BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Tigard-Tualatin School District 23J	)	FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER Case No. 26-054-086

I. BACKGROUND

On July 7, 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) attending the Tigard-Tualatin School District 23J (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 July 17, 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 July 30, 2026.

The District submitted a *Response* on July 29, 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, 7/29/26
2. Emails, 5/1/26 to 6/10/26
3. Notice of Team Meetings, 5/7/26 and 6/10/26
4. Prior Written Notice (PWN), 6/10/26
5. Student Functional Behavior Assessment, 4/16/26
6. Student Behavior Support Plan/Escalation Cycle, 4/16/26
7. Individualized Education Program (IEP) Amendment, 4/7/26
8. Annual Individualized Education Program (IEP), 6/10/26
9. Student work samples and I-ready Diagnostic Assessment, 5/11/26-6/10/26
10. IEP Placement, 4/16/26
11. IEP Placement, 6/10/26
12. IEP Written Agreements, dated 5/7/26 and 6/10/26

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

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

The District submitted additional documents on August 5, 2026 and August 10, 2026:

1. Student Data Trackers, 5/11/26 to 6/10/26
2. Transfer Individualized Education Program (Transfer IEP), 5/7/26
3. PWN, 5/7/26

The Parent submitted a *Reply* on August 17, 2026, and provided documents in support of the Parent's position. The Parent submitted the following relevant items:

1. Emails, 5/1/26-5/30/26
2. PWN, 6/10/26

The Complaint Investigator interviewed the Parent on July 13, 2026. The Complaint Investigator interviewed District personnel on August 10, 2026. 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 July 8, 2025, to the filing of this Complaint on July 7, 2026.

Allegations	Conclusions
Content of IEP The Complaint alleges that the District violated the IDEA when it failed to include information in the Student's IEP that is necessary to address the Student's unique educational needs. Specifically, the District failed to include an appropriate behavior support plan based on a functional behavioral assessment. (OAR 581-015-2220; 34 CFR § 300.320)	**Not Substantiated** The District adopted and implemented the transfer IEP and BSP as written, with comparable services, after the Student's transfer into the District.

Evaluation and Reevaluation Procedures The Complaint alleges the District failed to conduct a functional behavioral assessment (FBA) of the Student to address the Student's behavioral needs. (OAR 581-015-2110; 34 CFR § 300.304)	**Not Substantiated** The District implemented the Student's transfer BSP, which was completed after an FBA. No further assessment was necessary.
Parent Participation The Complaint alleges that the District violated the IDEA by interfering with the Parent's ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the Student, and the provision of a free appropriate public education to the Student. Specifically, the District failed to provide academic progress reporting to the Parent sufficiently in advance of the June 10, 2026, IEP review to enable the Parent's informed participation regarding IEP development. (OAR 581-015-2190; 34 CFR § 300.501)	**Not Substantiated** The District provided academic assessment data and a draft IEP, with academic assessment information, prior to the IEP review on June 10, 2026.
Education Records The Complaint alleges that the District violated the IDEA by denying the Parent's access to the Student's education records, specifically, by failing to provide current academic progress prior to the IEP review on June 10, 2026. (OAR 581-015-2300; 34 CFR § 300.501(a))	**Not Substantiated** The District informed the Parent there was no existing record on academic progress to produce to the Parent.
Least Restrictive Environment The Complaint alleges that the District violated the IDEA by removing the Student from the mainstream setting in excess of the non-participation justification in the Student's IEP. (OAR 581-015-2240; 34 CFR § 300.114)	**Not Substantiated** The District offered the least restrictive environment to the Student, in the general education setting.

Placement The Complaint alleges that the District violated the IDEA when it failed to provide the Student with an appropriate educational placement. (OAR 581-015-2250; 34 CFR § 300.116)	**Not Substantiated** The District provided the Student with access to a FAPE in the least restrictive environment.
Prior Written Notice (PWN) The Complaint alleges that the District violated the IDEA by failing to provide adequate prior written notice (PWN) in response to the Parent's requests and failing to provide PWN that accurately described IEP team decisions/refusals after the Student's transfer into the District and at the June 10, 2026 IEP meeting. (OAR 581-015-2310; 34 CFR § 300.503(a)(b))	**Substantiated** The District issued PWN on May 7, 2026 and on June 10, 2026 for IEP decisions and refusals but failed to provide an adequate explanation for its refusal of a more restrictive placement in the May 7, 2026 PWN.
Free Appropriate Public Education (FAPE) Due to the alleged IDEA violations detailed above, the Complaint alleges that the District failed to provide the Student with a free appropriate public education. (OAR 581-015-2040; 34 CFR §§ 300.17, 300.101)	**Not Substantiated** The District provided the Student with a FAPE.

REQUESTED CORRECTIVE ACTION
1. **Funded IEE:** Publicly funded BCBA evaluation. 2. **Forensic Audit:** Independent review of all SSC/parking lot logs to identify lost instructional minutes. 3. **Compensatory Education:** 1-on-1 tutoring matching excluded minutes. 4. **Record Correction:** Remove "NG" designations and re-code all medical/disability absences as excused. 5. **Placement:** Request for interim placement in a specialized therapeutic setting to remedy FAPE denial.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation 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 July 8, 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 a 7th-grade student and attends a middle school in the District. They are eligible for special education services under the category of Autism Spectrum Disorder (ASD.) The Student has many interests and enjoys talking about their interests. These include Uno, Magic the Gathering, and Dungeons and Dragons.

2. On April 16, 2026, the Student's former school district (Former District) conducted a functional behavioral assessment (FBA) to address school refusal, including leaving class or leaving school early. It included the following replacement strategies: take a break to regulate by reading or using a fidget and, when escalated, access an alternate space and trusted adult.

3. On April 16, 2026, the Student's Former District developed an "Escalation Cycle Behavior Plan" (BSP) to address school refusal, elopement, verbal outburst and hitting (observed toward the Parent.) It includes the following strategies:

    a. zero demands other than for physical safety
    b. contact office/administration
    c. contact Parent
    d. use prompts to return to school and give processing time
    e. validate feelings
    f. speak in calm, regulated manner
    g. allow regulation break in a predetermined safe space
    h. add staff joiner
    i. offer choices and incentive plan
    j. acknowledge making the right decision
    k. give access to health room for pain management
    l. validate the Student's sensation of pain
    m. drop demands if the Student is agitated
    n. reduce verbal output
    o. find points of connection to establish a relationship
    p. access to breaks as needed
    q. show empathy
    r. reinforce positive behavioral choices
    s. use observational language rather than directions
    t. avoid traditional consequences
    u. don't prompt or remind after giving assignment
    v. low demands

4. On April 7, 2026 and April 16, 2026, the Student's Parent and Former District IEP team met for an IEP review and amended the Student's IEP, dated October 30, 2025, with an amendment date of April 7, 2026. The District added the April 16, 2026 BSP as an accommodation and agreed to a new placement determination.

5. The April 16, 2026 placement page indicates the Student attends school for 5 periods per day, a shortened day chosen by the Parent and endorsed by the Former District. The Student also attends two general education classes virtually.

6. The IEP, dated October 30, 2025, and amended April 7, 2026, includes among other things:

    a. Student strengths, interests, and preferences: the Student is kind, empathetic and interested in learning. They add to conversation in class and are good at self-regulating.

    b. Parent Concerns: The Parent is concerned about the Student getting emails to teachers; their organization; calling home almost daily; how IEP goals are monitored and how to make IEP changes. The Parent requested that the school team, "combat [the Student's] negative talk."

    c. Present Levels of Performance: On 5th grade OSAS English Language Arts assessment, the Student scored a 2582 (Level 4). "This meets the 5th grade level benchmark by 54 points." Reading is 2605 (Level 4); Writing is 2534 (Level 3). On 5th grade OSAS Mathematics assessment, the Student scored a 2570 (Level 3) which meets the 5th grade level benchmark by 68 points. The Student's Language Arts teacher reports the Student has strong analytical skills and can provide evidence to support claims. The Student communicates with peers in small or whole group discussions. They struggle with emotional regulation during non-preferred tasks and/or with non-preferred peers/staff. The Student doesn't require specially designed instruction in reading, writing or math.

    d. Goals: The IEP includes goals in the areas of Social Communication and Emotional Regulation.

    e. Specially Designed Instruction (SDI): The anticipated location for SDI is designated as "Gen Ed Classroom" for Emotional Regulation and "Provider's Space," for Social Communication. The role responsible for monitoring the SDI is identified as "Special Education Teacher/Provider," for Emotional Regulation and "Speech-Language Pathologist," for Social Communication." SDI includes:

        i. Emotional Regulation, 300 minutes/monthly
        ii. Social Communication, 60 minutes/monthly

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

    g. Supplementary Aids/Services; Accommodations: The Student receives accommodations, including scheduled breaks; up to 25% extra time on assignments and assessments; organization check-ins; access to Chromebook and speech to text for writing; classroom teacher assigns preferential seating with student collaboration; core classes at the end of the day, as much as possible; access to a break if needed in a designated area outside the classroom; less distracting work space; completed copy of teacher's notes; 2 minutes extra

passing time at the start or end of the class per student preference; earplugs or noise cancelling headphones; chunking of longer assignment; checklist for longer assignments; separate individual work space to reduce sensory input after instructional time at teacher direction/permission; and escalation cycle .

h. Supports for School Personnel: District Autism specialist consult with Learning Specialist, 60 minutes/yearly; Learning Specialist consult with school staff, 30 minutes/yearly.

i. Non-Participation Justification: The IEP states, "[the Student] has access to participate in specially designed instruction in social communication and will be provided emotional regulation throughout [their] day. [The Student] has access to a full school day with one special education class with a focus on social emotional learning. Though this is not a team selected removal, at this point, [the Student] is struggle [sic] to access any in person general education classes. The team has updated [their] plan to include a parent chosen partial day of 5 periods with access to two online classes to build [the Student's] attendance of school and classes. [The Student] currently struggles to get out of [their] parent's car into the school building and when at school spends much of [their] day in a designated break space with supportive staff members. [The Student] has chosen to attend lunch more successfully than classes most recently."

j. Special Factors: The Student's IEP checked Yes for needs Assistive Technology.

7. The Student's IEP placement determination on April 16, 2026 indicates "General Education 80% or more." The Student attended a modified, Parent implemented, five period schedule and received 20% removal for specially designed instruction.

8. On or about April 24, 2026, the Parent applied to the District for an inter-district transfer. The Student was accepted for enrollment on or about May 1, 2026 and began to attend the District on May 11, 2026.

9. On April 30, 2026, the Former Case Manager emailed the Parent for a status check on the Student's enrollment in the new district, indicating the Student had not yet been withdrawn from the Former District and that the Former Case Manager had just received a records request on the Student from the new District.

10. On May 1, 2026, the District's Out of District Placement Coordinator (Placement Coordinator) emailed the Parent to indicate a "move-in" meeting would be scheduled once the District received the Student's records from the Former District.

11. The District requested the Student's records from the Former District on April 30, 2026.

12. On May 6, 2026, the Parent emailed District special education administration requesting the Student be placed in a self-contained program at a District middle school.

13. On May 6, 2026, the Parent sent an email to the District Placement Coordinator and the Principal, among others, acknowledging an IEP meeting scheduled the next day at the

Student's new middle school in the District.

14. On May 7, 2026, the Parent received a meeting notice for an IEP review to occur at 12:00 pm.

15. The District met for an IEP review on May 7, 2026 and accepted the Former District's Amended IEP, dated October 30, 2025 and amended April 7, 2026, as a transfer IEP.

16. The District's May 7, 2026 transfer IEP adopted the Former District's April 16, 2026 placement.

17. On May 7, 2026, after the IEP review, the Parent emailed District special education administration requesting reasoning for the District rejecting placement in the self-contained program at a different District middle school.

18. On May 11, 2026, the Parent emailed District IEP team members requesting a prior written notice (PWN) for the District's refusal to place the Student in a self-contained classroom at a different District middle school.

19. The District issued a PWN on May 7, 2026, but sent the week of May 11, 2026, describing the IEP meeting decisions including adopting the Former District's IEP, dated October 30, 2025 and amended April 7, 2026; its services and accommodations, including BSP; and the Former District's placement, dated April 16, 2026.

20. The Student's transfer IEP, dated May 7, 2026, included the April 16, 2026 behavior support plan (BSP) developed by the Former District.

21. On May 11, 2026, the Case Manager emailed the Parent to describe the Student's first day and indicated they would create a daily tracking form for tracking the Student's attendance/location/activity during the school day. The Case Manager indicated their primary goal was to get the Student into the school building and to stay in the school building.

22. On May 12, 2026, the Parent indicated that further IEP review was not necessary after communication with the Case Manager and the Principal.

23. On May 12, 2026, the Parent emailed the District to request an IEP review before the end of the school year. The Case Manager emailed agreement to schedule an IEP review.

24. On May 15, 2026, the Principal emailed the Parent to describe attendance tracking. They noted the record will indicate when the Student attended a class period and the Student will be marked "present," when they attend halfway through 7th period. The Principal indicated a 2:45 pm departure meets this criteria, however, indicated the school welcomed the Student to stay at school to the end of the school day at 3:10 pm.

25. On May 27, 2026, the Case Manager emailed the Parent with the Student's daily tracking data, a period-by-period description of the Student's attendance/location and daily activities.

26. The Student's daily tracking data documents 17 days of school attendance.

27. In an interview, the building principal (the Principal) reported that the Student occasionally came to the office to request to phone the Parent and to leave the school. The Principal indicated the Student was encouraged by both the Parent and them to remain at school and was able to do so.

28. On May 28, 2026, the Student's Case Manager emailed the Parent the Student's i-Ready diagnostic scores in Reading and Math, completed on or about May 11 to May 13, 2026. The scores indicated grade level or above ability in both academic areas.

29. On or about May 28 to June 1, 2026, the Student's Case Manager emailed the Parent with a copy of the Student's work samples and i-Ready assignments from May 11, 2026 to May 28, 2026.

30. On May 29, 2026, the District issued the Parent a meeting notice for an IEP review on June 8, 2026 at 9:00 am in person.

31. In an interview, the Case Manager reported the Student had a daily folder that contained assignments from their general education classes for math, science and social studies, which the Student completed in the Student Support Center (SSC), with assistance from a Learning Specialist Assistant (LSA), under the supervision of the Case Manager.

32. On June 4, 2026, the Case Manager emailed the Parent regarding scheduling a new annual IEP review noting, "[w]e will use the data we have for attendance, [the Student] attending classes while in the building and the assigned work [the Student is] completing. We will write a goal for engagement and continue with [their] behavior support plan…" The Case Manager also requested parent concerns for the IEP draft and indicated a draft would be sent the next day.

33. On June 5, 2026, the Parent emailed the Case Manager and the District special education administration with Parent concerns and a renewed request for the Student to be placed in a more restrictive self-contained classroom at a different District middle school.

34. On June 5, 2026, the Principal emailed the Parent to postpone the June 8, 2026 IEP review and indicated in an interview that the postponement was needed to allow the District to prepare a response to the Parent's June 5th parental concerns.

35. On June 10, 2026, the IEP team met for an annual review. The IEP includes the following, among other things:

    a. Student strengths, interests, and preferences: The Student has many interests and enjoys talking about their interests with others. These include Uno, chess, Magic the Gathering and Dungeons and Dragons. The Student enjoys playing card games with peers and attends a neurodivergent affinity group at the middle school.

b. Parent Concerns: The Parent details necessary accommodations for the Student, and that these include regulation breaks; designated low-distraction instructional space; assignment chunking; transition routines; visual prompts; use of "high-interest strategy games" to support "executive functioning, problem solving and cognitive endurance during instructional periods"; increasing instruction in the classroom rather than the Parent's vehicle; consistent access to grade level curriculum; and separate documentation of specially designed instruction on regulation and academics.

c. Present Levels of Performance: In the area of reading, the Student has an i-Ready diagnostic score from Spring 2026 of 663, average: grade 7. The Student has a "surpassed level," for phonics and high-frequency words; vocabulary, late grade 6; comprehension (literature), grade 7; and comprehension (informational text), grade 9. The IEP team indicates, "[w]hen comparing all of the current data on [the Student]'s reading skills, it was determined [they do] not require services in this area. [The Student] is [sic] very strong reader and has great comprehension skills across all assessments." In the area of Math, the Student has an i-Ready diagnostic score from Spring 2026 of 540, average: grade Mid 6. [Their] scores include: number and operations, grade Late-6; algebra and algebraic thinking, grade Mid-6; measurement and data, grade Mid-6; and geometry, grade Mid-6. The IEP team indicates when comparing all of the Student's scores, the Student does not require services and demonstrates "great skills," across all math assessments. In the area of Social/Emotional, the Student's attendance in general education classes is 13%, with "school related," attendance within the school building often self-selected class time in the Student Support Center (SSC), "…rather than in [their] scheduled class." The Student has accommodations to support Social/Emotional functioning in the general education setting, including "preferential seating, behavior support plan, separate individual work space, and scheduled/unscheduled breaks." In the area of Communication, the Student has accommodations within the general education setting, including speech to text for writing. The Student "…does not yet report or exhibit use of self-regulation strategies." With the Student's "speed of [their] escalation cycles," they will benefit from "…having self regulation strategies or plans to request assistance prior to entering or in the early stages of an escalation cycle to be more effective." In the area of Organizational/Study Skills, the Student requires accommodations in the general education setting, including extended time, copy of teacher's notes, extra passing time, chunking of longer assignments, checklists for longer assignments and organization check-ins.

d. Goals: The IEP includes goals in the areas of Social/Emotional, Communication, and Organizational/Study Skills.

e. Specially Designed Instruction (SDI): The anticipated location for Social/Emotional and Study/Organizational Skills is "SPED Classroom," and Communication is "School Wide." and the role responsible for monitoring the SDI is "Special Ed Teacher/Provider" for Social/Emotional and Study/Organizational Skills, and "Speech/Language Pathologist," for Communication.

- Social/Emotional for 300 minutes per week;
- Study/Organizational Skills for 120 minutes per week;
- Communication for 60 minutes per month.

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

g. Supplementary Aids/Services; Accommodations: completed copy of teacher's notes; access to speech to text for writing; preferential seating in collaboration with the Student's input; two minutes extra passing time at either start or end of class per the Student's preference; up to 25% extra time on assignments and assessments until the end of each quarter; behavior support plan; chunking of longer assignments; checklist for longer assignments; organization check-ins; separate individual work space to reduce sensory input after instructional time at teacher direction/permission; scheduled and unscheduled breaks as needed.

h. Supports for School Personnel: "High Needs Facilitator," and consultation to teaching staff from Learning Specialist for 30 minutes yearly.

i. Non-Participation Justification: Student "…will be removed from the general education setting for [their] Strategies class and [their]Community Meeting class led by a Learning Specialist."[The Student] requires explicit instruction in Social/Emotional and Study Skills/Organization and Social Communication. This instruction will occur in the Special Education setting."

36. The June 10, 2026 IEP meeting minutes reflect the following IEP team discussion: attendance, behavior, access to and increasing attendance in general education classes, social/emotional SDI, and other Parent concerns.

37. On June 12, 2026, the Case Manager emailed the Parent a copy of the June 10, 2026 IEP, a PWN, placement determination, and procedural safeguards.

38. The Student's attendance in general education classes was 13% between May 11, 2026 and June 11, 2026. The Student was present 17 of 21 school days.

39. The District, in its response, reported the following regarding the Student's behavior profile during the period of May 11, 2026 to June 10, 2026: "Behaviorally, [their] case manager reported that the Student formed two positive friendships, ate lunch with the general population on a couple occasions, and began verbalizing [their] wants and needs, including using [their] designated safe space on one occasion when frustrated. Measured against the four behavior tiers in [their] Behavior Support Plan, staff documented no Red-tier behaviors (eloping, physical aggression); Orange-tier behaviors limited to one instance of sitting in front of the school and swearing at staff one to two times per week, and no refusals to leave the office; and Yellow-tier behaviors consisting of daily refusal to attend class, along with somatic complaints and requests to go home approximately twice weekly. Green-tier behaviors consisted of the Student attending class (13% of the time), being able to self assess [their] stress and anxiety and taking a break as needed (daily), and being present for instruction and practicing skills. (daily in a separate setting.)"

40. The Parent submitted a *Reply* to the District's *Response* on August 17, 2026. In summary, the *Reply* reasserts the Parent's complaint allegations, including a.) the Student missed core general education instruction, specially designed instruction and IEP accommodation; b.) the

District failed to provide functional behavioral assessment when the Student presented with acute school avoidance, severe emotional dysregulation, and acute psychiatric distress resulting in a suicide risk assessment; c.) failed to provide "performance metrics" and "functional data" prior to the IEP review; d.) failed to report "instructional" vs. "regulation" minutes; e.) that 13% attendance in general education classes required the District to make a more restrictive placement; f.) that the Student requires a more restrictive placement with "therapeutic structure," and "behavioral support"; g.) that the PWN provided by the District failed to provide legally sufficient rationales; and h.) the District failed to provide a free appropriate public education.

IV. DISCUSSION

Content of IEP

The Complaint alleges that the District violated the IDEA when it failed to include information in the Student's IEP that is necessary to address the Student's unique educational needs. Specifically, the District failed to include an appropriate behavior support plan (BSP) based on functional behavioral assessment.

School districts must provide special education and related services to a student with a disability in accordance with the student's IEP.[3] The school district must ensure that each staff member, including service providers, has access to a student's IEP and is informed of their specific responsibilities for implementing the IEP.[4] "IEP Teams and other school personnel should be able to demonstrate that, consistent with the provisions in the child's IEP, they are providing special education and related services and supplementary aids and services."[5] A school district must provide parents with periodic reports of a student's progress toward their IEP goals following the schedule set forth in the student's IEP.[6]

Special education is defined as "specially designed instruction," that is provided at no cost to the parents and is intended to meet the unique needs of a child with a disability. "Specially Designed Instruction" means adapting, as appropriate to the needs of a child with a disability, the content, methodology, or delivery of instruction: 1) to address the child's unique needs resulting from the disability; and 2) ensuring the child's access to the general education curriculum.[7]

A district violates the IDEA when it materially fails to implement an IEP.[8] "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."[9] 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

[3] OAR 581-015-2220(1)(a); 34 CFR §300.323(c)
[4] OAR 581-015-2220; 34 CFR §300.323
[5] Questions and Answers on *U.S. Supreme Court Decision Endrew F. v. Douglas County Sch. Dist*. Re-1, 71 IDELR 68 (EDU 2017)
[6] OAR 581-015-2220(1)(c); 34 CFR §300.320(a)(3)(ii)
[7] OAR 581-015-2000(37); 34 CFR §300.39(b)(3)
[8] *Van Duyn v. Baker Sch. Dist. 5J*, 502 F3d 811 (9th Cir. 2007) ("Van Duyn")
[9] *Id.*

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."[10]

The Student's October 30, 2025 IEP, amended April 7, 2026 and April 16, 2026, included a behavioral support plan developed on April 16, 2026, from a functional behavioral assessment, (FBA), developed the same day. The District adopted the FBA and BSP when the Student transferred into the District on May 7, 2026 and enrolled on May 11, 2026. The BSP was implemented and the District took tracking data period by period every day the Student was in attendance. The BSP included four tiers of intervention, color-coded, Red, Orange, Yellow and Green; from most acute behavior, including physical aggression and elopement, to least acute behavior, including school refusal. The District noted in its response, based on staff and administrative interview, that the Student's behavior improved across the seventeen days of attendance between May 11, 2026 and June 10, 2026.

The District noted in its Response, that the Student's behavioral profile consisted of the following incidents under the four-tier BSP:

"Behaviorally, [their] case manager reported that the Student formed two positive friendships, ate lunch with the general population on a couple occasions, and began verbalizing [their] wants and needs, including using [their] designated safe space on one occasion when frustrated. Measured against the four behavior tiers in [their] Behavior Support Plan, staff documented no Red-tier behaviors (eloping, physical aggression); Orange-tier behaviors limited to one instance of sitting in front of the school and swearing at staff one to two times per week, and no refusals to leave the office; and Yellow-tier behaviors consisting of daily refusal to attend class, along with somatic complaints and requests to go home approximately twice weekly. Green-tier behaviors consisted of the Student attending class (13% of the time), being able to self assess [their] stress and anxiety and taking a break as needed (daily), and being present for instruction and practicing skills. (daily in a separate setting.)"

District staff confirmed in interview the Student's behavior data summary detailed in the District's Response. Staff reported positive behavioral response to BSP accommodation and improvement over the month of May, 2026, into June, 2026, with the Student engaged with peers in card games, self-motivated to complete general education assignments and i-Ready math and reading assignments, and able to maintain in the building, rather than leave school early.

The Department does not substantiate this allegation.

Evaluation and Reevaluation Procedures

The Complaint alleges the District failed to conduct a functional behavioral assessment (FBA) of the Student to address the Student's behavioral needs.

[10] *Id.*

At the Student's move-in/transfer IEP meeting on May 7, 2026, the IEP team noted the Student had a BSP, derived from an FBA, both of which had been developed and reviewed by the IEP team, including the Parent, less than one month before on April 16, 2026. The District IEP team, including the Parent, reviewed the FBA and BSP and adopted the BSP as written. The District agreed to track the Student's behavior and response to intervention/accommodation under the BSP and to meet for further review before the end of the school year.

No further reevaluation was necessary at that time as the assessment and BSP met the individualized behavioral needs of the Student. [11]

At the IEP review on June 10, 2026, the IEP team reviewed the Student's behavioral needs and the behavior tracking data. The IEP meeting notes indicate the District was implementing the Student's FBA and BSP during the transition into the District; noting the current BSP "…appears appropriate and will inform IEP development." During the month of May, 2026, when not in class, the Student often self-reported to the Student Support Center and worked on general education with the support of a Learning Specialist Assistant. The IEP team discussed student expectations for the coming school year, with main goal for the Student increase attendance in general education classes and agreed to update the BSP to further address attendance concerns. The IEP team indicated it would continue to use incentives for work production and attendance and continue to track the Student's behavior to inform behavioral intervention.

The Department does not substantiate this allegation.

Parent Participation

The Complaint alleges that the District violated the IDEA by interfering with the Parent's ability to participate in decisions with respect to the identification, evaluation, IEP and educational placement of the Student, and the provision of a free appropriate public education to the Student. Specifically, the District failed to provide academic progress reporting to the Parent sufficiently in advance of the June 10, 2026, IEP review to enable the Parent's informed participation regarding IEP development.

A school district must provide one or both parents the opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of the child.[12] School districts must consider the concerns of the parents for enhancing the education of their child, among other indicators of the student's academic, developmental, and functional needs.[13] "[P]arents have the right to bring questions, concerns, and preliminary recommendations to the IEP Team meeting as part of a full discussion of the child's needs and the services to be provided to meet those needs."[14] A meeting, in which parents must be given the opportunity to participate, does not include "preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that

[11] OAR 581-015-2110; OAR 581-015-2115; 34 CFR §300.304 and 300.305

[12] OAR 581-015-2190(1); 34 CFR §300.501(b)
[13] OAR 581-015-2205(1)(b) and (d); 34 CFR §300.324(a)(1)
[14] Letter to Northrop (OSEP 5/21/13), citing 71 Fed. Reg. 46,678 (2006)

will be discussed at a later meeting."[15]

Providing a parent with an opportunity to participate in IEP meetings includes a duty to notify the parent about the meeting early enough to ensure they have an opportunity to attend.[16] The IEP meeting notice must, at a minimum, 1) indicate the purpose, time, and location of the meeting and who will be in attendance; 2) inform the parent about their right to invite individuals who have knowledge or special expertise about the student; 3) inform the parent that the IEP team may provide with the meeting even if the parent is not in attendance; and 4) inform the parent of whom to contact before the meeting to provide information if they are unable to attend.[17] Additionally, school districts must schedule IEP team meetings at a mutually agreed time and place.[18]

The District and the Parent met for IEP review on May 7, 2026 and June 10, 2026. The District provided meeting notices for both and the Parent attended both meetings. The District agreed to conduct academic assessment, which occurred on May 12 to May 14, 2026 and the Parent was provided academic assessment information, including I-ready diagnostic assessment and work samples prior to the IEP review on June 10, 2026. The academic data reflected grade level or better assessment and the District also provided work samples that showed Student's completion of grade-level math, science and social studies assignments**.**

The Parents and the Student attended the June 10, 2026 IEP review, with discussion of the Student's attendance and goal to increase their participation in general education classes. Neither the District team members nor the Parents indicated a need for academic SDI at the June 10, 2026 review. The IEP team urged the Student to continue to increase their school attendance and participation in the general education classes. The Parents fully participated in the meeting with all necessary assessment information on academics provided prior to the IEP review.

The Department does not substantiate this allegation.

Education Records

The Complaint alleges that the District violated the IDEA by denying the Parent's access to the Student's education records, specifically, by failing to provide current academic progress prior to the IEP review on June 10, 2026.

The Student's Case Manager indicated to Parent prior to the IEP review on June 10, 2026, that due to the Student's minimal attendance in general education classes, during the 17 days of attendance after their inter-district transfer, the District did not have class grades, a record, to provide to the Parent.

As no record was created for the Student's general education grades, there was no record withheld

[15] OAR 581-015-2190(4); 34 CFR §300.501(b)(3)
[16] OAR 581-015-2190(2)(a); 34 CFR §300.321(a)(1)
[17] OAR 581-015-2190(2)
[18] OAR 581-015-2195(1)(b); 34 CFR §300.321(a)(2)

from the Parent in violation of the IDEA or the Family Educational Rights and Privacy Act, which is incorporated into the IDEA.[19]

The Department does not substantiate this allegation.

Least Restrictive Environment

The Complaint alleges that the District violated the IDEA by removing the Student from the mainstream setting in excess of the non-participation justification in the Student's IEP.

School districts must ensure, to the maximum extent appropriate, that children with disabilities are educated with children who do not have a disability.[20] The IEP team must consider the possibility of delivering services and supports in the regular classroom before removing a student to a separate classroom.[21] Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment should occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.[22]

At the May 7, 2026 IEP review, the District adopted the Student's placement, 80% or more in general education, and provided one period pull out for a Strategies class with the Case Manager. The District offered a full schedule of 6 periods of general education classes and encouraged full day attendance with a BSP accommodation and behavior tracking data taken for a further IEP review on June 10, 2026. The District also took attendance tracking data and documented where the Student was located in the school building throughout the day, when not in general education classes.

The District did not exclude the Student from their general education classes; on the contrary, it encouraged the Student to attend general education classes and implemented the Student's BSP. As the Student only attended one general education class, the Case Manager gathered general education assignments for the Student to complete in their self-selected, alternative break setting; in the Student Support Center (SSC,) as described in their BSP. The Case Manager noted the Student was at no time restricted from attending additional general education classes.

The Department does not substantiate this allegation.

Placement

The Complaint alleges that the District violated the IDEA when it failed to provide the Student with an appropriate educational placement.[23]

[19] OAR 581-021-0220 et seq.
[20] OAR 581-015-2240(1); 34 CFR §300.116(a)(2)(i).
[21] Letter to Beckwith, (OSEP 4/18/2017).
[22] OAR 581-015-2240(2); 34 CFR §300.116(a)(2)(il).
[23] OAR 581-015-2250; 34 CFR § 300.116

School districts must ensure that the educational placement of a child with a disability is determined by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.[24] Placement decisions should not be based solely on factors such as category of disability, severity of disability, configuration of delivery system, availability of educational or related services, availability of appropriate staff, or administrative convenience.[25] "Each student's placement must be individually-determined based on the individual student's abilities and needs... it is the program of specialized instruction and related services contained in the student's IEP that forms that basis of the placement decision."[26] The IDEA "requires that the placement be based on the IEP, and not vice versa."[27]

In addition, the educational placement of a child must be made in conformity with the least restrictive environment (LRE) provisions as noted in the previous allegation.

The LRE mandate does not require that school districts first place students with disabilities in the regular classroom and see if they fail before a more restrictive placement can be considered.[28] "Following this individual inquiry, if a determination is made... that the IEP for a particular disabled student could not be implemented satisfactorily in the regular education environment, even with the provision of supplementary aids and services, regular class placement would not be the LRE placement for that student."[29]

While IEP teams should work towards consensus, the district is ultimately responsible for the provision of FAPE to a student. "If the team cannot reach agreement, the public agency must determine the appropriate services and provide the parents with prior written notice of the agencies determinations regarding the child's educational program and of the parents' right to seek resolution of any disagreement by initiating an impartial due process hearing or filing a state complaint."[30]

The Parent requested placement in a self-contained classroom at a District middle school at the transfer IEP review on May 7, 2026. The IEP team reviewed the Student's move-in IEP, amended on April 7, 2026; reviewed the Student's most recent placement determination, dated April 16, 2026, and FBA/BSP from the prior district, also dated April 16, 2026, and determined it could implement these with comparable services at the neighborhood school in the general education setting. No change of placement was indicated to more restrictive setting from the Student records the IEP team received from the prior district.[31] The IEP team agreed to take additional Student behavioral tracking data and reconvene prior to the end of the school year to determine if additional services or change of placement was necessary.

[24] OAR 581-015-2250(1); 34 CFR §300.116(a)(1).
[25] OSEP Memorandum 95-9 (OSEP 11/23/1994); Letter to Veazey (OSEP 11/26/2001).
[26] OSEP Memorandum 95-9.
[27] *K.D. ex rel. C.L. v. Dep't of Educ., Hawaii*, 665 F.3d 1110, 1123 (9th Cir. 2011).
[28] Letter to Cohen, (OSEP 1996).
[29] *Id*.
[30] Letter to Richards (OSEP 2010).
[31] See OAR 581-015-2240 and 2250; 34 CFR §300.114 and 116

On June 10, 2026, the IEP team met for further IEP review. The IEP team reviewed the Student tracking data and noted the Student increased their daily attendance, while still struggling to attend general education classes. The Student presented with improving behavioral regulation; had connection with District staff; completed assignments from the general education curriculum, though in an alternative setting. This was a strategy identified in the Student's behavioral intervention plan. The Student also attended the District's neuro-divergent social skills class (NEST), and the Case Manager's Strategies class, to receive their SDI. The Student did not engage in elopement or physical/assaultive behavior, which indicated progress with self-regulation under their BSP. The IEP team determined the Student could receive FAPE in the least restrictive setting and documented the decision in a PWN.

The Department does not substantiate this allegation.

Prior Written Notice

The Complaint alleges that the District violated the IDEA by failing to provide adequate Prior Written Notice (PWN) in response to the Parent's requests and failing to provide PWN that accurately described IEP team decisions/refusals after the Student's transfer into the District and at the June 10, 2026 IEP Meeting.

A PWN must be given to the parent of a child within a reasonable period of time before a 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 content of the PWN must include a description of the action proposed or refused by the school district, an explanation of why the district proposes or refuses to take the action, and a description of each evaluation procedure, assessment, test, record, or report the school district used as a basis for the proposed or refused action. The notice must also include 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 the notice of procedural safeguards may be obtained. It must include sources for parents to contact to obtain assistance in understanding their procedural safeguards. PWN must include 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 agency's proposal or refusal.[32] The Prior Written Notice must be written in a language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.[33]

The District issued PWNs on May 7, 2026 and June 10, 2026. The IEP team met for IEP review on May 7, 2026 for the Student's enrollment into the District. The Parent requested the District consider more restrictive placement, in a self-contained classroom at a different District middle school campus. The IEP team, per staff interview, considered the Student's move-in IEP, dated October 30, 2025, amended April 7, 2026, and considered the Student's most recent placement by the former District on April 16, 2026 and Behavior Support Plan, also dated April 16, 2026.

[32] OAR 581-015-2310(2-4); 34 CFR §300.503(a)
[33] OAR 581-015-2310(4-5); 34 CFR §300.503(c)

Given the close proximity in time to the prior IEP amendment, placement and behavior plan development, the IEP team found the Student information to be current and accurate and determined the District could adopt and implement the existing IEP, placement and behavior support plan with comparable services.[34] Though the Parent requested District consideration of a more restrictive placement in a self-contained classroom, the District determined the Student's IEP services and accommodations best aligned with the placement in the general education setting with less than twenty percent pull-out for specially designed instruction. The District indicated the Student's SDI could be met in attendance in a Neuro-Divergent program class period with instruction by the District speech language pathologist and a Learning Strategies class period, with instruction from the Case Manager. The IEP team agreed to implement the April 16, 2026 behavior support plan and keep Student tracking data for further IEP review before the end of the school year.

On May 7, 2026, the District issued a PWN describing its acceptance of the move-in IEP, BSP and placement. The PWN did not note the District's refusal of the Parent's request for more restrictive placement, nor provide explanation for the refusal. The District did not "…explain the basis of its refusals and the data it relied on…" in declining the Parent's request.[35]

On June 10, 2026, the IEP team met for further review, including placement review. The District issued a June 10, 2026 PWN which detailed the proposed and refused actions, including the Parent's renewed request for more restrictive placement. The PWN included the required legal components, including review of the Student tracking data and response to the BSP accommodation, used for the IEP decisions and the reasoning for rejecting alternative options, ensuring the Parent was informed of the District's position and their procedural safeguards.

The Department substantiates this allegation only as it relates to the insufficient description of the District's refusal to place the Student in a more restrictive setting in the May 7, 2026 PWN.

Free Appropriate Public Education (FAPE)

Due to the alleged IDEA violations detailed above, the Complaint alleges that the District failed to provide the Student with a free appropriate public education (FAPE).

Each school district is responsible for providing a free appropriate public education to school age children with disabilities for whom the school district is responsible.[36] In Oregon, the school district who is responsible for providing FAPE to a student is the student's district of residence.[37] The IDEA defines FAPE as special education and related services that: 1) Are provided at public expense, under public supervision and direction, and without charge; 2) Meet the standards of the state educational agency; 3) Include an appropriate preschool, elementary school, or secondary school education; and 4) Are provided in conformity with an IEP.[38]

To determine if a student has been denied a FAPE, courts must consider whether the school district

[34] OAR 581-015-2230(1)
[35] See ex. St. Vrain Valley Sch. Dist. RE-1J, 124 LRP 22116 (SEA CO 05/31/24)
[36] OAR 581-015-2040(1); 34 CFR §300.101(a)
[37] OAR 581-015-2040
[38] OAR 581-015-2040; 34 CFR §300.17

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.[39] Not all procedural violations amount to a denial of FAPE. A school district's procedural violation denies FAPE to a student if it results in a loss of educational opportunity or if it seriously infringes on the parents' opportunity to participate in the development of the IEP.[40]

The Parents alleged a denial of a FAPE. The District maintained that the Student was making progress, noting …The District asserted that they were prepared to provide services and that the current placements and accommodations provided the Student with access to their education in the least restrictive environment.

Data from May 11, 2026 showed the Student was increasing their daily attendance, completing assignments from their general education classes, using accommodations from their BSP, and establishing relationships with supportive school staff members, thus making significant progress toward social-emotional and behavioral goals. The District's refusal to place the Student in a more restrictive setting did not constitute a denial of a FAPE because the District provided alternative, appropriate supports that allowed the Student to remain successful in the least restrictive environment as demonstrated by District data.

The Department does not substantiate this allegation.

VII. CORRECTIVE ACTION

In the Tigard-Tualatin School District 23J
Case No. 26-054-086

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

Action Required	**Submissions**	**Due As Soon As Possible But Not Later Than**
1. The District will develop and conduct training for all staff responsible for implementing IEPs at the Student's school on their responsibility to: a. Issue PWN with reasonable, detailed explanation/reasoning for the District's proposed or refused actions.	Training agenda and materials to ODE for review and approval. Sign-in sheet from training.	October 15, 2026 December 15, 2026

[39] *Endrew F.,* 137 S.Ct. at 999
[40] *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23,* 960 F.2d 1479, 1484 (9th Cir. 1992)

Dated: this 4th Day of September, 2026



Ramonda Olaloye
Assistant Superintendent
Office of Enhancing Student Opportunities

E-mailing Date: September 4, 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 provision of ORS § 183.484. (OAR 581-015-2030 (14)).