable," showed up, and supported the Student.

72. The Kindergarten Teacher explained the Student "favored" certain assistants and was "more inclined" to listen to two of the assistants over the other two. The Kindergarten Teacher observed the Student was "being safer" when they were with the assistants they favored and more inclined to attempt their work. They said, "It depended which two assistants were with [the Student], but [they] [were] pretty happy[,] [the Student] had a good relationship with them." The Kindergarten Teacher perceived the Student favored the two assistants because they saw them more often. They indicated this happened because when the Student arrived at School late, they did not get the same connection with the assistants who were with them in the morning. They said, "... [the Student] recognized them and was able to relate to them a little bit more."

73. The Kindergarten Teacher described the writing supports the Student received prior to March 2026. The Kindergarten Teacher explained they would write with a highlighter and have the Student trace over it. They stated the Student had a fidget pencil holder, was provided with larger pencils, and allowed to use markers. They stated the Student had the option to write on a whiteboard because it was "easier" than using a pencil on paper.

74. After March 2026, the Kindergarten Teacher stated the Student continued to have access to a pencil grip and was given more pencils which were triangular and were easier to grip. They

also continued to use a highlighter with the Student. The Kindergarten Teacher indicated that, with the supports, the Student was better able to grip the larger pencil which improved their writing. They perceived the Student felt more successful when using the whiteboard to write. The Kindergarten Teacher observed improvement with the Student's handwriting once they started picking up their utensil and trying to write.

75. The Kindergarten Teacher did not perceive the Student's IEP was missing anything and the supports the Student had were working.

76. The Kindergarten Teacher explained the Student would "get very frustrated really easily" and "would go [*sic*] a lot to harm others." They indicated there was "a lot of eloping," which made it hard for the Student to learn during class because they would want to "avoid or escape" any undesired activity or task. They stated the Student would yell if they were upset, and they observed the Student being "unsafe" towards others and themself The Kindergarten Teacher described "unsafe behavior" as the Student "... going up behind a student and trying to scratch their face and not letting go. It would look like throwing [their] supplies at people, trying to take a pencil and stab [themself] or someone else, throwing chairs, running out of the building. A lot of the things would just be [the Student] going to whoever was nearest [them], student or staff, and finding a way to put hands on, occasionally spitting." The Kindergarten Teacher perceived the Student as "very capable" and believed consistency in their attendance would help the Student.

IV. DISCUSSION

When IEPs Must Be In Effect

The Complaint alleged 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 provide the Student with "required 1:1 support, using a shared classroom aid instead."

At the beginning of each school year, a school district must have in effect an IEP for each child with a disability within the district's jurisdiction. School districts must provide special education and related services to a child with a disability in accordance with an IEP. A school district must conduct a meeting to develop an initial IEP within 30 calendar days of a determination that the child needs special education. As soon as possible, following development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP. Each school district must ensure that the IEP is accessible to each regular education teacher, special education teacher, related service provider and other service provider who is responsible for its implementation; and inform each teacher and provider of his or her specific responsibilities for implementing the child's IEP and the specific accommodations,

modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.[3]

A district violates the IDEA when it materially fails to implement an IEP.[4] "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."[5] 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."[6]

In this case, the evidence showed there was confusion surrounding the adult assistance the Student was receiving, which was corroborated by the Parent, the Advocate, the Special Education Director, and the Case Manager. The December 9, 2025 IEP stated the Student would be provided with additional adult support during "transitions, whole group, small group, recess, lunch and other meals, and specials," for 360 minutes per day. In their interview, the Special Education Director indicated the IEP team selected 360 minutes as the amount of time they anticipated the Student would need support. They discovered during the March 6, 2026 IEP meeting that what was happening in practice versus what was on an earlier PWN confused the Parent, which the Parent and the Advocate corroborated. A second PWN from March 6, 2026 clarified that in providing additional adult assistance for all of the activities listed on the Student's December 9, 2025 IEP, an adult was essentially with the Student during all of their school activities. Even though it did not look like it on the IEP, in practice, an adult was with the Student throughout the school day. This was corroborated by the Special Education Director and the Case Manager.

The evidence detailed how and when the Student received adult assistance, per their IEP. Additionally, the Special Education Director, the Case Manager, and the Kindergarten Teacher described how the adult assistants supported the Student. The Kindergarten Teacher and the Case Manager described the rotation of adult assistants throughout the Student's day, and they both observed the assistants working with the Student. The Kindergarten Teacher recalled the Parent was upset because there was not one specific person supporting the Student, but stated the assistants were "always reliable," showed up, and supported the Student. The Student's IEP, however, required "Additional Adult Support" and not one-to-one assistance by a single staff member.

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[3] OAR 581-015-2220; 34 CFR § 300.323

[4] *Van Duyn v. Baker Sch. Dist. 5J*, 502 F3d 811 (9th Cir. 2007) ("Van Duyn")

[5] *Id.*

[6] *Id.*

In this case, there was documented confusion among the parties about the type and amount of adult assistance the Student was receiving. However, the evidence demonstrated that, despite this confusion, the District implemented the Student's IEP and provided them with adult assistance during all of the activities indicated in the IEP.

The Department does not substantiate this allegation.

Prior Written Notice

The Complaint alleged the District violated the IDEA when it failed to provide the Parent with PWN regarding an increase in 1:1 services.

A school district must provide prior written notice to the parents of a child, within a reasonable time, before the school district proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a FAPE to the child; or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a FAPE to the child. The notice must include a description of the action proposed or refused by the district, an explanation of why the district proposes or refuses to take the action, a description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action, a statement that the parents of a child with a disability have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained, sources for parents to contact to obtain assistance in understanding their procedural safeguards, a description of other options that the IEP team considered and the reasons why those options were rejected, and a description of other factors that are relevant to the district's proposal or refusal.[7]

The District provided the Parent with PWN on December 5, 2025, December 9, 2025, December 10, 2025, and two on March 6, 2026. Due to confusion surrounding the type of adult assistance the Student was receiving, the Parent believed they should have received PWN documenting an increase in 1:1 services. As explained above, however, there was not an increase in services. The evidence showed the March 6, 2026 PWN clarified the provision of adult assistance to the Student, but the service remained the same.

The Department does not substantiate this allegation.

Content of IEP

The Complaint alleged the District violated the IDEA when it failed to develop an IEP that included services and supports that are necessary to address the Student's unique educational needs. Specifically, the IEP does not include OT services and does not include 1:1 ABA services by the Parent's preferred provider.

[7] OAR 581-015-2310; 34 CFR § 300.503

The IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. Also required, is a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum, and meet each of the child's other educational needs that result from the child's disability. An IEP must also include a description of how the child's progress toward meeting the annual goals will be measured, and when periodic reports on the progress the child is making toward meeting the annual goals will be provided. Further, a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child are required. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in activities must be included, as well as a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments; and the projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications.[8]

According to the evidence, the BCBA and School Psychologist 1 shared information and worked together as School Psychologist 1 developed the Student's IEP goals. School Psychologist 1 described their conversations with the BCBA as being "on the same page" regarding the Student's plan. School Psychologist 1 stated they used classroom data, and the Student's FBA, BSP, and treatment plan as a framework for crafting the Student's IEP goals. The Special Education Director and School Psychologist 1 perceived the Student's IEP goals were aligned with those from the BCBA. A December 9, 2025 Prior Notice and Consent for Initial Provision of Special Education Services stated the services in the IEP were based on several data points, including a report from the Outside Agency. IEP meeting notes, dated December 9, 2025, stated the goals were generated based on the Student's current ABA therapeutic plan from "[the Outside Agency]." In their interview, the Advocate acknowledged the District was providing what they asked for, but it was happening "slowly."

Applied Behavior Analysis Services

The Student's December 9, 2025 IEP addressed that the Student needed additional support in multiple areas. PWN from December 9, 2025 stated the IEP team considered the Parent's request for ABA therapy in the school setting and declined it because they believed their collaboration with the current therapist and alignment with the therapeutic plan would ensure the Student received the services they needed. The evidence provided did not establish that the Student required the use of ABA as a specific methodology to make progress on their goals. The Special Education Director stated they discussed with the Parent how the Student could have ABA therapy after school, but the Parent claimed it was a "hardship" on them. The Special Education Director also explained how the School could not allow private mental health clinicians in their buildings because it was a violation of their policy, which the Case Manager confirmed. No

[8] OAR 581-015-2200; 34 CFR § 300.320

evidence was provided to suggest that the District staff who delivered SDI and other special education services and supports to the Student were not qualified.

Occupational Therapy

The evidence showed a timeline of events regarding the Student's writing challenges and OT evaluation steps. The District's initial evaluation of the Student included a "fine motor screening." The results of that screening warranted a more in-depth OT evaluation. A Consent to Evaluate for the OT evaluation was signed on December 5, 2025. The Student's OT evaluation was completed on January 27, 2026. The Special Education Director and the Case Manager indicated scheduling challenges kept the IEP team and the Parent from meeting to review the OT evaluation until March 6, 2026, which was still within the required timeline for reviewing the evaluation. The IEP was amended on March 6, 2026 and included new OT services, accommodations, and OT consultation services. This was also reflected in IEP meeting notes and March 6, 2026 PWN. While the OT consultation did not start until March 6, 2026, the December 9, 2025 IEP indicated the Student's teacher offered them writing support prior to that time.

In this case, the Parent requested ABA therapy for the Student from a specific provider, which the District declined due to its policy prohibiting outside providers from providing services on campus. However, the evidence showed the District collaborated with the BCBA on the development of the Student's IEP goals. Regarding the Student's OT services, the evidence showed the Student's IEP was updated once the evaluation was complete and the accompanying meeting was held. Additionally, there was information to indicate the Student received some informal writing support prior to their IEP being updated. Overall, the information showed the Student's IEP was developed to meet their educational needs.

The Department does not substantiate this allegation.

Free Appropriate Public Education (FAPE)

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

School districts must provide a FAPE to all school-age children with disabilities for whom the district is responsible, who need special education and related services, even if the child has not failed or been retained in a course or grade and is advancing from grade to grade. "School-age children" are children who have reached five years of age but have not yet reached 21 years of age on or before September 1 of the current school year.

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.[9] Not all procedural violations

[9] *Endrew F.,*137 S. Ct. at 999

amount to a denial of a FAPE. A school district's procedural violation denies a 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.[10]

In this case, the District was found to have complied with the procedural requirements of the IDEA and developed an IEP reasonably calculated to enable the Student to make progress in light of their circumstances. Accordingly, there was no denial of FAPE.

The Department does not substantiate this allegation.

V. CORRECTIVE ACTION[11]

In the Matter of Lincoln County School District 10
Case No. 26-054-031

The Department does not order corrective action in this matter.

Dated: this 15 Day of May 2026



Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: May 15, 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).)

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[10] *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23,* 960 F.2d 1479, 1484 (9th Cir. 1992)

[11] The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).