

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Dallas School )  
District 2 and the Oregon ) FINDINGS OF FACT, CONCLUSIONS,  
Department of Education ) AND FINAL ORDER  
Case No. 18-054-014

**I. BACKGROUND**

On February 27, 2018, the Oregon Department of Education (Department) received a written request for a Special Education complaint investigation (Complaint) from the parent of a student (Student) residing in the Dallas School District (District) and an attorney (Complainant, collectively Complainants) representing a statewide advocacy group. The Complainants requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030, alleging violations of the Individuals with Disabilities Education Act (IDEA) on the part of the District and the Department. The Department confirmed receipt of the Complaint and forwarded the request to the District on March 2, 2018.

Under state and federal law, the Department must investigate written complaints that allege violations of the IDEA and issue an order within sixty days of receipt of the complaint. This timeline may be extended if the complainant(s) and the respondents agree to an extension to engage in mediation or local resolution, or for extenuating circumstances. The complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.<sup>1</sup> Based on the date the Department received this Complaint, the relevant period for this Complaint is February 28, 2017 through February 27, 2018.<sup>2</sup>

On March 13, 2018, the Department's Complaint Investigator (Investigator) sent a *Request for Response* (RFR) to the District and to the Department, identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of March 28, 2018. The District and Department asked for and received a 10-day extension due to the complex and systemic<sup>3</sup> nature of the Complaint. On May 22, 2018, the issue date for this Order was extended once more, to June 4, 2018, due to a family emergency experienced by Department staff responsible for the order's issuance. Both the Complainants and the District were notified of the extension.

On April 9, 2018, the District submitted the following materials for the Investigator to review:

4/9/18	Table of Contents
11/2/16	IEP
11/2/16	Meeting Notes
11/14/17	IEP
11/3/17	Meeting Notice
11/14/17	Prior Notice of Special Education Action

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<sup>1</sup> OAR 581-015-2030(5).

<sup>2</sup> Complainants requested the Department extend the investigation period further back based on improper conduct by the District. The Investigator did not find such wrongdoing. As such, the investigation period will reach back one year, to February 28, 2017.

<sup>3</sup> Two other parents filed similar complaints against both the District and the Department, as coordinated by an attorney representing a statewide advocacy group. Each of the four complainants requested the complaints be handled in a systemic manner.

11/14/17	Meeting Notice
11/14/17	Meeting Agenda
12/19/17	Request for Student Records
10/13/16	Meeting Notice
9/6/17	Meeting Notice
9/22/17	Meeting Notice
11/3/17	Meeting Notice
11/2/16	Prior Notice of Special Education Action
10/3/17	Prior Notice of Special Education Action
11/14/17	Prior Notice of Special Education Action
9/16/16 to 5/25/17	Discipline Referral Records
9/14/17 to 12/6/17	Discipline Referral Records
1/18	Discipline Summary
2016-2017	Attendance Records
2017-2018	Attendance Records
10/16/2015	Evaluation Pre-Plan
11/13/15	Statement of Eligibility for Emotional Disturbance
10/3/16 to 1/5/18	Emails
2017-2018	Daily Behavior Charts
9/2017 to 12/2017	Behavior Calendar
11/7/16	Functional Behavior Assessment
2017-2018	Log Book
10/27/15 to 12/8/17	Events Log
201-2017	Restraint & Seclusion Reports
9/5/17 & 11/1/17	Transportation Requests
11/2/17	Abbreviated School Day Notice and Acknowledgement
2017-2018	DSD Attendance Record
10/3/17	IEP
2/5/18	IEP
11/14/17	Meeting Notice

The Investigator determined that on-site interviews were necessary. On April 16, 2018, the Investigator interviewed the Parent and the Parent's Attorney. On April 19, 2018, the Investigator interviewed the District Special Education Program Specialist, the General Education Teacher, and the Special Education Director. On April 20, 2018, the Investigator interviewed the School Principal, Special Education Case Manager, and District Behavior Support Specialist.

On April 30, 2018, the Investigator interviewed the Department's Assistant Superintendent, Special Education Legal Specialist, and IDEA General Supervision Specialist.

The Investigator reviewed and considered the previously-described documents, interviews, and exhibits in reaching the Findings of Fact and Conclusions of Law contained in this order.

## **II. ALLEGATIONS AND CONCLUSIONS**

The Department has jurisdiction to resolve this Complaint.<sup>4</sup> The Complainants' allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and on the Discussion in Section IV.

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<sup>4</sup> 34 CFR §§ 300.151-153; OAR 581-015-2030.

<p><b>1.</b></p>	<p><b>Parent Participation - General</b></p> <p>The Complainants allege that the District violated the IDEA when it denied the Parent the opportunity to understand and participate in an IEP meeting held on November 14, 2017 (and possibly other IEP meetings during the relevant complaint period) by:</p> <p>Pre-determining the Student's educational placement to be a continued reduced school day program, thus depriving the Parent of the opportunity to participate in making the placement decision.</p> <p>(34 C.F.R. §§ 300.500, 300.327, 300.501(b); OAR 581-015-2190)</p>	<p><b>Substantiated</b></p> <p>The District changed the Student's placement without first convening an IEP Team Meeting. The District informed the Complainant, rather than consulting or offering opportunities to participate in reasonable consideration of placement options. The Department substantiates this allegation against the District.</p>
<p><b>2.</b></p>	<p><b>Prior Written Notice</b></p> <p>The Complainants allege the District violated the IDEA when it failed to provide the Parent with Prior Written Notice after it changed the Student's placement and/or refused the Parent's request to change placement.</p> <p>(34 C.F.R. § 300.503; OAR 581-015-2310)</p>	<p><b>Substantiated</b></p> <p>The District denied the Parent the procedural safeguard of providing the Complainant with a Prior Written Notice before the District changed the Student's placement. The Department substantiates this allegation against the District.</p>
<p><b>3.</b></p>	<p><b>Placements and Least Restrictive Environment</b></p> <p>The Complainants allege that the District violated the IDEA when it:</p> <ul style="list-style-type: none"> <li>a) Did not consider a full continuum of placements as possibilities when the District decided to shorten the Student's school day. Instead, the District considered a narrow range of placements;</li> <li>b) Told the Parent the District could not consider other placements due to budget and staff constraints.</li> </ul> <p>(34 C.F.R. §§ 300.114, 300.115, 300.116, 300.327; OAR 581-015-2240)</p>	<p><b>Substantiated</b></p> <p>The District did not give thorough consideration to the continuum of services and alternative placements. Furthermore, the District made a restrictive placement decision outside the IEP and placement team process. The Department substantiates this allegation against the District.</p>

<p><b>4.</b></p>	<p><b>Additional Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)</b></p> <p>The Complainants allege that the District violated the IDEA when it:          Changed the Student's educational placement by removing the Student from school for more than 10 school days (pattern or consecutive) without determining whether the Student's behavior that caused the removals was a manifestation of the Student's disability.</p> <p>(34 C.F.R. §§ 300.504, 300.530; OAR 581-015-2415)</p>	<p><b>Not Substantiated</b></p> <p>The District was not required to conduct a manifestation determination review because the Student had only experienced six days of disciplinary removal in the school year. The Department does not substantiate this allegation against the District.</p>
<p><b>5.</b></p>	<p><b>Content of the IEP</b></p> <p>The Complainants allege the District violated the IDEA when it:</p> <ul style="list-style-type: none"> <li>a) Pre-determined the amount of SDI that was to be provided to the Student, regardless of the Student's individualized needs that had been established at the November 14, 2017 IEP Meeting; and,</li> <li>b) Failed to include additional Specially Designed Instruction, Related Services and Supplementary Aids and Services that might have supported the Student to the extent the Student was able to attend for a full day of school.</li> </ul> <p>(34 C.F.R. § 300.320; OAR 581-015-2200)</p>	<p><b>Substantiated</b></p> <p>At various times, the content of the Student's IEP did not accurately depict the services and placement the District was providing to the Student. The Department substantiates this allegation against the District.</p>
<p><b>6.</b></p>	<p><b>Free Appropriate Public Education (FAPE)</b></p> <p>The Complainants allege that the cumulative result of the allegations listed above in this complaint resulted in a denial of FAPE to the Student.</p> <p>(34 C.F.R. § 300.101; OAR 581-015-2040)</p>	<p><b>Substantiated</b></p> <p>Due to procedural errors that led to substantive violations, the Student was denied a FAPE. The Department substantiates this allegation against the District.</p>

<p><b>7. State General Supervision</b></p> <p>The Complainants allege the Oregon Department of Education (Department) violated the IDEA when it:</p> <ul style="list-style-type: none"> <li>a) Did not provide the necessary supervision and monitoring to ensure that this Student and others in the District received FAPE; even though this Student evidences behavioral and other challenges in the school setting; and,</li> <li>b) Did not provide access to a comprehensive educational system of supports and services so that the District could provide FAPE to this Student and others.</li> </ul> <p>(34 C.F.R. § 300.101; OAR 581-015-2015)</p>	<p><b>Not Substantiated</b></p> <p>The Department fulfilled its monitoring and supervision responsibilities to the District. The Department had no notice that this Student was being denied a FAPE.</p> <p>The Department does not substantiate the allegation that the Department did not provide appropriate general supervision to the District.</p>
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<p><b>Complainants' Requested Corrective Action</b></p> <p>The Complainants' request the following actions be implemented as resolutions to the Complaint:</p> <ol style="list-style-type: none"> <li>1. To adequately compensate [the Student] for the many days of instruction and services [the Student] has lost, the Department should: <ul style="list-style-type: none"> <li>a) Order that the District provide compensatory education that, pursuant to the relevant holding of <i>Endrew F. v. Douglas County School District</i>, 137 S. Ct. 988 (2017), will restore [the Student] to the position [the Student] would have been in had [the Student] received full school days of appropriate education and services while a student in the District;</li> <li>b) Order that the District hire a knowledgeable independent educational expert from a list of suitable experts to be provided by the Department to assess the amount and form of compensatory education that would achieve the result specified in requested remedy # 1. a.;</li> <li>c) Issue a finding that it (the Department) has failed to meet its responsibility under 34 C.F.R. 300.101 to create and oversee a comprehensive educational system capable of ensuring that students with disabilities and serious behavioral problems receive a FAPE when they reside in rural districts far from behavioral experts and suitable day treatment programs.</li> </ul> </li> <li>2. Pursuant to C.F.R 300.149 et. seq., complainants additionally request that ODE create a network of behavioral support experts sufficient to serve all rural students with severe behavioral issues that cannot be addressed by local resources or programs, such that those experts will be available for up to one semester and numerous enough to be available within two weeks of establishing that the needs of a particular student qualified for network</li> </ol>
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services. In requesting this relief, complainants note that 300.151 provides that:

“(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address –

- 1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and,
- 2) Appropriate future provision of services for all children with disabilities.”

### III. FINDINGS OF FACT

1. The Student is ten years old and eligible for special education services. The Student’s eligibility under the category of Emotional Disturbance was established on November 13, 2015. The Student lives in the District boundaries and attends fifth grade in a regional Behavior Intervention Program.<sup>5</sup> The Student’s family receives services from other local agencies, including skills coaching, counseling, and general wraparound services.
2. On various assessment subtests, the Student scored in the average to superior range. The Student reads at grade level and District staff report that the Student loves to read, particularly when the Student is able to select the reading material. The Student is resistant to writing with a pencil or pen, and writing assignments often trigger behavioral incidents. The Student achieved a passing score on the statewide third-grade mathematics assessment.
3. The Student enrolled in the District during the Student’s third grade year. At that time, the Student was placed on an abbreviated school day schedule based upon such placement by the Student’s previous school district. The District placed the Student in its Structured Learning Program (SLP) at one of the District elementary schools for students in kindergarten through third grade.<sup>6</sup> By the end of third grade, the Student was attending school full-time, spending less than 40% of the school day in the general education environment.
4. In the SLP, students receive intensive behavior/emotional instruction from a special education teacher. The SLP emphasizes individualized instruction on building cognitive skills, social skills, emotional development, behavior management, communication development, as well as provision of sensory supports. Features of the SLP include reduced class size, carefully planned schedules and transitions, reduced instructional pace, content presented at student’s ability level, classroom visual supports, and additional adult support.
5. At the beginning of fourth grade, the Student moved to the SLP Program at a District elementary school for students in fourth and fifth grade, attending school full-time for the entirety of the school year.

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<sup>5</sup> The Behavior Intervention Program serves special education students in grades 1-12 whose IEPs are focused primarily on behavior goals. This program focuses on teaching pro-social skills to students in an academic setting taught at the student’s level. The goal is to teach students skills they need to be successful in a less restrictive environment. Collaborative Problem Solving (CPS) is a key component of the program.

<sup>6</sup> The District is configured into two elementary schools for students in grades K-3, one elementary schools for students in grades four and five, a middle school for students in grades six through eight, and a single high school. The District also has a post high school program for students between eighteen and twenty-one, and an alternative high school for students in eleventh and twelfth grade.

6. The Student's November 2, 2016 Individualized Education Program (IEP) notes that the Student has behavioral needs and requires assistive technology. The IEP contains goals in the areas of Writing and Behavior.
7. The Student's annual Behavior goal in the November 2, 2016 IEP is "[g]iven specially designed instruction, [the Student] will improve [the] ability to safely participate in classroom routines and activities. This goal contains the following three objectives: "(1) [The Student] will remain on task for a period of 10 minutes with no more than one adult prompt;" (2) "[The Student] will stay with the group and not leave without appropriate requesting with no more than one adult prompt;" and (3) "When [the Student] is feeling frustrated, angry or overwhelmed, [the Student] will select a pre-taught calming strategy. (e.g., ask for a break or use a visual support such as a stop sign, breathing exercises, request and engage in sensory activities.)"
8. The IEP Team determined the Student would receive the following specially designed instruction (SDI): 30 minutes per day of written language instruction and 60 minutes per day of "Behavior – social/emotional." The IEP notes that all SDI is to be delivered in the "Special Ed Class." The IEP Team specified that the Student would be removed from the general education setting for approximately 1700 minutes per week.<sup>7</sup>
9. The IEP Team selected a placement option of "[l]ess than 40% of the day in the general education setting."<sup>8</sup> The IEP Team also noted that the Student would receive the related service of round-trip transportation and also have a behavior plan. The IEP describes "Supplementary Aids/Services; Modifications" to include minimized transitions, a quiet area for de-escalation, sensory supports and visual supports. The IEP's placement page states that the Student would be with peers during lunch, physical education, breaks and electives, with adult support.
10. A functional behavior assessment (FBA) was completed on November 7, 2016. The Team identified behaviors that occurred in all school settings and consisted of very mild (refusal and whining) behaviors, to more significant behaviors where the Student destroyed property, was aggressive toward peers and staff (hitting, kicking and biting), as well as screaming. A Behavior Support Plan was compiled and it was decided that when the Student behaved in an aggressive and hurtful manner, District staff would remove objects, create safe places for the Student, give calming time, and provide sensory supports if the Student accepted them. If the Student's behavior became more aggressive, staff would attempt to stay out of the way, use room clearing techniques, and mats to protect staff. District staff also employed the Mandt<sup>9</sup> methodology to protect the Student.

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<sup>7</sup> In the District, elementary school students attend school for 6 hours and 10 minutes per day. This represents a total of 370 minutes per day, 1850 minutes per week.

<sup>8</sup> The District utilizes a computer program for developing IEPs that automatically generates a dropdown list of possible student placements. The dropdown list includes the following options: (1) Not Specified; (2) 80% or more of day in regular class; (3) 40 to 79% of day in regular class; (4) Hospital; (5) Less than 40% of day in regular class; (6) Public Separate School; (7) Private Separate School; (8) Public Residential Facility; (9) Private Residential Facility; (10) Correctional Facility; (11) Homebound; (12) Parentally Placed in Private School; and (13) Home Schooled.

<sup>9</sup> The Mandt System is a comprehensive, integrated approach to preventing, de-escalating, and if necessary, intervening when the behavior of an individual poses a threat of harm to themselves and/or others.

11. The Student began the 2017-2018 school year in the fifth grade, on a full-day schedule. On October 3, 2017, the IEP Team met for an annual IEP review. The Parent and three members of the Student's family's wraparound team attended the meeting, along with District staff.
12. The October 3, 2017 IEP contains a Behavior goal and Social Skills goal. The Behavior goal states, "[g]iven specially designed instruction, [the Student] will improve [the] ability to safely participate in classroom routines and activities by 10/1/2018. This goal contains the following three objectives: "(1) [The Student] will a) remain on task for a period of 10 minutes with no more than one adult prompt;" (2) "[The Student] will stay with the group and not leave without teacher permission with no more than one adult prompt;" and (3) "When [the Student] is feeling frustrated, angry or overwhelmed, [the Student] will select a pre-taught calming strategy. (e.g., ask for a break or use a visual support such as a stop sign, breathing exercises, request and engage in sensory activities.)"
13. The Social Skills goal states that "[the Student] will improve [ ] use of taught strategies for improving social interactions and conflict resolution skills with one adult prompt or fewer by 10/1/2018." This goal contains the following three objectives: (1) "Given visual and verbal prompts, [the Student] will participate in tasks/activities to completion by exhibiting appropriate behaviors, 80% of the time;" (2) [The Student] will transition appropriately from tasks and activities and school environments 80% of the time given visual and verbal prompts;" and (3) [The Student] will independently ask to take a break given visual and verbal prompts 80% of the time."
14. The IEP Team added an additional 60 minutes per day of SDI in "Behavior-social/emotional" to be provided in "Special Ed Class" and 30 minutes per day of "Social Skills." No anticipated location was listed for "Social Skills."
15. The IEP Team developed a safety plan for the Student and added accommodations including decreased amount to prove mastery, access to word processor, alternate response to illustrate understanding, and small group instruction for all academic subjects. The Team describes the Student's nonparticipation in the general education environment as amounting to "22 hours per week in the SLP" because the Student "benefits from specially designed instruction in written language, social skills, and behavior support." The Student's placement is described as "[l]ess than 40% of the day in the general education setting."
16. The District sent the Parent a Prior Written Notice of Special Education Action (PWN) dated October 3, 2017, which reflected changes to the Student's IEP.
17. During the 2017-2018 school year, the Student was suspended for six, non-consecutive days. The Student was not suspended or otherwise removed from school for disciplinary reasons between February 28, 2017 and the end of the 2016-2017 school year.
18. The Student's disciplinary record describes 51 behavioral incidents in 45 of the 110 days the Student attended school between January 23, 2017 to December 11, 2017. Among the 51 incidents, 35 were characterized as aggressive behavior;<sup>10</sup> 8 were for running; and 9 were for inappropriate sexual talk or behavior.<sup>11</sup> The District meted out various discipline and responses, including: (1) Loss of Undefined Privilege; (2) Parent Contact as only response; (3) Room Clear; (4) Conference with Student; (5) Sent home without suspension; (6) Loss of

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<sup>10</sup> Kicking, hitting, punching, spitting, throwing furniture and other objects, destroying materials in the classroom, and attacking peers and staff without obvious provocation.

<sup>11</sup> Grabbing staff or peers in private body parts, using obscene language, making sexual gestures and comments to peers.



Recess; and (7) Suspensions. In some cases, it appears that once calmed down, the Student returned to a regular schedule without experiencing any specific discipline. The Parent reports that fewer than five written referrals or suspension notices were sent home. The Parent also alleges receiving a response of "We don't know" from District staff when asked what caused the Student's aggressive behavior.

19. On October 30, 2017, the District Special Education Director sent an email to the administrator of the Behavior Intervention Program. In the email the Director stated the District was referring the Student for placement in the program and asked when the Team could meet to start discussing/transitioning the Student.
20. On November 1, 2017, the District Special Education Director executed a "Special Education Transportation Request" form, indicating that beginning November 6, 2017, the Student's school day would be abbreviated to five hours per day. The Student was scheduled to arrive at school at 8:30 a.m. and be picked up from school at 1:30 p.m.
21. On November 2, 2017, the Principal met with and informed the Parent that the Student could no longer attend school for a full day. The Principal furnished the Parent with an Abbreviated School Day Notice and Acknowledgement form. The Parent signed the form.
22. The Abbreviated School Day Notice and Acknowledgement form was developed after the passage of Oregon Senate Bill 263. Effective July 1, 2017, Senate Bill 263 set forth requirements relating to the placement of students on abbreviated school day programs. On or about September 17, 2017, the Department issued Executive Numbered Memo 004-2017-18 outlining SB 263 and included a sample acknowledgement form. The form notes that if a student has an IEP, the District may only place the student on an abbreviated school day after the IEP team has: (1) Determined that the student should be placed on an abbreviated school day program based on the student's needs; (2) Provided the student's parents with an opportunity to meaningfully participate in a meeting to discuss the placement; (3) Documented in the IEP the reasons why the student was placed on an abbreviated school day; and (4) Documented that the team considered at least one option that includes appropriate supports for the student and that could enable the student to access the same number of hours of instruction or educational services that are provided to students who are in the same grade within the same school.
23. The Student's abbreviated school day schedule began on November 6, 2017. The Student attended school for five hours, from 8:30 a.m. to 1:30 p.m. and the District provided transportation.
24. On November 3, 2017, the District developed a "Special Education Notice of Team Meeting" scheduled for November 14, 2017 to "develop or review an individualized education program (IEP) and placement." The meeting notice does not mention the District's placement of the Student on an abbreviated school day.
25. On November 14, 2017, members of the Student's IEP Team met for the purpose of revising the Student's IEP to reflect the Student's abbreviated school day. The Parent did not attend the meeting.
26. The meeting notes describe the purpose of the meeting as "to revise [the Student's] IEP to reflect [the Student's] modified day." The Student's "Present Levels" are described as "added modified day 8:30-1:30, and "Services" are described as "modified day."

27. The District sent a copy of the amended IEP to the Parent with a PWN dated November 14, 2017, describing the modified day and explaining that the “revision meeting was called to make changes to the IEP to reflect [the Student’s] current school day.
28. On December 5, 2017, the District Behavior Specialist sent an email to the Behavior Intervention Program, inquiring whether District staff could bring the Student and the Parent to tour the Behavior Intervention Program. Initially, the Parent refused to consider any other placement than the Student’s current classroom at the District elementary school for students in fourth and fifth grade. However, after discussing the matter with the family’s wraparound team, the Parent agreed to visit the Behavior Intervention Program. After visiting the site, the Parent agreed to a change in placement to the Behavior Intervention Program.
29. On December 12, 2017, the Student began attending the Behavior Intervention Program on a full-time basis. During the 43 days between enrolling in the Behavior Intervention Program on the filing of this Complaint, the Student attended school regularly. The Student was suspended for 1.5 days, and the Student’s behavior prompted approximately 12 incident reports with such descriptions as danger to self or to others and out of class without permission.
30. On February 5, 2018, the IEP Team met to amend the Student’s IEP to reflect the Student’s change in placement to the Behavior Intervention Program special school, which had occurred on December 12, 2017. The Behavior Intervention Program is described in the IEP as a “public separate school,” and also as an “alternative public setting.” The IEP Team did not change any of the Student’s goals, amounts of SDI, related services, supplementary aids, or revise the Student’s nonparticipation justification.
31. On February 5, 2018, the District drafted a PWN, describing the Student’s change of placement to the Behavior Intervention Program. The PWN notes that the Student had been attending the Behavior Intervention Program since December 12, 2017.
32. The Department carries out monitoring and supervision of District compliance with the IDEA. The Department completes its monitoring and supervision in part through the System Performance Review & Improvement System (SPR&I). This includes review of District performance across various indicators, as well as District review and reporting of individual student IEP files. The District satisfactorily completed its SPR&I review process for the 2016-2017 school year by the deadline established by the Department. The Student’s file was not among those selected for District procedural compliance review.
33. On February 27, 2018, Complainants filed this Complaint.

#### **IV. DISCUSSION**

##### **A. Parent Participation – General**

The Complainants allege that the District violated the IDEA when it denied the Parent the opportunity to understand and participate in an IEP Meeting held on November 14, 2017 (and possibly other IEP team meetings during the relevant complaint period by predetermining the Student’s educational placement be an abbreviated school day program, depriving the Parent of the opportunity to meaningfully participate in IEP Team decision making.

The 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 Student, as well as the provision of a free appropriate public education (FAPE).<sup>12</sup> If neither parent can attend an IEP or placement team meeting, the school district “must use other methods to ensure parent participating but not limited to, individual or conference phone calls or home visits.”<sup>13</sup> A meeting may be conducted without a parent in attendance if the school district is unable to convince the parent that they should attend.<sup>14</sup> Furthermore, a school district fails to comply with the requirements under the IDEA when it engages in predetermination—independently developing an IEP, then presenting it to parents without parent input and participation.<sup>15</sup>

On two different occasions, the District changed the Student’s education program without first convening an IEP Team Meeting.

### **1. November 14, 2017**

The District abbreviated the Student’s school day without involving the Parent in decision-making or convening an IEP Team Meeting. On November 1, 2017, District staff executed a “Special Education Transportation Request” form, indicating that beginning November 6, 2017, the Student would be on an abbreviated school day. On November 2, 2017, the school Principal informed the Parent that the Student’s school day would be abbreviated. The District furnished the Parent with an Abbreviated School Day Notice and Acknowledgement form. The Parent signed the form. On November 3, 2017, the District developed a “Special Education Notice of Team Meeting” scheduled for November 14, 2017 to “develop or review an individualized education program (IEP) and placement.” The meeting notice does not mention the District’s placement of the Student on an abbreviated school day. Beginning November 6, 2017, the Student attended school on an abbreviated school day schedule.

On November 14, 2017, District staff met to revise the Student’s IEP to reflect the Student’s already-implemented abbreviated school day. The Parent did not attend the meeting. The District’s meeting notes do not detail attempts to involve the Parent in the IEP Team Meeting, nor any efforts to reschedule the meeting to ensure the Parent’s participation. A prior written notice (PWN) developed after the November 14, 2017 IEP notes that the Student’s IEP was revised to reflect the Student’s abbreviated school day. The PWN does not note any change to the Student’s IEP goals or amounts of specially designed instruction (SDI).

The District convened an IEP Team Meeting approximately two weeks after informing the Parent that the Student would be placed on an abbreviated school day. The purpose of the meeting was to update the Student’s IEP to reflect a District decision that had already occurred. This scenario left the Parent incapable of meaningfully participating in a meeting with respect to changes to the Student’s IEP.

### **2. December 12, 2017**

On December 12, 2017, the District placed the Student in the Behavioral Intervention Program special school. The District did not convene an IEP Team Meeting to consider this change of placement until February 5, 2018. The Parent did attend this IEP Team Meeting. Besides noting the change in placement, the IEP Team did not change any of the Student’s goals, amounts of SDI, related services, supplementary aids, or revise the Student’s nonparticipation justification

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<sup>12</sup> 34 C.F.R. § 300.322; OAR 581-015-2190.

<sup>13</sup> 34 C.F.R. § 300.322; OAR 581-015-2195(2).

<sup>14</sup> 34 C.F.R. § 300.322; OAR 581-015-2195(3).

<sup>15</sup> *W.G. v. Board of Trustees of Target Range School Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992).

statement. Approximately eight weeks lapsed between the District changing the Student's placement and convening an IEP Team Meeting to address the Student's change in placement.

In both instances, the District convened IEP team meetings to update the Student's IEP to conform with educational program and placement decisions the District had already made. The Parent was prevented from meaningfully participating in these meetings. The Department substantiates this allegation.

### **B. Prior Written Notice**

The Complainants allege the District violated the IDEA when it failed to provide the Parent with a PWN after it changed the Student's placement.

If a school district proposes to change the educational placement or provision of FAPE to a child, within a reasonable time before implementing such changes, the school district must provide the student's parents with a PWN.<sup>16</sup> The PWN must contain specific information, including a description of the action the school district proposes, why the school district proposes that action, how the school district arrived at its decision, and other options considered.<sup>17</sup>

Here, the District implemented a change in the Student's daily schedule to an abbreviated school day on November 6, 2017, but did not develop a PWN reflecting this change until November 14, 2017. Approximately one month later, on December 12, 2017, the District implemented the Student's transfer to the Behavioral Intervention Program special school, but did not develop a PWN reflecting this change until approximately eight weeks later—February 5, 2018.

Indeed, the District may have implemented appropriate changes to the Student's educational program to address significant behavior needs. But it did so without providing the Parent with a written PWN, which is critical in these circumstances. This way, the Parent can fully consider the District's proposed changes and voice their objections or otherwise respond. Failure to issue a PWN prior to implementation of such changes does not align with the requirements of the IDEA. The Department substantiates this allegation.

### **C. Placements and Least Restrictive Environment**

The Complainants allege that the District violated the IDEA when it did not consider a full continuum of placements as possibilities when the District decided to abbreviate the Student's school day. The Complainants also allege the District told the Parent the District could not consider other placements due to budget and staff constraints.

Students with disabilities must be educated to the extent possible with other children who do not have disabilities. In addition, a district may only remove a child with a disability from the regular education setting when the nature or severity of the disability is such that education in regular classes cannot be provided satisfactorily.<sup>18</sup> Furthermore, school districts have a continuum of alternative placements available to meet the needs of students with disabilities, including instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions.<sup>19</sup>

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<sup>16</sup> 34 C.F.R. § 300.503; OAR 581-015-2310.

<sup>17</sup> *Id.*

<sup>18</sup> 34 C.F.R. § 300.114; OAR 581-015-2240.

<sup>19</sup> 34 C.F.R. § 300.115; OAR 581-015-2245.

The Student's disruptive behavior noticeably increased during the beginning of the 2017-2018 school year. Abbreviating the Student's school day may have been a proper consideration given data collected about the Student's behavior (e.g., incidents of physical aggression, unsafe behavior, destruction of property, obscene language, sexualized behavior). However, the District violated IDEA when it did not convene an IEP team meeting to consider other options, including the following: (1) reevaluate the appropriateness of the Student's Behavior goal and/or Social Skills goal; (2) revise the amount of SDI delivered to the Student in the areas of "Behavior-social/emotional" and/or "Social Skills;" (3) revisit the Student's functional behavior assessment and/or behavior support plan; and/or (4) reconsider supplementary aids and services available to the Student. Instead, the District made a unilateral decision to place the Student on an abbreviated school day, effectively eliminating the Student's opportunity to be in an environment with nondisabled students for at least one hour each school day.

When it leaped to abbreviating the Student's school day without ensuring that a continuum of alternative placements was available to meet the needs of the Student, the District violated the IDEA. The Department substantiates this allegation.

#### **D. Additional Disciplinary Removals of More than 10 School Days (Pattern or Consecutive)**

The Complainants allege that the District violated the IDEA when it changed the Student's educational placement by removing the Student from school for disciplinary reasons for more than ten school days without determining whether the Student's behavior that caused the removals was a manifestation of the Student's disability.

A school district may remove a child from school for violating the school's code of conduct, including suspension, for up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities.<sup>20</sup> If a Student is disciplinarily removed for more than ten consecutive days, or for more ten cumulative days in a school year that constitute a pattern, the District must conduct a manifestation determination review.<sup>21</sup> The purpose of this review is to determine whether the student's behavior that violated the student code of conduct was caused by or had a direct and substantial relationship to the student's disability, or was a direct result of the school district failing to implement the student's IEP.

During the 2017-2018 school year, the Student was suspended for six, non-consecutive days.<sup>22</sup> While it may have been prudent to convene a manifestation determination review to evaluate the connection between the Student's disability and the Student's violation of the school's code of conduct, one was not required. The District did not remove the Student from school for disciplinary reasons for more than ten consecutive or cumulative days that constitute a pattern. The Department does not substantiate this allegation.

#### **E. Content of the IEP**

The Complainants allege the District violated the IDEA when it: (a) predetermined the amount of SDI to be provided to the Student, regardless of the Student's individualized needs that had been established at the November 14, 2017 IEP meeting; and (b) failed to include additional SDI, related services, and supplementary aids and services that might have supported the Student to the extent the Student was able to attend a full day of school.

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<sup>20</sup> 34 C.F.R. § 300.530; OAR 581-015-2405.

<sup>21</sup> 34 C.F.R. § 300.530; OAR 581-015-2415.

<sup>22</sup> The Student was not suspended or otherwise disciplinarily removed from school between February 28, 2017 and the end of the 2016-2017 school year.

A student's IEP must include such components as: (1) a statement of the child's present levels of academic achievement and functional performance; and (2) a statement of the special education and related services and supplementary aids and services to be provided to the student to advance appropriately toward attaining annual goals, and be involved in the general education curriculum both with children with and without disabilities.<sup>23</sup>

During the 2017-2018 school year, the Student's IEPs did not contain accurate statements of the Student's special education services, nor the amount of time the Student would be involved in the general education curriculum. As described above, between November 6, 2017 and November 14, 2017, the Student's IEP did not accurately reflect the Student's educational program. As early as November 1, 2017, the District commenced processes to abbreviate the Student's school day, but did not update the Student's IEP until November 14, 2017.

Additionally, between December 12, 2017 and February 5, 2018, the Student's IEP did not contain accurate statements about the Student's placement. On December 12, 2017, the District placed the Student in the Behavioral Intervention Program special school. The Student's IEP content did not reflect this fact until February 5, 2018. After the placement in the Behavioral Intervention Program special school, no other changes were made to the Student's goals, amounts of SDI, related services, supplementary aids, or the Student's nonparticipation justification statement.

At various times, the Student's IEP content varied significantly from the services and placement the District provided to the Student. The Department substantiates this allegation.

#### **F. Free Appropriate Public Education (FAPE)**

The Complainants allege that the cumulative result of the Complaint allegations resulted in a denial of FAPE to the Student. Procedural violations of the IDEA do not automatically require a finding of a denial of FAPE. However, when procedural inadequacies "result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the individualized education program formulation process," a FAPE denial is the clear result.<sup>24</sup>

The District violated provisions of IDEA that resulted in the loss of educational opportunity on the part of the Student. The District abbreviated the Student's school day without first convening an IEP Team Meeting to discuss less restrictive alternatives that could provide the Student with educational opportunities. Such potential alternatives include: (1) reevaluating the appropriateness of the Student's Behavior goal and/or Social Skills goal; (2) revising the amount of SDI delivered to the Student in the areas of "Behavior-social/emotional" and/or "Social Skills;" (3) revisiting the Student's functional behavior assessment and/or behavior support plan; and/or (4) reconsidering supplementary aids and services available to the Student.

The District also committed procedural errors that infringed on the Parent's opportunity to participate in formulating the Student's IEP. The Parent did not attend the November 14, 2017 IEP Meeting where the District placed the Student on an abbreviated school day. The District's meeting notes do not detail attempts to involve the Parent in the IEP Team Meeting, nor any efforts to reschedule the meeting to ensure the Parent's participation.

The District denied the Student a FAPE. The Department substantiates this allegation.

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<sup>23</sup> 34 C.F.R. § 300.320; OAR 581-015-2200.

<sup>24</sup> *W.G. v. Board of Trustees of Target Range School Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992).

## G. State General Supervision

The Complainants allege the Department violated the IDEA when it: (a) did not provide the necessary supervision and monitoring to ensure that this Student and others in the District received FAPE even though this Student evidences behavioral and other challenges in the school setting; and (b) did not provide access to a comprehensive educational system of supports and services so that the District could provide FAPE to this Student and others.

The Department is responsible for general supervision and monitoring of special education programs for children with disabilities.<sup>25</sup> The Department carries out its general supervision and monitoring responsibilities in various ways, including facilitating district self-assessment, data collection, analysis and reporting; as well as on-site visits, review of district policies and procedures, review of the development and implementation of IEP's, improvement planning and auditing use of federal funds.<sup>26</sup> The Department's obligation to directly provide FAPE to a District student with disabilities arises when a school district refuses or wrongfully neglects to serve a student, provided that school district's failure is significant, and state agency officials are given adequate notice of the school district's noncompliance, and the state agency is afforded reasonable opportunity to compel local compliance.<sup>27</sup>

The Department fulfills its monitoring and supervision responsibilities through a variety of procedures. These include overseeing District self-assessment of compliance with specific IDEA requirements based on a sample of student special education files<sup>28</sup> and the collection of data related to indicators of program effectiveness (e.g., graduation rates, dropout rates, statewide assessment, discipline, least restrictive environment placement, disproportionate representation in special education, etc.) The data the Department collects from the District and every other school district in the State do not focus on individual children. Rather, the data depicts a school district's system-wide progress toward achieving defined goals. Little, if any, of the data obtained through the Department's monitoring and supervision processes yields information that could put the Department on notice of any issues related to a specific student.

The Department timely and completely fulfilled its monitoring and supervision responsibilities with respect to the District. Also, there is no indication that the Department does not distribute funding to the District in compliance with law in the same manner it does all other school districts in the State.

Until this Complaint was filed, the Department was unaware of the District refusing or wrongfully neglecting to adequately serve the Student. In light of the Department not having any adequate notice of the Student's circumstances, it follows that the Department was not afforded any reasonable opportunity to compel local compliance. The Department does not substantiate this allegation.

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<sup>25</sup> ORS 343.041; OAR 581-015-2015.

<sup>26</sup> OAR 581-015-2015.

<sup>27</sup> *Doe v. Maher*, 793 F.2d 1470, 1492 (9th Cir. 1986).

<sup>28</sup> The compliance program algorithm did not select the Student's special education file for District self-review in 2016-2017 or 2017-2018.

## CORRECTIVE ACTION<sup>29</sup>

*In the Matter of Dallas School District 2 and the Oregon Department of Education*  
Case No. 18-054-014

No.	Action Required	Submissions <sup>30</sup>	Due Date
<b>1a.</b>	<p><b>IEP Meeting and Content</b></p> <p>Convene an IEP team meeting to review the present levels of student academic and functional performance, with special attention to the student's academic progress in the general curriculum. Based on that review, revise the IEP, including accommodations, modifications and supplementary aids services or supports to personnel needed to support the student's special education needs as well as progress in the general education curriculum. Based upon the content of the revised IEP, determine placement in the LRE.</p>	<p>Submit to ODE and to the parents, evidence of completed IEP team meeting, including meeting notice, copy of complete IEP, list of documents/information reviewed, including reports of academic progress, and prior written notice. Submit documentation of placement meeting and decisions, including prior written notice.</p>	<b>August 31, 2018</b>
<b>1b.</b>	<p>Convene an interim IEP team meeting to review the effectiveness of the recently revised IEP and to consider, through an in-depth review of existing information, if additional evaluations or data are needed.</p> <p><i>If such additional information is needed, obtain written consent and provide the evaluation(s) in an expedited manner.</i></p>	<p>Submit evidence of parent participation, including team meeting notice, copy of IEP and IEP notes and/or minutes, and any associated prior written notice.</p> <p><i>Submit evidence of parent consent, prior written notice, expedited timeline, and evidence that copy was provided to the parent.</i></p>	<p><b>November 15, 2018</b></p> <p><b>Within 10 days of the decision</b></p>
<b>1c.</b>	<p>Following receipt of any new information throughout the 2018-2019 school year, convene the student's IEP</p>	<p>For each meeting, submit evidence of parent participation, including</p>	<b>Within 10 days of meeting date</b>


<sup>29</sup> The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030 (17) & (18)).

<sup>30</sup> Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: [raeannray@state.or.us](mailto:raeannray@state.or.us); fax number (503) 378-5156.



	team to review and revise the student's IEP as appropriate and, based on the IEP revision, determine appropriate placement in the Least Restrictive Environment (LRE).	team meeting notice, IEP/placement notes and/or minutes, and any associated prior written notices	
<b>2a.</b>	Compensatory education services. Offer 30 hours of extended school year services per summer in 2018 and in 2019 to address the student's academic progress in general education middle and secondary school content, such as science, technology, math, social studies, and language arts.	Annually develop and submit a copy of the planned content and service delivery schedule, signed by the parent and the District representatives, including name of educator(s), instructional area, and the individual responsible for supervision.	<b>June 29, 2018</b> <b>June 28, 2019</b>
<b>2b.</b>	Services to be provided by a qualified educator, qualified to teach the content or provide the service. District is responsible for transportation. Plans may be altered with the written agreement of the parent and the authorized District representative.	Annually, submit to the Department and with a copy to the parent, a copy of the daily log of hours, content, and attendance, signed by the Educator and the District supervisor.	<b>September 17, 2018</b> <b>September 16, 2019</b>

Dated: this 4th Day of June 2018

  
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 Sarah Drinkwater, Ph.D.  
 Assistant Superintendent  
 Office of Student Services

Mailing Date: June 4, 2018

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)