BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Newberg-Dundee School District 29J	))))	FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER Case No. 26-054-079

I. BACKGROUND

On June 1, 2026, the Oregon Department of Education (the Department) received a written request for a special education investigation (Complaint) from the parent (Parent) of a student (Student) served by the Newberg-Dundee School District (District). The Parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the request to the District.

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

On July 1, 2026, the Department's Complaint Investigator sent a *Request for Response (RFR)* to the District identifying specific allegations in the Complaint to be investigated and establishing a *Response* due date of July 15, 2026. On July 15, 2026, the District submitted a *Response*, disputing the allegations described in the Complaint. The District submitted the following relevant items:

1. District's Narrative Response, 7/15/26
2. Individualized Education Program (IEP), 6/4/25
3. Special Education Placement Determination, 6/4/25
4. Meeting Minutes, 6/4/25
5. Prior Written Notice (PWN), 6/4/25
6. Notice of Team Meeting, 5/20/25
7. Notice of Team Meeting, 11/19/25
8. Special Education Placement Determination, 12/2/25
9. Meeting Minutes, 12/2/25
10. PWN, 12/2/25
11. IEP Progress Report, 2/13/26
12. IEP, 12/2/25
13. IEP Amendment, 2/19/26

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

14. PWN, 2/20/26
15. Meeting Minutes, 2/10/26
16. Notice of Team Meeting, 3/20/26
17. IEP Amendment, 4/2/26
18. PWN, 4/2/26
19. Meeting Minutes, 4/2/26
20. Consent for Evaluation, 4/2/26
21. Special Education Placement Determination, 5/12/26
22. PWN, 5/12/26
23. IEP Progress Report, 6/12/26
24. IEP Amendment, 5/12/26
25. Meeting Minutes, 5/12/26
26. Consent for Evaluation, 3/1/24
27. Notice of Team Meeting, 4/15/24
28. Disability Statement, Developmental Delay, 5/1/24
29. Disability Statement, Autism Spectrum Disorder, 5/1/24
30. 3-year Re-evaluation Report, 5/1/24
31. Eligibility Summary, 5/1/24
32. PWN, 5/1/24
33. Letter from Physician, 2/23/26
34. Occupational Therapy (OT) Evaluation, 5/12/26
35. IEP Progress Report, 6/12/25
36. IEP Progress Report, 2/13/26
37. Student Discipline Profile, 2025-26 school year
38. Emails, 2025-26 school year
39. Home-School Communication, 2025-26 school year
40. Toileting Protocol, undated
41. Individual Health Plan, 8/2024-6/2025

On July 20, 2026, the Department's Complaint Investigator interviewed the District's Special Education Director/Director of Student Services, the Student's IEP Coordinator/Special Education Teacher, and the Student's school principal. The District provided additional information after the interviews, via email messages, received on July 15, 2026 and July 16, 2026. This information included:

1. A copy of the District's adopted diapering and toileting procedures for staff who work with students with disabilities, undated
2. Written reply to interview questions posed to the Student's classroom teacher from the 2025-2026 school year (who was on vacation and/or not under contract with the District during July of 2026);
3. The District's Student Rights and Responsibilities Handbook, undated
4. The District's Student Bullying Policy, undated

On June 22, 2026, the Department's Complaint Investigator interviewed the Parents and provided the opportunity for the Parents to provide additional information for their complaint. The Parent had also previously submitted about 100 pages of supporting evidentiary materials when the state IDEA complaint was filed.

On July 23, 2026, the Parents submitted additional documents to the investigator, via email, that included:

1. Document titled, "Newberg Dundee Schools- Public Budget and Staffing Record" and "Public Source Memorandum- Budget Conditions and Reductions in Special Education Staffing", 7/23/26
2. Document titled "Master Supplemental Response and Evidence Binder" with 116 pages of evidentiary materials related to the Student and the allegations, 7/23/26

On June 27, 2026, the Department interviewed an additional witness of the Parents, who worked with the Student as a special education assistant and as a reported "social mentor" for the Student, during the 2025-2026 school year.

The Complaint Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Parent's allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This Complaint covers the one-year period from February 23, 2025, to the filing of this Complaint on February 24, 2026.

Allegations	Conclusions
IEP Team Considerations and Special Factors The Complaint alleged that the District violated the IDEA when it: (a) failed to consider the Student's behavioral and sensory needs arising out of their suspected disability, as related to the IDEA eligibility category of Autism Spectrum Disorder (ASD); and (b) failed to consider the concerns of the Parent and the strengths and weaknesses of the Student, when the District changed the Student's placement and removed the assistance of the 1:1 aide for the Student. (OAR 581-015-2205; 34 CFR 300.320, 300324(a)(1) & (2) &	**Substantiated** The District did not timely consider the Student's behavioral or functional needs when developing the annual IEP in December of 2025. While the Parents were in attendance at the December 2025 IEP meeting, the document itself does not speak to the Parent's behavioral or

((b)(2))	safety concerns for the Student.
Least Restrictive Environment (LRE) The Complaint alleged that the District violated the IDEA when it placed the Student in an overly restrictive placement next year and failed to provide accommodations or modifications to allow the Student to stay in a less restrictive placement. (OAR 581-015-2845; 34 CFR 300.114)	**Substantiated** The record did not sufficiently reflect reasons why the Student could not remain in their current placement, without additional modifications and/or accommodations in place. The record also showed the Student made progress toward their goals in the predominantly general education placement during the 2025-2026 school year, so it is not clear why a predominantly special education placement is now warranted.
Evaluation Requirements The Complaint alleged that the District did not evaluate the Student in all areas of suspected disability. (OAR 581-015-2110; 34 CFR §300.304)	**Not substantiated** The record supports that the District did not have sufficient evidence to warrant conducting an FBA or OT evaluation prior to the spring of 2026.
Free Appropriate Public Education (FAPE) The Complaint alleged that the District violated the IDEA when it: (a) removed the Student from school for disability related reasons numerous times (vomiting, emotional or behavioral needs, etc.) during the 2025-2026 school year; (b) failed to provide toileting assistance and instruction, as required by the Student's IEP, which prevented the Student from accessing a FAPE during the 2025-2026 school year; (c) failed to provide specially designed instruction, based on the Student's needs and the IEP in effect during the 2025-2026 school year; (d) failed to properly address the reported bullying of the Student at school with the IEP	**Substantiated in Part** The record supports that the District did not promptly address the reported bullying concerns of the Parent and the EA during an IEP team meeting. The record does not show that the Student was removed from school more than 3 partial days for disability related reasons

team, and requiring the Student to report bullying, despite the nature of their disability, which allegedly prevents them from reporting and recognizing bullying; and (e) refused to provide needed accommodations and supports for the Student this school year, due to the reported lack of resources and the administrator's dependence on the passage of an upcoming levy for the District. (OAR 581-015-2040; 34 CFR 300.101)	(social altercations and vomiting). The record does show the District failed to provide toileting assistance and supports after they were added to the IEP in April 2026. The record does show that the District failed to provide specially designed instruction related to toileting and life skills in accordance with the April 26 IEP revisions. The record does not clearly connect these failures to provide the Student's FAPE to the failure of the District's May 2026 levy.

REQUESTED CORRECTIVE ACTION

The Parent requests that the District:

- Provide compensatory education for class time missed during the 2025-2026 school year, for disability related reasons;
- Provide appropriate supports for the Student to access instruction in the appropriate setting;
- Provide Specially Designed Instruction (SDI) based on the Student's specific autism related needs;
- Provide Social, emotional, and behavioral supports for the Student during the school day;
- Ensure the Student is safe at school;
- Ensure the District provides accurate incident reports for Student;
- Resume services of a one-to-one aide to help with toileting and hygiene needs;
- Direct adult oversight and monitoring at school to ensure the Student is not bullied by peers;
- Social/Emotional instruction to help the Student identify inappropriate peer behaviors or bullying;
- Increased academic support, increased SDI, one-to-one aide at school;

III. FINDINGS OF FACT

1. The Student in this matter is 10 years old, resides in the District and attends an elementary school in the District. During the 2025-2026 school year, the Student was in the 4th grade with an IEP in effect at the beginning of the 2025-2026 school year.

2. In the Complaint and during the interviews, the Parents shared that the Student has level 3 autism with an intellectual impairment and a language impairment.

3. As an initial matter, on its Response, the District wrote:

> There is reference in both the complaint and in emails to Zones, which is an afterschool program. The program is not run by the District or school, but by a neighborhood church. The Parents were previously confused and thought it was school-affiliated because the church rents space from the school to run their afterschool program. The Student struggled at Zones and was sent home multiple times. Again, this is a private afterschool program and is not District or school affiliated. This could be why some of the allegations appear to reference events/facts that are not applicable (e.g., references to the Student being sent home early).

4. In an email dated September 17, 2025 from the Parent to the IEP Case Manager/Special Education teacher, the Parent wrote that the Student had reported at home "a few times that [they have] been bullied and made fun of…" The Parent provided the names of two specific boys that the Student had told the Parent had related to these concerns. The Parent also wrote that this was "hurting Student's feelings…"

5. A Parent produced note dated November 6, 2025 states that the Student threw up [at school], had no other symptoms, and that the Parent picked the Student up from school at 12:15 PM [after the school called the Parent to pick up the Student].

6. The Student had an effective Individual Education Program (IEP), dated December 5, 2025 ("December 2025 IEP" or "Annual IEP"). This IEP showed the Student was eligible for special education services under the category of Autism spectrum disorder (ASD). The December 2025 IEP noted that the Student's next three-year reevaluation was due by April 30, 2027. It further noted that the next annual IEP review and revision was due by December 1, 2026. A note on the document further indicates that the IEP was revised on February 19, 2026.

7. The December 2025 IEP includes specially designed instruction and related goals in the following areas: reading, writing, self-advocacy, math and speech. The December 2025 IEP notes that the Student "…attends a small group instruction for reading/writing 5 days per week, math 5 days per week, and speech weekly.

8. The December 2025 IEP includes the following SDI, related services, modifications, aids and

supports for the Student:

Type of Service	Type of Personnel	Frequency & Duration/Per Cycle	Start Date	End Date
Social Skills/ Peer Interaction	LEA- Gen Ed and Spec Ed	30 minutes weekly	12/2/2025	12/2/2026
Writing	Spec Ed/Reg Ed	30 Minutes Weekly	12/2/2025	12/2/2026
Mathematics	Spec Ed/Reg Ed	120 minutes weekly- providers space	12/2/2025	12/2/2026
Speech/Language	Speech Language Pathologist	80 minutes monthly- providers space	12/2/2025	12/2/2026
Reading	Spec Ed/Gen. Ed	90 minutes weekly/ providers space	12/2/2025	12/2/2026
Warning for transitions	All school settings	10 minutes daily	12/2/2025	12/2/2026
Access to health room bathroom/alternate bathroom	Gen Ed/Spec Ed	30 minutes daily	12/2/2025	12/2/2026
Designated safe space for Student to go to when needed	Across the school	360 minutes daily	12/2/2025	12/2/2026
Visual timer for transitions	All school settings	10 minutes daily	12/2/2025	12/2/2026
First/Then Language	All school settings	10 minutes daily	12/2/2025	12/2/2026
Fidgets for listening and learning time or times when Student is expected to sit quietly and listen to instruction	Gen ed/Sped classroom	15 minutes daily	12/2/2025	12/2/2026
Visuals to support problem solving	Gen Ed/SPED all locations	360 minutes daily	12/2/2025	12/2/2026
Clear speech models	All school settings	5 minutes per day	12/2/2025	12/2/2026
Models for expanded phrases	Gen ed/ SPED all school settings	5 minutes per day	12/2/2025	12/2/2026

Designated folder or work completion basket in Student's desk	Gen Ed/Sped classroom setting	1 minute daily	12/2/2025	12/2/2026
Communication home when reported incidents of aggression elopement or bullying occur that involve Student	Schoolwide/ Gen ed and SPED providers	5 minutes- per incident	2/20/2026	12/1/2026
Speech to text software for independent reading and assessments	GEN Ed/SPED classroom	During reading/ 20 minutes	2/20/2026	12/1/2026
Adult within hearing distance of Student during recess, lunch and PE	General Education/SPED	60 minutes daily Playground, cafeteria, PE	2/20/2026	12/1/2026
Word prediction software for written work and assessments	General Education/SPED	20 minutes daily when assignments require writing	2/20/2026	12/1/2026
Toileting support (following bowel movement to ensure proper clean-up has occurred)	General Education/SPED	Private bathroom- 10 minutes daily	2/20/2026	12/1/2026
Modified grading for academic	Gen Ed/SPED	60 minutes daily classroom setting	12/2/2025	12/2/2026
Modified curriculum (reading, writing, math)	Gen Ed/SPED	60 minutes daily- classroom setting	12/2/2025	12/2/2026

9. The December 2025 IEP also provides the following supports for school personnel, in order for the Student to benefit from the general education classroom: consultation between general education staff and special education staff for 30 minutes- 1 time per year; and consultation between school staff and the autism specialist for 60 minutes per year.

10. The December 2025 IEP progress notes state that the Student has made significant progress

in communicating their needs to adults. The progress notes state that the Student is "handling [their] emotions better this school year" and that their classroom behavior "has improved this year." The IEP progress notes state that the Student is able to follow directions and classroom routines independently. The notes further indicate that the Student needs adult support with organizing their materials and packing up for the end of the day.

11. The December 2025 IEP shows no data indicating there is regression significant for extended school year services for the Student.

12. The special factors box for behavior on the December 2025 IEP notes that the Student does not exhibit behaviors that impact their learning or the learning of others. This area of the IEP indicates that the Student does have communication needs and indicates that they need assistive technology for "communications, transitions, and routines."

13. The Student's behavior goal on the December 2025 IEP is: Given direct instruction, visual cues, and modelled practice the Student will demonstrate appropriate social interaction based on the relationship context (e.g. peer, adult, unfamiliar person) by choosing behaviors suited to the situation in 4 out of 5 observed opportunities. The Present levels section of this goal notes that "Student needs adult support to problem solve peer to peer conflicts and will mis-label some behaviors as bullying. [They are] able to accurately reflect on scenario specific behaviors 50% of the time."

14. The December 2025 IEP states that the Student would be placed in a general education classroom setting and pulled out for 1:1 instruction 290 minutes per week to receive instruction in reading, social/emotional, writing and math. The notes indicate the Student does well with small group instruction. They will also receive 630 pull out minutes per year to work on speech skills. This accounted for about 16% of the Student's school day, cumulatively.

15. Both parties agree that in the winter and spring of 2026, the Student experienced significant regression in the area of toileting. As a result, the Parents started to send the Student to school in pull-ups, to assist with their anxiety about cleaning and toileting. The IEP discussed these new needs in a team meeting that occurred in April of 2026.

16. On January 18, 2026 the Student was called "gay" and teased by a group of 4-5 other students on the playground at school. The Parent's notes of this incident indicate that the Student "attacked 2-3 of them [the other children who were bullying the Student], and I had to come and pick [them] up early."

17. The Parent's notes from February of 2026 show that on February 19, 2026 the Student slept for two hours at school and the Parent was contacted to pick the Student up but declined.

18. On February 19, 2026 the IEP team met to address the Parent's concerns related to the

Student's toileting regression. The notes on the IEP titled "Amendment 2/19/2026" stated that "Student's parents have a concern about [their] ability to advocate for [themselves] and others when things like bullying occur to [them] or when [they are] the target…" They also shared concerns about the Student not being able to fully clean themself after toileting at school. The Parent concerns section of this IEP (originally dated December 2025) also states that, "Previous: Student's parents discussed concerns related to [the Student's] accidents. They shared the Student would be moving to pullups to reduce possible anxiety around having accidents and changing [at school]."

19. On February 11, 2026, the Parent wrote a note regarding the Student that says the Student went to the office and reported they did not feel well and wanted to go home. The note states the Parent does not recall what time they picked up the Student that day.

20. The Parent's note dated February 12, 2026 states that the Student "threw up after eating too much at lunch and then going to PE, pickup at 12-12:30."

21. A Prior Written Notice (PWN) dated February 20, 2026 states that the Student's IEP team met and made the following changes: text to speech, word prediction for testing and written assignments; adult within hearing distance of the Student during lunch, recess, and PE; toileting support to follow bowel movements (ensure cleaning happens); communication home when reported instances of bullying, elopement, or aggression occur with the Student. The PWN states the Team denied the Parents' request for a 1:1 aide throughout the school day. The PWN states "the current data does not support the need for additional support through Student's school day."

22. On February 23, 2026 the IEP Coordinator/Special Education Teacher, emailed the Parents about an incident that had occurred with the Student at lunch that day. In the message, the IEP Coordinator wrote that "the situation was quickly resolved…" and expressed that "..[they were] upset at [themselves] for touching people." The Parent replied to this email and stated that, "So within earshot isn't working, and [they] hit another two students."

23. On February 23, 2026 the Student's pediatrician wrote a letter that the Parent submitted to the District which stated, "Student has periods of vomiting episodes. Please do not require [them] to go home when this occurs unless there are other indicators of infectious process: persistent vomiting/multiple episodes, diarrhea, fever, or lethargy."

24. On February 23, 2026 the Student's doctor treating their autism wrote a letter to the District that stated, "Student was diagnosed with autism spectrum disorder requiring very substantial support for deficits in communication (level 3)…with accompanying language impairment, and with accompanying cognitive delay."

25. On March 3, 2026 ("March 2026 letter") the Parents wrote the elementary school education team a six-page letter of concerns on behalf of the Student. In this letter, the Parents specifically noted that they wanted the IEP team to meet for the Student, within the next

two weeks, to discuss the concerns. The specific concerns were a loss of academic time (related to early dismissals frequently tied to the Student's disability- listing 9 incidents of requested early pickups from November 2025-February 2026) and lack of behavioral data and support. The Parents went on to note that they were aware from District sources the Student "frequently leaves the classroom, spends time in the office, wandering hallways, or remaining in the bathroom without structured supervision…"

26. In this March 2026 letter, the Parents also stated they came across an email from the Student's teacher from the last school year, stating that "[The Student] would greatly benefit from having a 1:1 aide again like [they] did last year…Unfortunately, the District did not have funding this year to keep the aide with [the Student]."

27. In the March 2026 letter, the Parents also wrote that they had many social-emotional safety and bullying concerns for the Student (particularly during unstructured times) that they had repeatedly brought to the school's attention. The Parent wrote that the Student could not advocate for themselves during instances of bullying, due to their autism. The letter also noted toileting regression and concerns related to the Student coming home in dirty pull ups. The letter noted Student's pull ups "…[were] frequently full/extremely soiled at the end of the day when we pick Student up." The letter noted there was no shared toileting plan and no IEP goals related to toileting for the Student at that time. The Parents therefore asked for clear staff responsibilities related to the Student's toileting and for an IEP goal for self-care/toileting to be added to the IEP. The Parent also shared recent iReady data that showed the Student was regressing in all academic areas, despite what the IEP team was reporting for progress. The Parent asked how the Student could access 5 or more hours of academic instruction in the general education setting, given their academic profile. The Parents noted their concerns that 58 minutes a day of small group SDI and weekly speech services were not sufficient.

28. The Parents' March 2026 letter also noted that the Student needed functional goals and support in their IEP, due to their autism-related needs. The Parents stated this included elopement prevention, emotional regulation and coping skills, daily living activities goals (hygiene, toileting, etc.), organization, task management, and task completion goals for discussion by the IEP team.

29. On April 1, 2026 the Parent emailed the Student's IEP Coordinator/Special Education Teacher, the Special Education Director, the Principal and the Classroom Teacher and noted they had a number of concerns for the Student. First, the Parent wrote that they did not know why the Student was "still toileting without support." The Parent noted that at the last IEP team meeting, the team had agreed that the Student needed check-ins throughout the day, assistance with hygiene, and help ensuring that their clothing is on correctly. That does not appear to be happening." Next, the Parent wrote that, "[The Student] came home wearing the same pull up that I put on [them] this morning. It was torn, with the inner lining coming out, and there was dried stool present, indicating that [they] had started to go [to produce a bowel movement] but was not properly assisted or cleaned. This is highly

unacceptable. It directly impacts [their] dignity, hygiene, and overall wellbeing during the school day..." The Parent ended the email by asking what steps were being taken to help the Student with toileting at school at that time and how they would be assisted moving forward.

30. A note on the annual IEP titled "Amendment" and dated April 2, 2026 states that the Student's parents were concerned about the Student's supervision levels at school. The notes also indicate that the Parents told the IEP team that the Student was being sent home from school for disability related reasons and missing too much instructional time. The note further indicates that the family requested increased adult supervision to be provided proactively, not only in reaction to adverse incidents. The notes further indicate the Parents requested life skills instruction in toileting and dressing for the Student.

31. On April 2, 2026 a life skills goal and specially designed instruction were added to the IEP for the Student. This amendment states the Student would receive 15 minutes daily of life skills instruction starting April 2, 2026 and ending December 1, 2026. The life skills goal required the Student to independently complete a functional hygiene routine (e.g. toileting, changing pull ups, dressing, washing hands) after being given direct instruction, visual instruction, and opportunity to practice. The Student was to complete this goal in 4 of 5 opportunities as observed by an adult, without prompting. This was to be measured by the teacher, using data collection. The present level for the goal says that the Student was not able to complete any of the steps without an adult to assist and prompt them.

32. On April 2, 2026 the annual IEP was amended to include two new accommodations to support the Student, they were:

    a. 1:1 [adult] support within 10 feet of Student for scheduled transitions throughout the day, lunch, PE and recess for 60 minutes per day, from April 2, 2026 through December 1, 2026
    b. Scheduled bathroom breaks in a private bathroom, 10 minutes daily, from April 2, 2026 through December 1, 2026

33. A PWN dated April 2, 2026 states that the IEP team met on April 2, 2026 and made the following changes: a life skills goal was added; an accommodation of adult support 1:1 for scheduled transition, lunch, and PE would be added; an accommodation of sending teacher/staff notification to receiving/sending staff within 3 minutes of the Student not going to the receiving location; an accommodation of school to home daily communication will be added; the Student's behavior on the special factors page will be changed to show their behavior does impact their learning; the wording on the present levels section was changed to stop requiring the Student to report bullying; and the Parents' signed a consent for an occupational therapy (OT) evaluation. The PWN further shows the Student had regression in toileting and due to their communication needs may be "at increased risk for unsafe situations" and notes that "at times [they have] difficulty fully communicating details about incidents and activities that occur throughout the school day." The PWN also notes

that the Student is able to access general education instruction and places in the building independently, without the need of adult assistance.

34. After the April 2nd IEP meeting the special factor for behavior notes that the Student's "Behavior needs are addressed in goal area and accommodations." There is no date to indicate when the revision was made on the document itself.

35. The Annual IEP for 2025 does not include dates for progress monitoring data to be provided to the family on the IEP goals.

36. On May 12, 2026 the IEP team met again and reviewed and revised the Student's IEP. The notes for this amendment states that, "A team meeting was held, to address supervision concerns that the family has. They are concerned that the Student is a high risk of elopement. Through the OT evaluation process the family also shared they have concerns in the areas of toileting, fine motor, and that Student has stated [they get] overstimulated and just wants to disappear. [They are] having very large feelings during this time."

37. On May 12, 2026 the IEP team added the accommodation of providing the Student with a copy of the teacher's classroom notes each time notes were taken, in both the general education and special education classrooms.

38. On May 12, 2026 the IEP also added consultation with an occupational therapist (OT) and school staff, for 120 minutes per year.

39. The May 2026 IEP shows that the Student will receive the majority of their instructional time in the special education classroom, or 40-79% of the school day. The Student would have access to general education peers during lunch, specials, PE, and recess.

40. During interviews with District staff, the District noted that in May 2026, the IEP team ultimately selected a more restrictive placement for the Student, but the team agreed to wait and implement the new placement during the next school year, as the Student's schedule would be greatly disrupted by the change, and they were very near the end of the school year.

41. A prior written notice (PWN) dated May 12, 2026 states that, the IEP team met and made the following changes for the next school year: beginning at the start of the 2026-27 school year, the Student's placement would change from 80% of the day in general education to 40-79% of the day in general education, with the majority of the school day in the special education classroom. The PWN also notes the OT consultation was added along with the accommodation of notes being provided to the Student. The PWN states the Team did not think the Student required 1:1 adult support throughout the school day, but they would keep in place the adult support within 10 feet for scheduled transitions, PE, lunch, and recess. The PWN also states that the Student eloped two times during that school year, one of which occurred with a 1:1 adult support person present. The document concludes that a

functional behavior assessment (FBA) will be conducted for the Student in the fall.

42. In its written narrative response, the District stated via its attorney that it had monitored the Student's progress monitoring data during the 2025-2026 school year and had no concerns about the Student making progress toward their goals. The District's narrative also states that the District/school staff did not have concerns about the Student being bullied or harassed or similar behaviors, during their school day.

43. The District and the Parent agreed that a special education assistant ("EA") would begin working with the Student for their toileting needs and to prevent bullying during lunch, recess, and unstructured times after the April 2026 IEP team meeting. During an interview with the Student's former EA[3] they told the investigator that they observed numerous students bullying or harassing the Student over the 2025-2026 school year. The EA noted that students would call the Student "smelly" or make them call themself "smelly" or laugh when the Student harmed themself in front of groups of children. The EA reported that children called the Student names and would instigate occurrences of the Student doing odd things, like placing an apple on their head. The EA reported that the other children would not do these things to the Student when adults were present. The EA shared that they would report these incidents to the Student's teacher and Parents each day when they occurred. The EA stated that they submitted about 10 such incident reports to the Student's teachers during the 2025-2026 school year. The EA stated that "not a lot was done about it." The EA reported that the teacher did a lesson on autism at some point but reported that the bullying for the Student actually got worse after that lesson. The EA reported this was sometime shortly after winter break in 2025. The EA further reported if there were not enough staff to cover a recess, they would just call it a "break time" so the Student did not have to get access to adult supports and the District could still comply with the IEP. The EA reported that in May of 2026 they went outside and found the Student without adult support on at least one occasion.

44. This EA, who was assigned to work with the Student in the spring of 2026 also reported that on many occasions during the spring of 2026 there would not be any other adults to assist them with following the District's toileting protocol when the Student was in the toilet and they called for assistance (which is needed as the protocol requires two adults in the room with a child using the toilet) so they were not able to go into the stall to help the Student with their toileting. The EA reported there were times when they waited for over 30 minutes, and no one came to assist with the toileting. The EA reported that at times the Student would escalate when toileting, but they would not be able to assist them, due to staffing issues.

45. In their written response to the interview questions, the Student's classroom teacher wrote that they did not see the Student get bullied and did not hear the other students in class call

[3] This staff member left the District at the end of the 2025-26 school year. The Parent provided their information as a witness.

the Student names. The 4th grade classroom teacher said that the Student was well liked by classmates, but when the Student's best friend moved this year, they did not find another "close friend."

46. In its narrative response and during interviews, the District reported that the Student had only been sent home early due to behavioral incidents two times during the 2025-2026 school year. The District stated in its narrative reply and in its interviews that the Student was never sent home for vomiting.

47. The District reported that the Student was making progress toward their toileting goals, but that its data sheets (collected from April 2026-June 2026) were shredded at the end of the school year.

48. The Parents submitted a number of local news stories and District informational materials about the budget crisis and related levy, that were published during the 2025-2026 school year. In at least three of these articles from March-May 2026, the Superintendent of the District is quoted as saying the funding crisis would adversely impact special education staffing numbers, particularly related to educational aides. One such article dated May 25, 2026 notes that on May 19, 2026 the local elections included Measure 36-239, which solicited support from the local community to assess $1.20 per $1,000 of assessed property value, to raise an estimated $6.1 million dollars annually for the District, in a five-year option ("the levy"). This article further notes that the levy was not approved by voters, and states that as a result, 35 positions will be cut, and class sizes will be larger in the near term, with school closures in the future[4]. The article further notes that the staff reductions would be comprised of 25 teachers and 10 support staff would be eliminated as part of the staff reduction measures.

The District denied that the levy and a lack of funding in the District were ever discussed with the Parents. The District noted that the levy was a topic of current events during the past school year, so may have been chatted about casually around the Parents in that context.

49. On July 28, 2026 the District's attorney and special education director emailed the investigator responsive information to the Parent's rebuttal packet. Specifically, the attorney stated that in the Parent's evidentiary email, that the information was actually based on a dated message from a District employee about funding that was sent to the Parent on May 30, 2025. The District argued that this date falls outside of the investigatory period for the instant complaint and further argued that this message was sent over a year before the IEP meeting that the District believes is at issue.

50. The District's attorney and Special Education Director also argued that the Parent's rebuttal packet appears to include private text messages between herself and a former District employee, a special education aide for the District (EA). The District argued that it was

[4] https://newsberg.org/2026/05/25/newberg-dundee-school-levy-fails-district-to-move-forward-with-cuts/

unclear as to what date the [text] messages were sent to the Parent[5], and stated that "… [it] appears that those [text messages]were also probably sent sometime during the 2024-25 school year…" The Special Education Director's email clarifies that this particular EA was only assigned to work with the Student after the April 2, 2026 IEP team meeting. The Special Education Director's email also states that, "…[The EA] was assigned to provide direct support and instruction [to the Student], following the toileting plan that was previously shared with you, during one of the Student's daily scheduled toileting opportunities."

IV. DISCUSSION

IEP Team Considerations and Special Factors

The Complaint alleged that the District violated the IDEA when it: (a) failed to consider the Student's behavioral and sensory needs arising out of their suspected disability, as related to the IDEA eligibility category of Autism Spectrum Disorder (ASD); and (b) failed to consider the concerns of the Parent and the strengths and weaknesses of the Student, when the District changed the Student's placement and removed the assistance of the 1:1 aide for the Student.

In the development, review, and revision of a student's IEP, the IEP team must consider a variety of factors including the strengths of the child, the concerns of the parent for enhancing the education of their child, and the results of the initial or most recent evaluation of the child. The IEP team must also consider the child's academic, developmental, and functional needs. The IEP team should also consider the student's communication needs and whether they require assistive technology devices and services. The IEP team must also consider variety of additional special factors that may impact or impede the student's learning or the learning of others. If a Student is determined to have challenging behaviors that impact their learning or the learning of others, then the IEP team must consider the use of positive behavioral interventions and supports and other strategies to address that behavior. *See* 34 CFR 300.324 (a)(2)(i).

In this case, the District did not check the Student's behavioral needs box on the special factors page of the annual IEP until the April 2026 IEP revision meeting. This is despite the fact that the Parent began reporting instances of the Student being bullied by peers as early as September of 2025, and two behavioral incidents that resulted in the Student physically attacking their peers after social altercations and/or bullying. The evidence in the record shows that the District was aware of the Student's behavioral needs and issues with peers throughout the school year but failed to consider behavior as a special factor until April 2026. Additionally, despite the Parents' many reports related to behavioral issues of the Student and many requests for behavioral data and incident reports, the District failed to offer or provide an FBA or BIP during the entire 2025-2026 school year.

[5] A number of the text and email messages submitted by the Parent in both the initial complaint materials and in the rebuttal packet did not include the full date of the conversation and/or the text to show the messages were dated, sent and/or received on dates that clearly fall within the one-year allowable period for IDEA state complaint investigations set forth in OAR 581-015-2030.

Additionally, there is no indication that the Parents' concerns about the Student's behavioral and functional needs were considered or addressed during the annual IEP team adoptions in December of 2025. While the Parents did attend the meeting and their concerns were noted in the Parent concerns section, the actual text of the IEP and its supports and services did not address the Student's behaviors or functional needs until after the Student had several adverse behavioral incidents and regressed in their toileting and social skills.

The Department substantiates this allegation.

Least Restrictive Environment (LRE)

The Complaint alleged that the District violated the IDEA when it placed the Student in an overly restrictive placement next year and failed to provide accommodations or modifications to allow the Student to stay in a less restrictive placement.

Under OAR 581-015-2240, school districts must ensure that students with disabilities are educated with their nondisabled peers to the maximum extent appropriate to their individual needs. The rule requires that removal from the regular educational environment through special classes, separate schooling, or other restrictive placements occur only when the nature or severity of the student's disability is such that education in the regular classroom, even with the use of supplementary aids and services, cannot be achieved satisfactorily.

Additionally, courts in the 9th Circuit have adopted a test using four factors to determine if a student's LRE is appropriate: 1) the educational benefits of placing the student in a full-time regular education program; 2) the non-academic benefits of such a placement; 3) the effect that the child would have on the teacher, and other students in the regular classroom; and 4) the costs associated with the placement.

In the instant case, the Parents and the District both articulated that the Student was able to do work in the general education classroom and that they were well liked and accepted by their general education peers. There was no evidence to show that the Student did not receive educational benefits in the general education classroom, nor that they would receive more educational benefits in a predominantly special education classroom. While the District documents showed that the Student did better in small groups, the District also contended that the Student progressed well in the general education classroom. The documents in the record indicated that the Student needed more adult assistance with toileting, social interactions with peers, and unstructured times (PE, passing periods, recess, etc.), but there was no evidence to show that the Student needed to have more specially designed instruction or that their presence in the general education setting was not beneficial to the Student or their peers.

The Parents were able to demonstrate that at least two District employees believed that the Student would benefit from a one-to-one aide all day and there was ample evidence provided to show that the District reported budgetary constraints that adversely impacted its special

education program and staffing levels. Additionally, there was no evidence that the District tried to offer additional aids and supports to keep the Student in their predominantly general education classroom placement for the next school year or reasons as to why the additional aids and supports would not be appropriate for the Student in lieu of the more restrictive special education placement.

The Department substantiates this allegation.

Evaluation Requirements

The Complaint alleged that the District did not evaluate the Student in all areas of suspected disability.

Specifically at issue in this case, is if the District should have conducted a functional behavior assessment (FBA) for a behavior intervention plan (BIP) for the Student during the school year at issue and if the District should have evaluated the Student for OT services during (or prior to) the 2025-2026 school year.

IEP Teams often employ FBAs and BIPs as 'positive behavioral interventions and supports' where, as in this case, the child's 'behavior impedes the child's learning or that of others.' *See* 20 U.S.C. § 1414(d)(3)(B)(i).

Outside of the specific circumstances in which either the IDEA or state law requires an FBA, IEP teams have discretion whether to conduct one. Because IEP teams have an obligation to provide a free appropriate public education (FAPE) to students with disabilities, they also must conduct an FBA if they determine that doing so is necessary in order to develop an appropriate IEP. *See, e.g., C.F. v. New York City Dep't of Educ.*, 62 IDELR 281 (2d Cir. 2014) (because the lack of an FBA led to the development of an inappropriate BIP and placement, the district procedurally and substantively violated the IDEA).

In the instant case, there is no state or federal legal requirement for the District to conduct an FBA for this Student, and the IEP team did not find that an FBA was necessary for the Student to receive a FAPE. There was no evidence to support that the District should have conducted the FBA prior to the April 2026 IEP team meeting.

As for the OT evaluation, when the Parents requested the evaluation, they were promptly provided with a consent form, and the evaluation was timely completed. While the Parents had expressed concerns with toileting prior to spring of 2026, the concerns were also related to the Student's anxiety with toileting. As such, it was not clear that the Student needed OT supports or an evaluation before the concern was raised by the Parents in the spring of 2026.

The Department does not substantiate this allegation.

Free Appropriate Public Education (Denial of FAPE)

The Complaint alleged that the District violated the IDEA when it: (a) removed the Student from school for disability related reasons numerous times (vomiting, emotional or behavioral needs, etc.) during the 2025-2026 school year; (b) failed to provide toileting assistance and instruction, as required by the Student's IEP, which prevented the Student from accessing a FAPE during the 2025-2026 school year; (c) failed to provide specially designed instruction, based on the Student's needs and the IEP in effect during the 2025-2026 school year; (d) failed to properly address the reported bullying of the Student at school with the IEP team, and requiring the Student to report bullying, despite the nature of their disability, which allegedly prevents them from reporting and recognizing bullying; and (e) refused to provide needed accommodations and supports for the Student this school year, due to the reported lack of resources and the administrator's dependence on the passage of an upcoming levy for the District.

School districts must provide FAPE to all school-age children with disabilities for whom the district is responsible.[6] Procedural violations may only lead to finding that a child did not receive a FAPE if they: "(I) impeded the child's right to a free appropriate public education; (II) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child, or (III) caused a deprivation of educational benefits."[7] In determining whether a student was denied a FAPE, courts review a district's compliance with both the procedural and substantive components of the Student's education. Reviewing courts must inquire whether the school district complied with the procedural requirements of the IEP, and whether the school district met the substantive requirements to develop an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.[8]

Bullying of a student with a disability that results in the student not receiving "meaningful educational benefit" constitutes a denial of FAPE. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013). *See also Dear Colleague Letter*, 111 LRP 45106 (OCR/OSERS 07/25/00); and *Torrance Unified Sch. Dist.*, 119 LRP 43024 (SEA CA 2019) (because the district failed to adequately address the ongoing peer harassment a teen experienced that interfered with his ability to benefit from his education, the district denied him FAPE.) Schools have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive FAPE . The school, as part of its appropriate response to the bullying , should convene the IEP team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide FAPE. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013).

First, there is conflicting information and accounts of how many days the Student was sent home for vomiting and disability related needs. The doctor's note to the District related to the Student vomiting was not sent until late February 2026 and there is no evidence that the

[6] OAR 581-015-2040
[7] 20 USD § 1415(f)(3)(E)(ii)
[8] *Endrew F.*, 137 S.Ct. at 999.

Student was sent home for vomiting after this. The record did show that the Student was sent home early on two days due to their behavioral related needs and altercations with their peers. There is also sufficient evidence to demonstrate that the District did not provide appropriate toileting support and instruction during the 2025-2026 school year. Finally, there is ample evidence that the District was aware of the bullying towards the Student from as early as September of 2025, but it did not take steps to address this concern with the IEP team until much later in the school year. Due to the missing toilet logs and data and conflicting staff testimony, the District is not able to demonstrate sufficient progress was made on the toileting goal, after it was finally added to the IEP in April of 2026. While it is not clearly related to the District's funding issues or levy, this is beside the point for IDEA compliance which clearly dictates that a FAPE must be provided based on a students' individual needs, regardless of fiscal constraints on school districts.

The Department substantiates this allegation.

VII. CORRECTIVE ACTION

In the Newberg-Dundee School District
Case No. 26-054-079

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

Action Required	Submissions	Due Date
1. The District must convene an IEP meeting with the Parent(s) to review the Student's IEP (including placement) and revise the IEP, as appropriate, to include aids and supports that will allow the Student to make progress in a less restrictive setting and ensure that the Student's behavioral needs are met.	Documentation of offer to hold IEP meeting made to the Parents. Copy of amended IEP and PWN issued detailing any amendments to the Student's IEP.	**September 30, 2026** **October 31, 2026**
2. The District must convene a meeting with the Parent(s) to determine appropriate compensatory education services to make up for the District's failure to appropriately address bullying of the Student and the Student's toileting needs during the 2025-26 school year.	A written plan for the delivery of compensatory education, developed in a meeting with the Parent(s). Evidence that compensatory services were provided.	**October 31, 2026** **February 28, 2027**
3. The District must ensure that all District staff involved in the Student's special education receive training in the District's obligation to:	Training agenda/materials to ODE for review/approval.	**September 30, 2026** **December 15, 2026**

a. Implement students' IEPs; b. Promptly review and revise students' IEPs to address additional disability-related needs; c. Determine placement in the least restrictive environment; d. Address bullying of students with disabilities.	Sign-in sheet from training.	

Dated: this 31st Day of July 2026



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Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: July 31, 2026

Appeal Rights: Partied 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 provision of ORS § 183.484. (OAR 581-015-2030 (14).)