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Attorneys for Defendants Oregon Department of Education, Colt Gill and Katherine Brown

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

J.N., by and through his next friend, Cheryl Cisneros, E.O., by and through his next friend, Alisha Overstreet; J.V., by and through his next friend, Sarah Kaplansky; B.M. by and through his next friend, Traci Modugno; on behalf of themselves and all others similarly situated, and

COUNCIL OF PARENT ATTORNEYS AND
ADVOCATES, INC.,

Plaintiffs,

v.

OREGON DEPARTMENT OF
EDUCATION,

COLT GILL, in his official capacities as
Director of Oregon Department of Education
and Deputy Superintendent of Public
Instructions for the State of Oregon, and

KATHERINE BROWN, in her official
capacities as Governor and Superintendent of
Public Instruction for the State of Oregon,

Defendants.

Case No. 6:19-cv-00096-AA

OFFER OF JUDGMENT

TO: Plaintiffs, by and through attorneys Ira A. Burnim, 1090 Vermont Ave NE, Suite 220,
Washington, DC 20005; Thomas Stenson, 511 W 10th Ave, Suite 200, Portland, OR

97205; Crystal Adams, 712 H Street NE, SPT #32020, Washington, DC 20002; Michael W. Folger, One Manhattan West, New York, NY 10001; Selene Almazan-Altobelli, 8 Market Place, Baltimore, MD 21285; of attorneys for plaintiffs.

Pursuant to Fed. R. Civ. P. 68, Defendants hereby offers to allow entry of judgment to be taken against them as follows:

A judgment in favor of Plaintiffs and against Defendants with the terms set forth in the attached Exhibit 1 and for Plaintiff's costs under 42 U.S.C. §1988 incurred up to the date of this offer (that includes a reasonable amount for attorney fees incurred through the date of this offer) as determined by the Court under the applicable standards, including the standard described in *Hensley v. Eckhart*, 461 U.S. 424, 435 (1983).

If Plaintiffs do not accept this offer, they may be required to pay Defendants' costs incurred after the date of this offer and may be unable to recover Plaintiff's costs incurred after the date of this offer.

To accept this offer, Plaintiffs must serve written notice of acceptance thereof within fourteen (14) days of the date this offer is made.

This offer is not an admission of liability by the Defendants, but rather is made solely for the purpose of compromising a disputed claim.

PLAINTIFFS [ACCEPT____/DECLINE____] DEFENDANTS' OFFER OF JUDGMENT

IRA A. BURNIM D.C. No. 406154
Bazelon Center for Mental Health Law

DATED:_____

THOMAS STENSON OR No. 152894
Disability Rights Oregon

DATED:_____

CRYSTAL ADAMS CA No. 308638
National Center for Youth Law

DATED:_____

MICHAEL W. FOLGER N.Y. No. 5151337
Skadden, Arps, Slate, Meagher & Flom LLP

DATED:_____

SELENE ALMAZAN-ALTOBELLI MD No. 10506
Council of Parent Attorneys and Advocates

DATED: _____

DATED July 22, 2022.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ Carla A. Scott

CARLA A. SCOTT #054725
Senior Assistant Attorney General
NINA R. ENGLANDER #106119
Assistant Attorney General
Trial Attorney
Of Attorneys for Defendants

Exhibit 1

ODE shall take the steps set forth below in the following categories: (1) Guidance Development and Publication of Best Practices; (2) Training, Technical Assistance, and Professional Development; (3) Additional Monitoring Processes Related to Shortened School Days (SSD); (4) Workplace Shortage of Special Education Staff.

I. Guidance Development and Publication of Best Practices

ODE will develop guidance and publish best practices on the following topics.

A. Topics

1. *Guidance on Use of Shortened School Days:* ODE will Provide an overview of SSD and review requirements related to the use of SSD (e.g., ORS 343.161). ODE will also share best practice recommendations and will identify practices that are ineffective and discouraged. Guidance will include sample monitoring standards ODE will use related to SSD that districts can use to assess compliance. The guidance will include best practices to address inappropriate use of kindergarten placements on SSD.
2. *Guidance on LRE requirements of the IDEA and its connection to SSD:* Provide an overview of the LRE and placement requirements of the IDEA, with an emphasis on the establishment and use of a continuum of alternative placements. A key point in this guidance is that decisions to shorten a student's day are only appropriately considered once an IEP team has fully considered whether the child's needs can be met in a full school day in any setting within their continuum of alternative placements (i.e., instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions). Prior to considering placement on SSD, IEP teams should generally exhaust all lesser restrictive strategies, interventions, and supports.
3. *Guidance on Supporting Student Behavior through FBAs and BIPs:* ODE will describe IDEA's requirements when a child's behavior impedes their learning or that of others, and best practice recommendations for conducting FBAs, developing BIPs, and implementing BIPs. This guidance will include essential elements of quality FBAs and BIPs, including sample formats that districts can use to develop their own practices, and recommendations related to progress monitoring, review, and revision of BIPs.
4. *Guidance on Making and Documenting Placement Decisions Related to SSD, Including Parent Participation Requirements:* This guidance will focus on providing IEP teams with support for making appropriate placement decisions related to SSD, including a checklist that teams can use to determine whether SSD placement is an appropriate option to

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consider. Included in this guidance will be information that is likely to be included in IEPs when an SSD is being considered. This guidance will also document the efforts school districts must make to ensure meaningful parent participation in the decision-making process related to SSD placements.

- 5. *Guidance on Documenting Informal Removals from the School Setting:* ODE will continue to reinforce statewide guidance that all disciplinary removals—including in-school suspension, out-of-school suspensions, and informal removals—must be reported annually to the Oregon Department of Education’s Discipline Incidents Collection.

B. Timeline

Action Item	Anticipated Timeline
Review existing ODE guidance	July-Aug 2022
Develop engagement plan. Engagement will include overview of guidance topics including ORS/IDEA requirements.	July-Aug 2022
Notify school districts of guidance development and engagement opportunities	Aug 2022
Draft comprehensive guidance	Aug-Sep 2022
ODE to implement engagement plan. ODE will offer opportunities for engagement with school districts, agency partners, parents, and community members.	Sep-Nov 2022
Review input from engagement	Nov 2022
Revise guidance as needed based on engagement	Nov-Dec 2022
Finalize guidance	Jan 2023
Publish guidance	Feb 2023
Introduce guidance (special education director’s calls, via district support specialists, via an on-demand webinar, and through statewide presentations)	Feb 2023

C. Accountability

ODE will share guidance with Plaintiffs following publication, will confirm receipt of guidance with each school district and education service district (ESD), and will share a list of school districts represented at the director’s call where guidance was introduced.

II. Training, Technical Assistance, and Professional Development

A. Universal, Targeted, and Intensive Training

ODE will make training, technical assistance, and professional development related to SSD available at universal, targeted, and intensive levels, according to district need. Specifically, ODE will do the following:

1. *Develop universal training resources for each of the guidance areas described above.* These resources will be available to regional and local education agencies (LEAs) to support capacity-building at the local level. ODE will disseminate these training resources to relevant audiences through its District Support Specialists and with district-level and ESD special education directors. To address kindergarten placement, ODE will also meet with Early Intervention/Early Childhood Special Education (EI/ECSE) contractors to review best practices to address inappropriate use of kindergarten SSD placements.
2. *Establish Regional Special Education Support Networks.* ODE will reallocate approximately **\$2.5 million** in funding to dedicate to support ongoing training and capacity building needs in specific regions throughout the state. These regional networks will provide additional personnel distributed regionally throughout the state to focus on critical areas of need (e.g., building local capacity related to behavior, coordinating the transition from PK-K and early childhood [P-3] placements). These regional networks will provide targeted support reflective of regional needs and seek to build capacity through resource development and provision, technical assistance, coaching, and professional development.
3. *Establish a Statewide Technical Assistance Center:* This Center will provide intensive support and will build capacity of staff to work with students with disability-related behavior needs. ODE will reallocate approximately **\$2.5 million** in funding to dedicate to this effort. This center will serve as an additional resource for LEAs and the regional special education support network when local and regional capacity is not sufficient to meet local need.

B. Timeline

Action Item	Anticipated Timeline
Introduce guidance (via special education director’s calls, district support specialists, on-demand webinar and statewide presentations)	Feb 2023
Release training modules for each guidance topic	September 2023
Establish regional special education support networks	2023-24 school year

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Action Item	Anticipated Timeline
<ul style="list-style-type: none">Year 1 (2022-23): Funding, visioning, planning, recruitment, and hiringYear 2 (2023-24): Implementation of regional special education support networks	
Develop RFP/IGA process, award contract(s) for statewide technical assistance (TA) center	2023-24 school year
Launch behavior-focused statewide TA center	2024-25 school year

C. Accountability

ODE will share training modules with Plaintiffs following development. ODE will communicate with Plaintiffs via quarterly progress reports regarding implementation of regional special education support networks and statewide TA center.

III. Additional Monitoring Processes Related to SSD

Background

Since 2019, ODE has been receiving technical assistance from the National Center for Systemic Improvement (NCSI) and implementing a contract with West Ed (which houses NCSI) to redesign its general supervision system. NCSI is funded by the U.S. Department of Education’s Office of Special Education Programs and is the national technical assistance center that supports state agencies in developing, implementing, and improving general supervision systems to ensure they meet requirements of the IDEA. This work focuses on the supervisory activities that are most closely related to improving outcomes for children experiencing disability.

This work has most recently resulted in the adoption of OAR 581-015-2015 General Supervision. Though this work was not undertaken in relation to this lawsuit, this administrative rule and implementation of the related system for general supervision provides a mechanism to address data collection and monitoring of SSD, in order to limit its inappropriate use.

ODE will use this system for general supervision to monitor the use of SSD on an ongoing basis. Because full implementation of this system will take several years, ODE will take short-term actions as a bridge to be used until each cyclical cohort has been able to participate in a monitoring process. Finally, ODE will specifically monitor the compliance of SSD placement decisions for each student currently placed on SSD through a validated self-assessment process.

As identified in each accountability section below, ODE will submit quarterly progress reports to Plaintiffs to provide an update on the implementation of the monitoring terms below.

A. Monitoring the Use of SSD through General Supervision

1. Monitoring commitment

ODE will monitor use of SSD through collection, validation, and submission of data specific to the use of SSD; monitoring activities and any resulting corrective action; and dispute resolution and any resulting corrective action. ODE will modify its “Special Education Child Count” (SECC) data collection to include a new required field for placement on SSD. Starting with the 2022-23 school year, ODE will conduct differentiated monitoring for special education programs, varied in focus and intensity according to district data. As appropriate, districts will be required to participate in universal monitoring (all districts participate in universal monitoring every year); targeted cyclical monitoring (i.e., completed on a three-year cycle); targeted data-driven monitoring (i.e., to enable the state to identify noncompliance with specific State Performance Plan indicators); and intensive monitoring (i.e., districts are selected for intensive monitoring based on level of programmatic risk as determined by an annual risk assessment completed by ODE; as appropriate, given selected school districts’ data, ODE will utilize the SSD file review component during intensive monitoring).

2. Timeline

Action Item	Anticipated Timeline
Implementation of universal, targeted, and intensive monitoring	2022-23 school year
Revision of SECC data collection to include abbreviated day flag <ul style="list-style-type: none"> • 2023-24: Notify districts of need for revision of this collection; work with data governance committee to make revisions • 2024-25: Implement changes to special education child count collection • 2025-26: Begin using data collected in SECC to inform monitoring processes 	2024-25 school year
Training on changes to data collection	2024-25 school year
Begin using SECC data to inform monitoring under general supervision	2025-26 school year

3. Accountability

ODE will provide Plaintiffs with quarterly progress reports which will include:

- a. A summary of findings of any monitoring related to SSD;
- b. Updates to SECC data collection (due December 1 of each year) to include an abbreviated day field, enabling the Department to identify a total number of students placed on SSD within the past year.

B. Dispute resolution and any resulting corrective action

1. Investigation of state complaints

ODE will continue to investigate state complaints filed related to this area of concern, as it recently did in the matter of Klamath Falls City School District (21-054-038), identify noncompliance where it exists, and order corrective action as appropriate. Findings from dispute resolution activities, including mediations and due process hearings, will inform provision of technical assistance and professional development.

2. Timeline

Action Item	Anticipated Timeline
Investigation of state complaints	Ongoing, as filed
Order corrective action, as needed	Ongoing, as needed
Review dispute resolution activity to inform general supervision monitoring practices	Annually
Provide PD and TA based on themes that emerge in dispute resolution	Ongoing, as needed

3. Accountability

ODE will provide Plaintiffs with quarterly progress reports which will include:

- a. Anonymized results of any state complaints related to SSD, including findings of noncompliance, if any, and required corrective action, if any;
- b. Any themes identified in review of dispute resolution data;
- c. Any enforcement actions taken consistent with OAR 581-015-2015 (i.e., “School districts and programs that do not complete corrective actions and correct noncompliance may be subjected to enforcement mechanisms, including but not limited to additional reporting requirements, technical assistance, a corrective action plan or improvement plan, and conditions on funding, and/or withholding funds, in whole or in part, by the Department).

C. Short-Term Bridge Actions Related to Data Collections for SSD

1. Short-term data collection

ODE recognizes that it will take time to complete the actions identified set forth above related to data collection and monitoring activities. Therefore, ODE will implement a short-term data submission requirement for all school districts until the end of the 2024-25 school year. This requirement will allow ODE to gather data about the frequency and use of SSD until a formal data collection and SSD-related monitoring can be implemented. Under this requirement, school

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districts will be required to report to ODE each placement of a student on SSD that persists beyond 30 school days.

2. Timeline

Action Item	Anticipated Timeline
Develop mechanism and process for reporting SSD placements that persist beyond 30 days to ODE. An early draft mechanism for collecting the data is here: https://app.smartsheet.com/b/form/aabf9e17b98c4bee8fbe8c8985603341	August 2022
Share requirement and procedure for reporting SSD placements that persist beyond 30 days to ODE with special education directors.	September 2022
District support specialists will review data related to SSD placements monthly.	Starting October 2022
District support specialists will follow-up monthly with each district that has not reported any students placed on SSD that persist beyond 30 days to confirm accuracy.	Starting October 2022
Requirement to submit this data will end.	2025-26 school year when SECC data collection has been revised

3. Accountability

ODE will provide Plaintiffs with quarterly progress reports which will include confirmation that reporting for students placed on SSD for longer than 30 days has begun, and a summary of data collected from that process.

D. Monitoring the Compliance of SSD Placement Decisions for Each Student Currently Placed on SSD

1. Monitoring terms

Under the authority of the recently revised OAR 581-015-2015 General Supervision, ODE will require a validated self-assessment process to be completed by the school district for each student placed on SSD. ODE will conduct validation checks to ensure accuracy, identify areas for additional training for individual districts and across the state, and issue findings of noncompliance when it is identified. ODE will use currently available data to identify the number of files to be reviewed or will use updated information regarding current SSD placement numbers if provided by Districts.

2. Timeline

Action Item	Anticipated Timeline
Notify districts of need for monitoring under authority of the recently revised OAR 581-015-2015	September 2022
Invite all districts to provide updated lists of students placed on SSD; require submission of list of students placed on SSD if school district did not submit data to Neutral Expert	October 2022
Require submission of self-assessment results for all students placed on SSD	November 2022
Select sample of student records and standards to review	December 2022
ODE to review sample of student records and standards	January 2023
Identify noncompliance if/where it exists	Jan-Feb 2023
Require corrective action as needed	February 2023
Ensure any required corrective action is implemented	Starting Feb 2023
Implement enforcement actions if/as required	Starting Feb 2023

3. Accountability

ODE will provide Plaintiffs with quarterly progress reports which will include confirmation that student-specific monitoring processes (i.e., a validated self-assessment process for each student placed on SSD) have begun, and anonymized summary of data collected from that process, including:

- a. Descriptive statistics, to the extent possible, related to number of students monitored who are still placed on a SSD, reason(s) for SSD placement, compliance vs. noncompliance for each standard assessed, summary of compliance status statewide and by district (when not subject to n-size or cell size suppression); and duration of current SSD placement, and;
- b. General areas of noncompliance found.
- c. An anonymized summary of any corrective action required based on student-specific (validated self-assessment) monitoring processes and updates related to implementation of that corrective action.
- d. Any enforcement actions taken consistent with OAR 581-015-2015 (i.e., “School districts and programs that do not complete corrective actions and correct noncompliance may be subjected to enforcement mechanisms, including but not limited to additional reporting requirements, technical assistance, a corrective action plan or improvement plan, and conditions

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on funding, and/or withholding funds, in whole or in part, by the Department).

IV. Address Workplace Shortage of Special Education Staff

ODE will convene an annual statewide summit, starting in the 2022-23 school year, for Oregon’s approved educator preparation providers (i.e., Bushnell University, Corban University – Oregon, COSA-Concordia University of Chicago, Eastern Oregon University, George Fox University, Lewis & Clark College, Linfield University, Oregon State University, Oregon State University-Cascades, Pacific University, Portland State University, Southern Oregon University, University of Oregon, University of Portland – Oregon, Warner Pacific College, Western Oregon University), to discuss and support preparation pipeline to address workplace shortages of special education staff. ODE will partner with the Teacher Standards and Practices Commission (TSPC), the Educator Advancement Council (EAC), and the Higher Education Coordinating Commission (HECC) to coordinate this summit, if those agencies are interested.

A. Timeline

Action Item	Anticipated Timeline
Summit planning and agenda development	July-December 2022
Invite program participants	October 2022
Hold summit	June 2023

B. Accountability

ODE will share summit agenda, participating agencies, and an overview of outcomes with Plaintiffs via any agreed-upon progress reporting.

V. Termination

The judgment will terminate on July 1, 2026.