

AGENDA
Regular Meeting
Zoom
Thursday, November 6, 2025

State Board of Education meetings comply with open meeting laws and accessibility requirements. Requests for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be given to [Corey Rosenberg](#) at 503-947-5740, at least 48 hours before the meeting. You can access all board materials on our [Boardbook](#) page. Staff respectfully request that you submit email copies of written materials before or after your testimony.

Please note: all times are approximate.

1. Call to Order

A. Roll Call

Time: 9:00 AM

2. Public Comment

Time: 9:05 AM

A. The State Board of Education will hold space for **virtual** public comment. Individuals must register to provide virtual comment. Written public comment received will be posted to BoardBook.

3. Consideration of Petition to Amend OAR 581-015-2430 and 581-015-2360

334

Time: 9:35 AM

4. First Readings

A. Senate Bill 141 (2025) Implementation: Definitions and Metrics

375

Time: 10:00 AM

Cassie Medina, Office of Education Innovation and Improvement

5. Adjourn

Time: 11:00 AM



Date: October 28, 2025

To: Department of Education

From: Adrienne Anderson, Government Relations Counsel, OSBA

Subject: Objection to proposed rule change to OAR 581

The proposed rule change to OAR 581-015-2430 and 2360 are already covered by other areas of the administrative rules and would provide confusion for school districts to implement.

The proposed rule change to OAR 581-015-2430 makes it only applicable when a district is appealing a manifestation determination under OAR 581-015-2415(4)(a)(C) or appealing the end of the removal period under OAR 581-015-2425(2). However, that particular subsection relates to a district's ability to seek an order from Administrative Law Judge to allow for placement in an interim alternative educational setting for injurious behavior and what a district must do prior to seeking that order. That section does not relate to a district appealing a manifestation determination.

The proposed rule change to OAR 581-015-2360 further confuses matters. Currently, during the pendency of any due process hearing or judicial appeal, the child must *remain* at their current placement unless an ALJ orders a change of placement for up to 45 days due to the substantial likelihood of injurious behavior. OAR 581-015-2415 provides that if a determination is made that the student's behavior is a manifestation of their disability, then the school district must *return* the student to the placement from which they were removed unless a district obtains an order from an ALJ under *OAR 581-015-2430* allowing a change in placement to an interim alternative educational setting for injurious behavior *and* (1) conducts a functional behavioral assessment or (2) reviews the student's behavioral plan and modifies it as necessary.

The proposed rule changes raise a series of issues. First, it's unclear what the addition of subsection (1) does for OAR 581-015-2430, making it only applicable to districts appealing a manifestation under OAR -2415. OAR -2415 already states that an ALJ granting an order for change of placement must do so under OAR -2430. Second, it prohibits an ALJ from granting an order for a change of placement for injurious behavior when it comes to a

student *remaining* in their placement, but the proposed change does not amend OAR - 2415, which still allows an ALJ to grant an order to *remove* a student from a placement for injurious behavior if one of the two qualifiers listed above is met. And third but slightly unrelated to the proposed rule change, the current definition of injurious behavior is confusing. The definition for “injurious behavior” under OAR –2430 is “behavior that is substantially likely to result in injury to the child or to others.” The term “injurious behavior” is used in both OAR –2430 and –2415, but the phrase “substantial likelihood of injurious behavior” is used in OAR –2360, which seems redundant.

We are certainly open to working with the proponents to provide clarity in the administrative rule to ensure its compliance with the IDEA, but the proposed rule change might increase the confusion. Additionally, we believe it’s important to involve the necessary stakeholders in any rule change impacting schools and districts.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF EDUCATION**

IN THE MATTER OF THE
EDUCATION OF:

**STUDENT AND ESTACADA
SCHOOL DISTRICT 108**

) **FINAL ORDER**
)
) OAH Case No. 2025-ABC-06997
) Agency Case No. DP 25-105
)

HISTORY OF THE CASE

On March 19, 2025, Parent filed a request for a due process hearing (Complaint/hearing request) with the State Superintendent of Public Instruction on behalf of Student, alleging that Estacada School District 108 (District) violated federal and state statutes, federal regulations, and state administrative rules during the 2024/2025 school year, through the date of the Complaint.

On March 19, 2025, the Oregon Department of Education (ODE) referred this matter to the Office of Administrative Hearings (OAH) for a due process hearing. Senior Administrative Law Judge (ALJ) Kate Triana was appointed by the ODE to conduct the due process hearing and issue a Final Order in this case.

On April 4, 2025, the District filed District's Motion for 45-Day Interim Alternative Educational Setting seeking an order removing Student from their current placement pursuant to provisions of OARs 581-015-2360, 581-015-2425, and 581-015-2430.

On April 15, 2025, ALJ Triana conducted a prehearing conference, by telephone. Lara Hurska and Whitney Hill, attorneys at law, appeared with Parent, SS. Taylor Kinch and Joel Hungerford, attorneys at law, appeared on behalf of the District. Jill Bennett, District Assistant Director of Student Services, also appeared. At the prehearing conference, ALJ Triana scheduled the expedited hearing for April 30 and May 1, 2025.¹ ALJ Triana also set briefing deadlines for Parent to file a Response to the District's Motion.

On April 18, 2025, Parent filed Parent's Response to District's Motion for 45-Day Interim Alternative Educational Setting seeking a ruling dismissing the District's Motion. On April 25, 2025, the District filed District's Reply. On April 28, 2025, ALJ Triana took the matter under advisement. On April 29, 2024, the OAH issued a Ruling on Motion to Dismiss District's Motion for 45-Day Interim Alternative Educational Setting, denying Parent's motion.

On April 30, May 1, and May 2, 2025, ALJ Triana convened a Webex videoconference hearing. Ms. Hruska and Ms. Hill appeared and represented Parent and Student. Mr. Hungerford

¹ The hearing in this matter was bifurcated, with an expedited hearing scheduled to address the District's Motion and a separate, non-expedited hearing scheduled to address Parent's Complaint.

and Ms. Kinch appeared and represented the District. Ms. Bennett appeared as the District representative throughout the entirety of the proceeding. The following individuals appeared and testified on behalf of the District:

- Jill Bennett,* Assistant Director of Student Services for the District²;
- Kyle Gilstad,* Para Educator for the District;
- Laura Mlyn, Autism Consultant and Board Certified Behavioral Analyst (BCBA) with Columbia Regional Inclusive Services³;
- Stephanie Peterson, Instructional Coach for the District⁴;
- Trevor Syring,* Vice Principal of River Mill Elementary in the District⁵; and
- Abby Williams,* School Psychologist for the District⁶.

In addition, the following individuals appeared and testified on behalf of Student:

- SS, Mother;
- Maria Gilmour, BCBA and CEO of Wynne Solutions LLC⁷;
- Kristi Franke, Home Healthcare Aid and family friend of Parent and Student;
- JoAnne White, Social Services Specialist for North Clackamas Branch of the Oregon Department of Human Services⁸; and
- Alexandria Kolas (Olmstead), Para Educator for the District in October and November of 2024.

During the third day of the hearing, on May 2, 2025, concerns were raised regarding the confidentiality of some of the testimony. The District made an oral motion for a protective order, which the ALJ granted. The ALJ closed the hearing to the public at that time and instructed the District to follow up with a written Motion for Protective Order. On May 7, 2025, the District filed a written Motion for Qualified Protective Order. On May 8, 2025, the ALJ signed and issued the Qualified Protective Order.

On May 8, 2025, the District provided a copy of the transcript from the April 30, 2025,

*

Witnesses with an asterisk (*) by their name were called to testify for both parties.

² Ms. Bennett was designated as an expert in the field of school psychology and Mandt systems.

³ Ms. Mlyn was designated as an expert in the field of BCBA.

⁴ Ms. Peterson was designated as an expert in the field of special education.

⁵ Mr. Syring was designated as an expert in the fields of school administration and student discipline.

⁶ Ms. Williams was designated as an expert in the field of school psychology.

⁷ Dr. Gilmour was designated as an expert in the field of BCBA.

⁸ Ms. White was designated as an expert in the field of child welfare and child mental health.

portion of the hearing (Volume I). On May 9, 2025, the District provided a copy of the transcripts for the remaining portions of the hearing (Volume II and Volume III).⁹

On May 12, 2025, Parent filed an Amended Complaint.

On May 16, 2025, the parties submitted written closing arguments. The record closed on that date.

ISSUES

1. Whether there is a substantial likelihood that Student will engage in injurious behavior. OARs 581-015-2360, 581-015-2430, and 581-015-2445.
2. If so, whether Student's placement should be changed to an appropriate interim alternative educational setting for a period up to 45 school days. OAR 581-015-2430.

EVIDENTIARY RULING

The District offered Exhibits D1 through D86. Exhibits D4, D6, D10, D12, D14 through D17, D19 through D27, D30, D32 through D35, D37 through D40, D42 through D72, and D74 through D86 were admitted into the record without objection.

Exhibits D1 through D3, D5, D7 through D9, D11, D13, D18, D28, D31, D36, and D41 were admitted into the record over Parent's relevance objection. Exhibit D29 was withdrawn by the District as duplicative. Exhibit D73 was admitted into the record without objection once the District laid the foundation for the exhibit.

Parent offered Exhibits S1 through S31. Exhibits S2, S3, S5, S7 through S15, S17 through S21, and S21 through S31 were admitted into the record without objection.

Exhibits S1, S4, S6, S16, and S22 were admitted into the record without objection once Parent laid the foundation for the exhibits.

FINDINGS OF FACT

1. Student was born in 2018 and is currently six years old. (Ex. D3 at 1.) Student lives in Estacada with his/her mother, father, and two older siblings (aged 9 and 15). (Ex. D59 at 5; tr. Vol II at 685:1 through 8.) Student is approximately three feet tall and weighs approximately 39 pounds. Student's doctors consider him/her to be small for his/her age, falling in approximately the 11th percentile. (Tr. Vol II at 660:1 through 8.)

⁹ The transcripts were provided in three volumes, one for each day. However, the page numbering system was continuous throughout the three volumes (Volume I included pages 1-387 (April 30, 2025); Volume II included pages 394-751 (May 1, 2025); Volume II included pages 758-858 (May 2, 2025). All citations to the transcripts will be as follows: Tr. Vol [volume number] at [page number]:[line number] through [page number]:[line number].

2. When Student was approximately two-and-a-half years old, Mother took Student to a doctor who made a presumptive diagnosis of autism spectrum disorder (ASD) with attention deficit hyperactivity disorder (ADHD) and maladaptive behavior, but declined to formally diagnose Student at that time. (Tr. Vol II at 634:17 through 635:9.)

3. Prior to Kindergarten, Student attended a private daycare. Student was disenrolled from the daycare due to safety concerns stemming from his/her behavioral issues. (Ex. D4 at 1.)

4. On August 16, 2022, Stephanie Rund, MS and Education Specialist with Clackamas Education Service District (CESD), and Natasha Stern, MS and Speech Language Pathologist, completed an Early Childhood Special Education Evaluation Report for Student (2022 Report). (Ex. D4.) In the 2022 Report, Ms. Rund and Ms. Stern noted the following behavioral issues from Student's preschool:

[T]hrowing chairs and dumping materials onto floor, punching, slapping, kicking, spitting on, pinching and biting Teachers. Bringing food, candy and toys from home and eating and taking it out. Throwing [a] plate of food across tables, launching over food cart, running out of the room and building, running away from teachers, calling teachers and children stupid, idiots, other foul language.

(*Id.*) Ms. Rund and Ms. Stern also noted that Student had difficulty with transitions. (*Id.*) Ms. Rund and Ms. Stern opined that Student's adaptive and social or emotional skills were delayed compared to children of the same age, and Student's cognitive skills were somewhat delayed compared to children of the same age. (*Id.* at 8.) Ms. Rund and Ms. Stern further opined that the interviews, assessments, and observations of Student supported Early Childhood Special Education (ECSE) eligibility. (*Id.*)

5. Student was identified as eligible for, and received, ECSE services prior to attaining school age in the area of developmental delay (DD). (Exs. D3 at 1, D4 at 1.)

6. On March 8, 2024, CESD convened a meeting and developed an Individualized Family Service Plan (IFSP) for Student, intended to serve Student through August 31, 2024. (Ex. D6 at 1.) The team determined that Student would attend a community preschool for 29 hours per week and receive 0.81 hours per week of ESCE services with typical peers in an early childhood program, to include 45 minutes per month of specialized instruction in cognitive, adaptive, and social skills in the classroom and 45 minutes per month of family training activities in the family home. (*Id.*) Additionally, the team determined that Student should have access to sensory supports/objects for transitions for 10 minutes per day; a timer or stopwatch and transition warnings eight minutes per day; and a visual system of routines in the classroom for 10 minutes per day. (*Id.* at 3.) The team set the following goals for Student: remaining engaged during activities; transitioning between preferred and non-preferred activities; friendship skills; and self-regulation. (*Id.* at 6.)

7. Student was enrolled in Gladstone Early Education through CESD. Student was fully integrated into a classroom with typically developing peers. The classroom included 25

children, one teacher, and multiple other adults for behavioral support. (Ex. S6 at 1.) Mother found that, during Student's time at Gladstone:

[Student] continued to make progress toward all of [his/her] IFSP goals. [Student] learned self-regulation tools and grew in [his/her] capacity to handle transitions, big emotions, and interactions with peers. This is documented by [Student's] progress report. By the time [Student] ended [his/her] pre-school program, it was clear that with proper supports, consistent reinforcement, and a dedicated teaching team, [Student] could handle transitions, interact well with peers, and participate at school.

(*Id.* at 2.)

8. Gladstone set a number of goals and objectives for Student, including Cognitive, Adaptive, and Social/Emotional goals. (Ex. S6 at 30-31.) The goals included increasing Student's attention span during adult-directed activities; transitioning between activities, especially from preferred to non-preferred activities; adequately self-regulating to stay engaged in social and learning opportunities; and engaging in friendship skills (taking turns, inviting or joining in play, sharing, being happy for friends' successes, and resolving conflict without an adult). (*Id.* at 30-32.) A review of Student's progress on these goals in March of 2023 revealed that Student had made some progress towards the goals, but that at times, Student would "flip [his/her] lid, and become uncentered" if asked to change something or go do something unwanted. (*Id.* at 32.)

9. On May 30, 2024, the District convened an individualized education program (IEP) meeting for Student for the 2024/2025 school year, when Student would be starting Kindergarten at River Mill Elementary in the District. (Exs. D8 at 1, D9 at 1, D10 at 14.) Student, Mother, Student's current special education teacher/provider, Student's general education teacher, and two District representatives attended the IEP team meeting. (Ex. D10 at 2.) The team noted that Student liked to engage in art and large motor activities, and was very interested in animals, living and dead. Mother reported that Student had "maladaptive behavior." (*Id.*)

10. During the May 30, 2024 IEP meeting, the team developed an IEP for Student (May 2024 IEP). (Ex. D10.) The IEP team noted that Student did not always follow safety boundaries; struggled with maintaining friendships, social skills, and self-regulation of emotions; could be physically or verbally aggressive or use foul language when dysregulated; and may hit, kick, punch, run, or knock items over when dysregulated. (*Id.* at 4.) Circumstances that could cause Student to become dysregulated include transitioning away from a preferred activity, being told "no," peer conflict, or being told what to do by an adult. (*Id.* at 4-5.) The team noted that structure, routine, movement breaks, snacks, and "being a helper" were helpful for Student. (*Id.* at 5.) The team also noted that Student would need adult assistance for safety (including eloping and aggressive behaviors), transitioning between activities, self-regulation during inappropriate behaviors, and toileting. (*Id.*) The team set the following academic and functional goals and objectives for Student:

Given a social scenario and an emotion visual, [Student] will identify a possible feeling of the individual in the scenario and possible self-regulation activity they could implement with 80% accuracy in 3 out of 4 opportunities by spring 2025.

* * * * *

Given verbal, tactile and/or visual cues during a transition time, [Student] will transition to the next activity within 1 minute of the given direction in 3 out of 4 opportunities by spring term of the following school year.

(*Id.* at 8, 9.) The IEP included 30 minutes per week of specially designed instruction (SDI) in behavior, social/emotional and 30 minutes per week of SDI in self-management. (*Id.* at 10.) The IEP identified the following supplementary aids/services for Student: adult assistance for safety (eloping), transitions, self-regulation, and toileting; sensory supports during transitions, including preferred objects if being used appropriately and safely; transition support including 5/2/1 warnings prior to transitions, visual and verbal cues, times, and first-then language; visual supports including a schedule, routine, expectations, directions, and self-regulation support; and options for in-class or out-of-class breaks when dysregulated. (*Id.* at 10-11.) The IEP indicated that Student would spend 80% or more of his/her day in the general education classroom. (*Id.* at 15.)

11. A review of Student's progress on his/her goals at Gladstone in June of 2024, showed that Student had made progress. Student began attending group meetings with peers, cleaning up when asked, participating in group meetings when they were of interest to Student, transitioning between activities smoothly (occasionally requiring some wait time), and participating in his/her daily schedule. (Ex. S6 at 33-34.) However, Student's progress report noted that, while Student can name his/her emotions, Student "doesn't always, and sometime would rather throw and hit adults to let them know [he/she] is unhappy with an answer." (*Id.* at 53.)

12. Preschool programs frequently differ from Kindergarten programs. Preschool programs tend to be play-based and focus on socialization skills and school readiness. Kindergarten is often the first time a child is introduced to the requirement to sit at a desk for an extended period and listen to a teacher for academic instruction. (Tr. Vol I at 38:15 through 24, 252:5 through 16.)

13. All students in the District are scheduled to attend school four days per week, typically Monday through Thursday. Friday of most weeks are designated as a "REID" day (Responsive Extension Intervention Development day). The District provides a two-hour block of time on Fridays where a student can elect to go to school and receive extra help with work, make up tests or work, or participate in small group activities or enrichment. Participation is voluntary. If there are only four scheduled days in a week (due to a holiday, in-service, or other non-school day), no REID day occurs. (Tr. Vol I at 46:14 through 47:21.)

14. During the first week of school in the District, Kindergarten students attend two

half-days in small groups. This allows the teacher to meet the students and understand their needs and assign them to a classroom teacher. Kindergarten students then begin full-time Kindergarten the next week. Student attended two half-days the week before September 3, 2024, and then started full-time Kindergarten on September 3, 2024. (Tr. Vol I at 45:13 through 46:13.)

15. There was no school for students in the District on August 30, 2024, and September 2, 2024. (Ex. D74 at 2-3.)

16. On September 5, 2024, the District began tracking Student's unwanted behaviors including inappropriate language, physical behaviors (towards people or property), and elopement (both inside and outside the school building). (Ex. D53.) Students who elope inside the building can hide from adults and access items or areas that would create a safety concern for the student. Also, in the need to evacuate the school, staff may be unable to find and evacuate the student. Elopement outside of the building can result in safety concerns if a student runs into the road or off campus. (Tr. Vol I at 229:21 through 230:22.)

17. On September 5 and 6, 2024, both of which were half school days due to heat, Student had 13 incidents of inappropriate language, five incidents of physical behaviors (flipping chairs and desks in the classroom, knocking books off shelves, and punching a teacher), and two incidents of elopement (running towards the baseball field during a fire drill and eloping from the general education classroom). (Ex. D53 at 1.)

18. On September 6, 2024, Mother emailed the District, requesting that the District perform a Functional Behavioral Assessment (FBA) for Student. She noted, "I strongly feel that not understanding some of the reasons behind [his/her] behaviors, is impeding an appropriate action plan that will set [him/her] up for success within the Estacada School District." (Ex. S11 at 1.)

19. Between September 9 and 12, 2024, Student had six incidents of inappropriate language, five incidents of physical behaviors (hitting peers, throwing books, knocking over chairs, and kicking garbage cans), and four incidents of elopement (out of the classroom). (Ex. D53 at 1.) On September 12, 2024, Student called a peer an "asshole." (Ex. D55 at 1.) When the peer stated that he would tell an adult, Student slapped the peer on the face. When a teacher told Student that Student would have to talk to the vice principal, Student began destroying the classroom. (*Id.*)

20. On September 13, 2024, Parents signed a consent form for the District to perform an FBA. (Ex. D14 at 1.)

21. Between September 13, 2024 and September 24, 2024, Abby Williams, school psychologist for River Mill Elementary, observed Student in multiple school settings over several hours and obtained information from Student's teachers, Mother, Student, and paraeducators working with Student to complete an FBA for Student. Student's special education teacher and general education teacher each completed a collaborative problem solving assessment questionnaire, detailing Student's strengths and lagging skills. (Ex. D16 at 1; Tr. Vol I at 204:1 through 205:1, 205:22 through 206:3, 206:23 through 207:11.) The collaborative

problem solving questionnaires sought information about Student's language and communication skills, attention and working memory skills, emotional and self-regulations skills, cognitive flexibility skills, and social thinking skills. (Ex. D16 at 1-3.) The collaborative problem solving assessment showed that Student had the following lagging skills: thinking rationally when frustrated; managing irritability, anxiety, and disappointment in an age-appropriate way; thinking before responding; seeking attention in appropriate ways; understanding how his/her behavior affects others; and empathizing with others and understanding others' perspective or points of view. (*Id.* at 3.) As part of the FBA, Ms. Williams also reviewed Student's IFSP, current IEP, academic records, attendance records, and incident reports. (Tr. Vol I 211:16 through 212:2.)

22. Between September 16 and September 19, 2024, Student had eight incidents of inappropriate language (including one verbal threat to kill another student), eight incidents of physical behaviors (kicking garbage cans, flipping over stools, dumping items out of bins, climbing shelves, ripping paper off the walls, grabbing and hitting peers at lunch, rolling around the school on a rolling chair, and kicking an adult), and four incidents of elopement (out of the classroom and once out of the building, into the parking lot, and then into the street). (Exs. D53 at 1-2. D55 at 1.)

23. Based on her observations of Student and the collaborative problem solving assessment, Ms. Williams determined that Student's challenging behaviors usually occurred around lunch time and during times when demands were placed on Student. (Ex. D16 at 3.) She noted the following antecedents to Student's challenging behaviors: asked to be part of the group; a demand is placed on Student (complete an assignment, clean up, transition from activity); clean up to go home/transfer bus; and announcement at the end of the day. (*Id.*) She noted the following challenging behaviors: inappropriate language (average of six times per day but lowered to two times per day when replacement words were taught); physical behaviors occurring daily (hitting, throwing, destroying property); and elopement daily from the classroom with two occasions from the school building. (*Id.* at 3-4.) She hypothesized that the outcome of the challenging behavior was to avoid the work or demand that was placed on Student and/or possible sensory input. (*Id.* at 3.) She noted that Student's lagging skills in managing irritability/emotions, thinking before acting, and understanding how behaviors affect others were related to Student's challenging behaviors. (*Id.*) Finally, she noted that the outcome of the desired behaviors of using kind/appropriate language and safety would result in Student engaging in the classroom community and work and regulating his/her emotions in an expected and safe manner. (*Id.* at 4.)

24. On September 19, 2024, Student began talking about a deer his/her father killed. Student then sated "I'm going to bring a gun and kill you and everybody else here. Don't even tell me the guns are locked up." (Ex. D59 at 1.)

25. Student was absent from school on September 23, 2024. (Ex. D53 at 2.)

26. On September 24, 2024, the IEP team convened a meeting to review and discuss the FBA and create a Behavior Support Plan (BSP). (Exs. D15, D17 at 1.) Mother indicated that she felt Student had been more successful at preschool because Student had a higher level of adult support. The team noted some improvements in Student's behavior since the beginning of the

school year, including decreased foul language and an increased use of appropriate language to communicate Student's interests. The team identified triggers to Student's elopement including the end of the day transfer to the bus and a desire to have someone chase him. (Ex. D17 at 1.) Mother raised a question about whether Student needed an adult assigned to be with him/her during all school hours (1:1) to prevent elopement. District staff declined to provide Student a 1:1 at that time because most of Student's elopement from the general education classroom was to a safe location within the school. (*Id.* at 1-2.) Mother requested additional information about Zones of Regulation¹⁰ to use at home and shared a concern that Student had arrived at home one day very upset after Student was restrained in LC1¹¹ with "big blue pads." (*Id.* at 2.) Mother also noted that Student can become "very clingy" or dependent on an adult he/she is comfortable with. (Tr. Vol I at 56:6 through 57:15.)

27. At the September 24, 2024 meeting, the team created a BSP for Student (September BSP). (Ex. D16 at 4-5.) The BSP provided that all staff working with Student would: incorporate art and building things into Student's classwork to include Student's interests in learning; provide access to snacks and breakfast; use universal language and visuals when communicating with Student; redirect inappropriate conversations or comments; provide sensory supports (weighted ball, heavy movement opportunities, safe hitting of an object or pad); and stop signs at exterior doors. (*Id.* at 4.) Additionally, the BSP indicated that Student's case manager and paraprofessionals working with Student were to teach replacement words for inappropriate language; provide a visual reminder when Student began to use inappropriate language; teach Zones of Regulation; provide alternate locations for breaks and/or works when eloping; and transition support especially after lunch and recess. (*Id.* at 4-5.)

28. According to the BSP, when escalated, all staff working with Student were to: escort Student to the LC1 classroom and provide snacks, access to art, and Zones of Regulation check-in to help Student regulate. Additionally, staff were to clear the room of other students if Student's behaviors were unsafe and call in a trained professional to deescalate Student. The BSP also noted that Student's older siblings could also be used as a resource to help calm Student. (*Id.* at 5.) Finally, the BSP instructed staff to complete data tracking sheets and Zones of Regulation curriculum progress monitoring to track Student's progress. (*Id.* at 4.) The data tracking sheets were reviewed by the school psychologist and sent home with Student each day for Parents to review. (Tr. Vol I 62:17 through 63:5.)

29. On September 24 and 26, 2024, Student had six incidents of inappropriate language, one incident of physical behaviors (stamping and ripping papers belonging to a teacher), and two incidents of elopement (outside the classroom). (Ex. D53 at 2.) Student was absent on September 25, 2024. (Ex. D66 at 6.)

30. Between September 30 and October 2, 2024, Student had approximately 42

¹⁰ Zones of Regulation is a curriculum that the District uses to teach students skills related to emotional regulation. (Tr. Vol I at 61:5 through 7.)

¹¹ "LC1" stands for "learning center 1," a classroom set aside as a place for students who may require a break, sensory break, quiet time, etc. The school also has LC2 and LC3 rooms available for small group instruction for academics and/or breaks. (Tr. Vol I at 77:16 through 78:5.)

incidents of inappropriate language (including threatening peers and threatening to stab an adult in the neck with a pencil Student was holding), 14 incidents of physical behaviors (stomping on toys, swinging a broom in the classroom, throwing clipboards, hitting a paraeducator and teacher in the face, punching staff repeatedly, knocking over chairs, throwing chairs at peers, hitting a teacher with a dustpan, attempting to stab a teacher with a stool leg, and hiding in the classroom), and five incidents of elopement (out of the classroom). (Exs. D53 at 2, D55 at 1.)

31. Student was absent from school on October 3, 2024. (Ex. D53 at 2.)

32. On October 7, 9, and 10, 2024, Student had over 42 incidents of inappropriate language, 37 incidents of physical behaviors (ripping posters in the classroom, rolling around in the rolling chair, throwing bark chips at teachers, repeatedly punching a teacher, throwing chairs, hitting staff, swinging items around, and pulling on peers' ears and faces), and two incidents of elopement (out of the classroom). (Exs. D53 at 2-3, D55 at 2.)

33. There was no school for students in the District on October 11, 2024. (Ex. D74 at 4.)

34. On October 15, 2024, Student threw a clipboard at a teacher. (Ex. D55 at 2.)

35. On October 16, 2024, Student threw a stapler at a teacher, spit in the teachers face, and kicked and punched another teacher. Student also punched a peer in their stomach at recess, unprovoked, and threatened to kick the peer's genitalia. (Ex. D55 at 2.)

36. On October 21 and 22, 2024, Student had over 180 incidents of inappropriate language (including threatening others), 40 incidents of physical behaviors (climbing, throwing chairs, rolling around hallway on rolling chair, and hitting staff), and 21 incidents of elopement (out of the classroom or group setting). (Ex. D53 at 3.)

37. Beginning on October 23, 2024, the District began tracking "destruction" separate from physical behaviors on Student's behavior tracking sheets. (Ex. D53 at 3.) On October 23 and 24, 2024, Student had over 126 incidents of inappropriate language, 37 incidents of physical behaviors (climbing on shelves, ripping paper off walls, hitting staff, and hitting peers), three incidents of elopement, and eight incidents of destruction (throwing items and climbing on prohibited items). (Ex. D53 at 3-4.)

38. Around this time, the District began to notice that Student was choosing to spend less time in the general education setting and more time in LC1. The students who were typically utilizing LC1 when Student was present were nonverbal or had some physical challenges and were very limited in their interactions between peers. (Tr. Vol I at 109:5 to 18, Vol II 581:8 through 15.)

39. On October 23, 2024, the IEP team met to amend Student's IEP (October IEP Amendment). (Exs. D19 at 1, D21.) The team reviewed data that had been tracked and collected since September of 2024, which showed Student had engaged in elopement, physical behaviors, and verbal behaviors. (Ex. D21 at 1.) The IEP noted:

[Student] began attending River Mill Elementary in August 2024. Since beginning the school year, [Student] began by being in class throughout the entire day with push-in support. Within a week, [Student] began showing a need for breaks outside of the classroom. When [Student] began displaying unsafe behaviors, we began tracking data in a data tracking sheet. Overall, it was tracked that [Student] has displayed 200+ verbal behaviors, 100+ physical behaviors, and 22 instances of elopement (5 that exited the building). [Student] has received 4 out-of-school suspensions due to unsafe behavior. Behaviors that [Student] has displayed at school is swearing, inappropriate language, threats to hurt others, eloping from the area, destruction of property, hitting and kicking staff and students, and not being safe with object, including throwing items at others.

[Student] began the year with a paraeducator supporting [him/her] in the classroom. Now [Student] is receiving support throughout most of the day, to support [him/her] staying regulated, [Student] spends most of [the] day in a flexible learning environment. Typically staff rotate from supporting [Student] to complete work from [his/her] teacher, and taking breaks. [Student] can utilize sensory and regulation break items any time that [he/she] would like. [Student] is receiving Social Emotional and Behavior instruction throughout [the] school week. [Student] is very resistant to completing classwork, but [he/she] has an easier time if questions are asked verbally and if it is not called work. [Student] enjoys going to lunch, recess, and PE with [] peers, but [] has a hard time staying safe even in these areas.

(*Id.* at 5.) The team added a third goal to the IEP; “Given a 5 minute warning before a transition and a warning of what is coming next, [Student] will safely complete the transition in 3 out of 4 transitions back to the classroom by spring 2025.” (*Id.* at 10.) The amended IEP also increased Student’s SDI to 60 minutes per week for social/emotional behavior, 60 minutes per week for self-management, and 60 minutes per week for transition support. (*Id.* at 11.) The amended IEP also increased Student’s supplementary aids/services of adult support to “throughout [Student’s] entire day to support safety, transitions, and self-regulation.” (*Id.*) For transition support, the team added “reminding [Student] what is next” to the amended IEP. (*Id.* at 12.) The team added that Student should be allowed to show knowledge and mastery of material in varied ways to support engagement. The amended IEP also directed all staff to utilize Student’s BSP and to communicate with Student’s home regarding behavior and time spent in the general education classroom. (*Id.*) The amended IEP removed Student from the general education classroom for 180 minutes per week for SDI in social/emotional/behavior, self-management, and transitions, with less than 40% of Student’s day in the general education classroom. (*Id.* at 13, 16.)

40. Between October 28 and October 31, 2024, Student had 203 incidents of inappropriate language, 125 incidents of physical behaviors (throwing books at staff, throwing items, pushing a student, hitting staff and peers, and pulling on a peer’s shirt), 24 incidents of elopement (out of expected area), and 71 incidents of destruction (climbing on prohibited items, rolling around in rolling chair, ripping items off walls, and destroying the vice principal’s office).

(Ex. D53 at 4.)

41. On October 29, 2024, Student climbed up on some cabinets and refused to climb down. When staff told Student that he/she would not be allowed to go to recess, Student began throwing things, ripping paper off the walls, hitting and kicking furniture, knocking over furniture, and throwing items at staff and students, including a full metal water bottle and umbrella that both landed near other students. Student attempted to hit a staff member with a vacuum and was throwing chairs towards peers. As staff were trying to escort Student to an enclosed space, Student entered the vice principal's office and began throwing items at staff and attempting to destroy anything in reach. Student stated that he/she wanted to kill staff member and everyone in the school. (Ex. D55 at 2.)

42. There was no school for students in the District on November 1, 2024. (Ex. D74 at 5.) Student was absent from school on November 4, 2024. (Ex. D53 at 4.)

43. On November 5, 2024, Student had over 90 incidents of inappropriate language, and 20 incidents of physical behaviors (including hitting, punching, and climbing on prohibited items). (Ex. D53 at 4.) Student pushed and shoved another peer, who reciprocated. When an adult intervened, Student hit the adult several times on her lower body. (Ex. D55 at 2.)

44. On November 6, 2024, Student began pushing over chairs, furniture, and other items in the classroom. When staff intervened, Student began hitting and throwing items at staff. Student spanked a peer, called other peers names, and flipped off a peer. When the vice principal intervened to support Student, Student began hitting, kicking, and throwing items at him. Staff attempted to distract Student, be silly, talk through Student's emotions, and ask Student what was needed to deescalate him/her. The District tracked a total of 55 incidents of inappropriate language and 37 incidents of physical behaviors. Student was sent home early due to these behaviors. (Ex. D625 at 1.)

45. On November 7, 2024, Student had 41 incidents of inappropriate language, 13 incidents of physical behaviors (spanked a peer, punched a paraeducator, got into maintenance floor cleaner, and rolled chairs and carts around the hallway), one incident of elopement (from the expected area), and two incidents of destruction (ripping things). (Ex. D53 at 5.)

46. There was no school for students in the District on November 11, 2024. (Ex. D74 at 5.) Student was absent from school from November 12 through November 21, 2024, due to a burn injury [he/she] received outside of school. (Ex. D53 at 5.) There was no school for students in the District from November 22 through November 29, 2024. (Ex. D74 at 5.)

47. Kyle Gilstad is a paraeducator for the District at River Mill Elementary. He has worked as a paraeducator for over 12 years. (Tr. Vol II 585:5 through 11.) Mr. Gilstad has worked as one of the paraeducators assigned to Student since approximately December of 2024. (Tr. Vol II at 591:1 through 7.) Student has expressed a preference for working with Mr. Gilstad. (Tr. Vol II at 651:17 through 652:4.) Mr. Gilstad received training specifically regarding Student and Student's IEP and BSP from Ms. Williams, Ms. Bennett, Ms. Zeis, and Ms. Peterson. On Fridays, the team supporting Student conducts a group check-in to discuss issues or new

behaviors that have arisen. Anytime there is a change to the BSP the team also meets to review the revisions. (Tr. Vol II at 588:4 through 590:20.) Student has hit and kicked Mr. Gilstad during the period in issue. Student has also attempted to grab a chair and hit Mr. Gilstad with it. (Tr. Vol II at 595:2 through 11.)

48. On December 2, 2024, the IEP team met for an IEP team meeting and a manifestation determination meeting. (Exs. D23, 24, 25.) The District initiated the manifestation determination based on Student's behavior on November 6, 2024, and because Student had been suspended a total of six times during the school year. (Ex. D24.) The team determined that Student's behavior on November 6, 2024 was a manifestation of Student's disability. (Ex. D25 at 1.) The District expressed that Student's behaviors were increasing and the time Student spent in the general education classroom had decreased, even after increasing adult support. The team discussed whether the school could meet Student's needs in the traditional school setting, with the District recommending alternative placement. (*Id.* at 4, Ex. D29 at 3.) Mother shared that she believed the staffing was too unpredictable for Student. The District shared that it rotated staff working with Student because he/she was "very difficult to be with for long periods of time," but that overall, the same individuals were working with Student daily, just on a rotational basis. (Ex. S14 at 2.) Mother shared that she believed an alternative placement was inappropriate because Student's IEP was not being implemented as written, it was too early in the school year, and there was insufficient data to make a placement determination. The team agreed to meet again in approximately one week to continue the placement discussion. (Ex. D24 at 4.)

49. Between December 2 and 5, 2024, Student had 114 incidents of inappropriate language, 10 incidents of physical behaviors (hitting staff, kicking doors, climbing on prohibited items, throwing things at peers, and punching a peer), three incidents of elopement (out of the classroom or expected area), and no incidents of destruction. (Ex. D53 at 5.)

50. On December 6, 2024, Student's Parents emailed the District stating, in part:

We are deeply concerned about the efficacy of [Student's] Individualized Education Program (IEP) since its implementation. While we acknowledge the IEP team's efforts, we believe substantial revisions are urgently needed to ensure [Student] receives the comprehensive academic, behavioral, and emotional support [he/she] requires to thrive.

[Student's] documented behavioral challenges and difficulties adapting to new learning environments necessitate a more robust and proactive intervention strategy. The current lack of a dedicated, full[-]time paraeducator specializing in complex behavioral needs is significantly impeding [his/her] academic progress. We are particularly alarmed by the proposed swift transition to a more restrictive learning environment just one month after the initiation of [his/her] Behavior Support Plan (BSP). This accelerated timeline appears premature and potentially harmful to [his/her] long-term development, directly contradicting the collaborative spirit fundamental to the IEP process. This raises serious questions regarding the district's adherence to its legal obligation to provide [Student] with a Free Appropriate Public Education

(FAPE), as mandated by [his/her] IEP. The inadequate support [Student] currently receives not only limits [his/her] academic potential but also violates [his/her] right to an inclusive learning environment.

To address these critical concerns, we request a thorough and impartial review of all actions undertaken since the BSP's implementation, with a paramount focus on preserving [Student's] current school placement. We strongly oppose any transfer, believing it would be profoundly detrimental to [his/her] well-being and academic growth. We have already initiated a request for a facilitated IEP meeting through the Department of Education to facilitate this review and encourage collaborative problem-solving.

To immediately alleviate current challenges and cultivate a more supportive learning environment, we propose a trial period of an abbreviated school day. This trial will allow us to objectively assess its effectiveness and inform future IEP modifications based on concrete data.

Furthermore, to gain a complete and nuanced understanding of [Student's] unique needs and formulate a truly effective IEP, we formally request an independent educational evaluation (IEE). An IEE will provide the objective, unbiased data necessary to create a plan that ensures [Student's] success within [his/her] current inclusive school setting.

Our primary objective is to collaborate effectively with the school district to develop a comprehensive and effective plan that enables [Student] to flourish academically and socially within [his/her] current inclusive school environment. We eagerly anticipate a prompt and constructive response and a commitment to collaborative problem-solving to meet [Student's] educational needs. We are available to discuss this matter further at your earliest convenience.

(Ex. S13 at 1-2.) On December 9, 2024, Ms. Bennett, on behalf of the District, responded to Parents' email:

Our team has reviewed your email dated 12/06/24 and would like to provide our thoughts to some of your ideas and concerns:

1. *Desire to participate in a facilitated IEP provided through the Department of Education:* We wholeheartedly agree with this idea and fully support the initiation of a facilitated IEP. You noted that you have already initiated this process, so we also will fill out the paperwork needed on our end to ensure a seamless initiation of that process.

2. *Concern regarding the implementation of the Behavior Support Plan (BSP):* Consent to conduct a Functional Behavior Assessment and Behavior Support Plan was attained on 09/13/24. The FBA and BSP were presented to

the team on 09/24/24 and have been in place since that date. The data collected since 09/05/24 affirms that [Student's] behavioral struggles are complex. Despite reconvening the IEP team on 10/23/24 to increase adult support, [his/her] challenges continue to provide safety concerns for other students, staff and [Student]. Hence, the IEP meeting held on 12/02/24 was to (1) hold a Manifestation Determination and (2) begin discussion [of] if a traditional school setting is the best learning environment for [Student], or not. As you know, Estacada School District values inclusive practices, but we also have an obligation to discuss alternative learning environments if data indicates a student may need higher levels of support than what a traditional school setting is able to offer.

3. *Proposal for trial period of an Abbreviated School Day*: You as a parent always have the right to shorten your student's school day as you see fit, but the district's offer of Free and Appropriate Public Education (FAPE) at this time is a full-school day and we will continue to offer that unless the IEP team determines differently.

4. *Request for an Independent Educational Evaluation (IEE)*: Per the Estacada School District, Oregon Department of Education and the Individuals Disabilities Education Act (IDEA). "Under the Individuals with Disabilities Education Act (IDEA), parents/guardians may request an independent educational evaluation (IEE) at the Estacada School District's/public expense if the parents disagree with the results of an evaluation conducted by the district. Please note though: An IEE is only available in areas in which the district has completed an assessment or evaluation." [Student's] initial eligibility evaluation was conducted by the Clackamas County Educational Service District Early Childhood Evaluation Team and has been in place since 08/16/22. Thus, the IEE in this instance wouldn't apply, as Estacada School District staff did not complete the evaluation. However, as noted at our recent 12/02/24 meeting, [Student's] three[-]year reevaluation will be due in August 2026. We are willing to move-up [*sic*] the three[-]year reevaluation process to begin that process earlier if you'd like, and it would be conducted by our district evaluation specialists.

Thank you for sharing your ideas and concerns. Please be assured that we too, wish to collaborate effectively with you on behalf of [Student]. We will look forward to meeting again soon within the collaborative, facilitated IEP process.

(*Id.* at 1.) (Emphasis in original.)

51. Student was absent from school on December 9 and 10, 2024. (Ex. D53 at 5.)

52. On December 11 and 12, 2024, Student had 26 incidents of inappropriate language, nine incidents of physical behaviors, two incidents of elopement, and no incidents of destruction.

(Ex. D53 at 5-6.)

53. Between December 16 and 19, 2024, Student had 104 incidents of inappropriate language, 32 incidents of physical behaviors (hitting teachers, pinching peers, and flipping chairs), one incident of elopement (out of expected area), and four incidents of destruction. (Ex. D53 at 6.)

54. On December 17, 2024, Student was standing on the school's stage area, which was prohibited. When staff asked Student to come down, Student attempted to climb in a ball cage and staff became concerned that Student would get stuck inside the cage. Student dropped his/her lunch and a paraprofessional picked it up. Student began hitting the paraprofessional and using profanity. The paraprofessional directed Student to the vice principal's office for lunch, where Student grabbed a pair of scissors and attempted to stab adults in the room. Student hit and punched the vice principal several times before Student began to cry. Student told the vice principal that Student was mad, but did not know how to handle it when he/she got that mad. (Ex. D55 at 3.)

55. There was no school for students in the District from December 23, 2024 through January 3, 2025. (Ex. D74 at 6-7.)

56. In January of 2025, the Oregon Department of Human Services received report from the child abuse hotline regarding Student. (Tr. Vol III 765:19 through 767:17, 792:3 through 6.) The report indicated that Student had been drawing a picture in class and said something like "this looks like when daddy hits mommy. Nope, it looks like when a kid hits daddy." (*Id.* at 766:18 through 25.) Ms. White, a Social Services Specialist for North Clackamas Branch of the Oregon Department of Human Services, was assigned to investigate the matter. (*Id.* at 765:19 through 23.) In February of 2025, Ms. White visited the school to interview Student and Student's nine-year-old sibling. (*Id.* at 780:10 through 23, 792:3 through 7.) While at the school, Ms. White spoke briefly to school psychologist who disclosed no specific concerns regarding Student. (*Id.* at 780:34 through 781:25.) Ms. White then visited Student's home and spoke to Student's Father, Student, and Student's two siblings. Following those discussions, Ms. White had no concerns regarding family safety. (*Id.* at 794:19 through 795:11.)

57. Between January 6 and 9, 2025 Student had 168 incidents of inappropriate language (including one verbal threat to kill other students), 24 incidents of physical behaviors (punching and hitting peers and teachers), eight incidents of elopement (out of expected area), and nine incidents of destruction (flipping chairs and ripping paper). (Ex. D53 at 6-7.) Student was able to verbalize that he/she gets "so mad," but did not know what to do in those situations. (*Id.* at 7.)

58. On January 7, 2025, Student and a peer got into a verbal argument regarding the height of a peer. Student punched the peer. Student flipped off and used profane language when the vice principal attempted to speak to Student. (Ex. D55 at 3.)

59. On January 8, 2025, Student went to the cafeteria with an adult where two peers were playing basketball. Student pointed a "finger gun" at the peers and said that he/she was going to shoot them with a BB gun. (Ex. D55 at 3.) When reminded about appropriate school

language, Student stated that he/she was “going to go home and get [sibling’s] gun and come and shoot them both.” (*Id.*; ex. D60 at 1.)

60. On January 9, 2025, Student became upset in the classroom and began tearing up paper. Student then went into the hall, kicked the paraeducator who was with him/her, and crawled into his/her cubby. When the vice principal arrived, Student flipped him off, threw items at him, and then kicked him in the shin. (Ex. D55 at 4.)

61. On January 11, 2025, the vice principal sent an email to Student’s parents that said:

Hi there! Just wanted you to know that [Student] had a great day today! The best part of my day was when [he/she] walked into my office and asked if [he/she] could give me a hug!

(Ex. S6 at 58.)

62. Between January 13 and 16, 2025, Student had 68 incidents of inappropriate language, 11 incidents of physical behaviors (threw a toy at staff, hit peers, punched staff, and threw items), two incidents of elopement (out of expected area and once out of the school building onto the playground and past the school fence), and 23 incidents of destruction (flipping chairs, throwing things in hallway, rolling on chairs in classroom, and pushing and hitting furniture). (Ex. D53 at 7.)

63. On January 14, 2025, Student became agitated in LC1. Staff gave Student space, offered alternative outlets, ignored his/her unwanted behaviors, and attempted to brain switch/deescalate Student. Student hit two staff members and then picked up a stool and threatened to throw it at a staff member. (Ex. D55 at 4.)

64. There was no school for students in the District on January 20, 2025. (Ex. D74 at 7.)

65. Between January 21 and 24, 2025, Student had 63 incidents of inappropriate language, 23 incidents of physical behaviors (swinging his/her body, throwing balls at others, punching staff, throwing stools, flipping chairs, playing on a physical therapy bicycle, grabbing clothes of others, and punched a peer), 22 incidents of elopement (from the expected area), and two incidents of destruction. (Ex. D53 at 7-8.)

66. On January 24, 2025, Student wanted to use a bicycle that was specifically for a peer in a wheelchair. When a staff member told Student “no” and gave him/her alternative choices, Student hit the staff member. (Ex. D55 at 4.)

67. On January 27 and 28, 2025, Student had 50 incidents of inappropriate language, 12 incidents of physical behaviors (pushing, kicking, and punching peers), one incident of elopement (leaving the playground through the fence), and one incident of destruction. (Ex. D53 at 9.)

68. During recess on January 28, 2025, Student kicked a peer, pushed another peer, slapped a third peer, and punched an adult. (Ex. D55 at 4.)

69. Student was absent from school on January 29, January 30, and February 3, 2025. (Ex. D53 at 8.) There was no school for students in the District on January 31, 2025. (Ex. D74 at 7.)

70. On February 4 through 6, 2025, Student had 59 incidents of inappropriate language, 10 incidents of physical behaviors (hitting staff), no incidents of elopement, and no incidents of destruction. February 5, 2025, was a virtual school day due to inclement weather. (Ex. D53 at 8-9.)

71. On February 5, 2025, the IEP team convened a virtual team meeting, facilitated by Robin Day, an Oregon Department of Education IEP facilitator. (Exs. D30, D37 at 1.) During the meeting, Mother requested additional information and data about antecedents to Student's behaviors. (Ex. D30 at 1-7.) The District shared that one staff person ("Gavin") had worked with Student a few times, but that it had "been a problem" because he would pick Student up and move Student around the room when escalated, which further escalated Student. (*Id.* at 4.) The District noted that October was a hard month for Student, but that there had been some improvement in some areas since the District increased the adult support for Student. (*Id.* at 4.) Student had eloped from the school building a total of five times in the school year. The District noted that recently, Student had slid behind a fence on the playground and stood there for a period before returning to the playground. The District noted that most of Student's behavioral incidents occurred in the hour before, the time during, and the hour after lunch and recess. (*Id.*) Student's special education teacher stated that she meets frequently with the paraeducators assigned to work with Student and they frequently discuss and try new strategies to manage Student's unwanted behaviors. The team agreed that Student would benefit from additional structure, including at recess time (*i.e.*, the paraprofessional working with Student would say "at recess today you will be playing basketball"). (*Id.* at 5.) The District agreed to include a visual schedule for Student with pictures of who Student would be working with during the day. (*Id.* at 6.) The District agreed to edit the daily behavior tracking sheet to include a more structured schedule for Student, and to more accurately track antecedents and staff responses to Student's unwanted behaviors. The parties agreed that the District would update Student's BSP based on updated behavioral data discussed at the meeting and provide a copy to Parents for input/review. (*Id.* at 7.) The District agreed to ensure that all paraeducators in LC1 were familiar with Student's BSP, even if they did not work directly with Student. The District agreed to provide information to Parents about the Zones of Regulation. The District also indicated it would begin working on an assessment to evaluate Student under the eligibility category of ASD. Mother agreed to pause her request for an IEE as long as the team continued to work on revising Student's BSP. (*Id.* at 8.) The team agreed to meet in few weeks to discuss Student's progress. (*Id.* at 7.)

72. On February 6, 2025, Student told a peer "I am going to kill your parents and your dog." (Ex. D61 at 1.)

73. On February 7, 2025, the District updated Student's Behavior Data Tracking Sheet

to include a daily schedule, an area for notes about Student's behavior during each scheduled activity, an area for notes about antecedents to Student's behavior, a list of accommodations and supports to use with Student, and an area to list any work that Student completed (or to note if Student refused to complete work). (Ex. D32 at 1.)

74. On February 7, 2025, the District revised Student's BSP to include additional regulation strategies including: incorporating physical movement/games into academic tasks; reviewing Student's schedule each morning and warning Student of any changes; providing 2-3 options for Student to choose from (not open-ended questions); and providing structured recess activities. (Ex. D33 at 4-5.) The District also revised Student's BSP to include additional support for Student during transitions, especially after lunch and recess by providing Student with warnings before the transition and using Student's visual schedule/expectation so Student knew what was coming next. (*Id.* at 5.)

75. Student was absent from school on February 10, 2025. (Ex. D53 at 9.)

76. On February 11 and 12, 2025, Student had 39 incidents of inappropriate language, 16 incidents of physical behaviors (hitting teachers and peers), no incidents of elopement, and no incidents of destruction. (Ex. D53 at 9.)

77. February 13, 2025 was a virtual school day due to inclement weather. (Ex. D53 at 9.) There was no school for students in the District on February 17, 2025. (Ex. D74 at 8.)

78. On February 18 and 21, 2025, Student had 55 incidents of inappropriate language (including talking about shooting using a sibling's gun), three incidents of physical behaviors (hitting a paraprofessional), no incidents of elopement, and three incidents of destruction (throwing items). (Ex. D53 at 9.) Student was absent from school on February 19 and 20, 2025. (*Id.*)

79. On February 24 and 26, 2025, Student had 21 incidents of inappropriate language, no incidents of physical behaviors, no incidents of elopement, and no incidents of destruction. (Ex. D53 at 10.) Student was absent from school on February 25 and 27, 2025. (*Id.*)

80. On February 27, 2025, the IEP team met to discuss the proposed changes to Student's BSP. (Ex. D37.) Mother consented to the school performing an eligibility assessment for ASD for Student. The team also agreed to meet in April to discuss Student's progress after changing Student's BSP and updating the tracking sheet. (*Id.* at 1.)

81. In March of 2025, Student began seeing a counselor outside of school for mental health support. (Tr. Vol II at 668:14 through 669:6.)

82. On March 3, 2025, Student and two peers began "throwing punches" at each other at recess. (Ex. D39 at 1.) Staff noted that it may have been play fighting at first, but turned mean. An adult told the three students to go and sit on the wall and the two peers obeyed. Student flipped the adult off and eloped from the playground through a gate and headed towards the high school. The vice principal attempted to get Student to return to the school, but Student refused.

Student's high-school-aged sibling exited the high school and encouraged Student to return to school. Staff were slowly able to walk Student back to campus and get Student to reenter the school building. (*Id.*)

83. Also on March 3, 2025, the District called a manifestation determination meeting by phone because it was Student's tenth suspension. (Ex. D39.) Mother, the vice principal, and school psychologist were present at the meeting. (*Id.* at 3.) The District agreed to "tightening and solidifying" the expectation with staff for Student to have a structured recess. (*Id.*) The team also discussed trying to talk about situation like this with Student inside the building instead of outside where Student could elope. (*Id.*) Mother reported that Student had been "off" at the start of the day, and she wondered if something might happen at school. (*Id.*) The team determined that District implemented Student's BSP appropriately and that Student's behavior was a manifestation of Student's disability. (*Id.*)

84. Between March 3 and 6, 2025, Student had 39 incidents of inappropriate language, 25 incidents of physical behaviors (hitting and punching peers, hitting and kicking staff), two incidents of elopement (running through the fence/gate on the playground twice), and 22 incidents of destruction (breaking peer's Lego builds, throwing items, and flipping chairs). (Ex. D53 at 10.)

85. On March 5, 2025, Student brought a cell phone to school. A teacher gave the cell phone to the vice principal for safe keeping. Before the first recess, Student became increasingly agitated and upset about the cell phone and entered the vice principal's office to search for it. During the search, Student became more frustrated, began using inappropriate language, and ultimately hit the paraprofessional who was supporting him/her at the time. (Ex. D42 at 1.) Student then hid in his/her cubby and cried. When the special education teacher and school psychologist were standing nearby, Student ran towards the special education teacher and began trying to punch her multiple times in the stomach. The special education teacher tried to back away, but Student continued trying to punch her. Student then returned to his/her cubby and cried some more. When the special education teacher attempted to walk away, Student ran at her again, attempting to punch her multiple times. (Ex. D55 at 5.)

86. Also on March 5, 2025, the District called a manifestation determination meeting by phone for Student's eleventh suspension. The District requested that Parents allow staff to check Student's backpack before entering school, so they could send prohibited items (such as a cell phone) home. Mother stated that Student's backpack would be checked before Student left home and that if problems persisted, Student would be sent to school without a backpack. (Ex. 42 at 4.) The team determined that Student's behavior was a manifestation of Student's disability. (*Id.* at 2.) The team also amended Student's BSP to include a backpack check before Student entered school to ensure items not needed for school were not brought in. (Ex. D43 at 5.)

87. On March 10 and 11, 2025, Student had 20 incidents of inappropriate language, eight incidents of physical behaviors (slapping others), no incidents of elopement, and no incidents of destruction. (Ex. D53 at 10-11.)

88. On March 12, 2025, Student was eating lunch next to a peer with two adults

present. Student smacked the peer in the ear and then went and hid from adults. When the vice principal saw Student, he asked Student what was going on and Student “took off.” (Ex. D49 at 1.) When the vice principal saw Student later, he asked Student what happened and Student responded “we won’t be talking about that.” (*Id.*) Later, Student told the vice principal what happened and that Student did not know why he/she did that. (*Id.*)

89. On March 12, 13, and 17, 2025, Student had 19 incidents of inappropriate language, one incident of physical behaviors, no incidents of elopement, and six incidents of destruction. (Ex. D53 at 11.)

90. On March 13, 2025, the District called an IEP team meeting and held a manifestation determination meeting at the same time for the March 12, 2025 incident. (Exs. D45, D46, D47, D49.) Mother provided an email prior to the meeting, explaining that she believed an abbreviated school day would hamper the assessment of Student’s eligibility under the category of ASD, as the assessment would not have a clear picture of Student’s behavior in the school during a typical school day. (Ex. D47 at 1-2.) The District reviewed Student’s unwanted behaviors, noting that Student had, on average, 19 incidents per day of unwanted language, six incidents per day of physical aggression, four incidents per day of destroying property, and three incidents per day of elopement. The District also noted that Student was spending less than 20-percent of the day with peers. (*Id.* at 3.) District staff noted that Student was engaging in more school-related work recently, but only when motivations such as bargaining or rewards were used by staff. (*Id.* at 3, 5.)

91. At the March 13, 2025 meeting, the District recommended that Student be placed in a more restrictive specialized school. The District believed placement in a specialized school would benefit Student by: smaller class and school size; fewer transitions; more intensive individualized instruction; specific behavior support and monitoring; a structured schedule; smaller staff to student ratios; and more specialized, therapeutic support for behaviors. (*Id.* at 5; Ex. D50 at 1.) They noted that the possible harmful effects included limited social interaction with typically developing peers, removal from Student’s neighborhood school, and commuting time to school. (*Id.*) The District raised concerns that Student was falling behind academically because of his/her behaviors. District staff stated that they felt they had tried “so much” and that there “isn’t much more to do.” (Ex. D47 at 5.) When the discussions regarding placing Student in a specialized school arose, Mother requested that the meeting be stopped to allow her to contact a meeting facilitator. The District declined to stop the meeting, stating that they would continue the discussion and, if Mother disagreed with the outcome, she could consider enlisting a facilitator in the future. (Ex. D47 at 4.) At the end of the meeting, the four District personnel in attendance agreed to placing Student in a specialized school and Mother disagreed with the recommendation. (*Id.* at 5.) The team also decided that, effective March 18, 2025, Student would have an abbreviated school day (two hours per day) until there was an opening at a specialized school. (*Id.* at 6.)

92. At the March 13, 2025 IEP meeting, the team amended Student’s IEP goals and placement. (Ex. D46 at 4.) The IEP included the following narrative about Student’s behavior:

Between the dates of 1/6/25 and 3/11/25 [Student] attended school 30 days. During this time each day [Student] on average has 19 incidences of language, 6 physical incidences, 4 incidences of destroying property, and 3 instances of eloping. During this time period, [Student] has left the building 1 time and left school property 2 times. [Student] is physical both towards staff and students. As [Student's] physical behaviors have decreased, the team has been offering more work in academic and social emotional areas. Currently, [Student] completes work about 50% of the time when it is offered. [Student] is more likely to complete work with a motivator (basketball, fun activity, etc[.]), after [his/her] first recess, when working with peers, when the work is incorporated into a game or movement, and when the work is not labeled as work, but staff uses strategies to include [Student] in the work ("hmm I can't figure this out, can you help me?"). [Student] enjoys helping others with work.

[Student] has improved in [his/her] ability to hear a problem, identify an emotion of the individual involved, and provide a self-regulation strategy that they could implement. Currently when [Student] is given a problem, [he/she] can identify the emotion of the individual involved and provide a self-regulation strategy that [he/she] could implement with 90% accuracy. [Student] needs more work in practicing these skills with peers when problems do arise in-person. Currently, [Student] spends about 20% of [his/her] day with [] peers. This time spent with [Student's] peers mainly consists of recess, lunch, specials, and library.

[Student] has been suspended a total of 14.5 days this school year, accounting for 16 incidences[sic]. 15 of these incidences [sic] have been due to [Student] hitting a staff members. [Student] has been suspended for hitting staff members, students, and eloping the school campus leading to unsafe behaviors for [Student], staff, and students.

(*Id.* at 6.) The team amended Student's social/emotional/behavior goal to read, "when given two or more self-regulation options, during a moment of frustration Student will choose a self-regulation strategy and implement that strategy when prompted verbally and/or visually in 3 out of 4 opportunities by winter 2025." (*Id.* at 10.)

93. The team determined that Student's BSP was followed during the March 12, 2025 incident and that Student's behavior was a manifestation of his/her disability. (Exs. D47 at 2, D49 at 2.)

94. On March 14, 2025, Mother emailed the District about her concerns from the March 13, 2025 IEP meeting and subsequent decision of the District to change Student's placement. (Ex. S18 at 1.)

I am writing to formally refuse the proposed change in placement for my child * * * discussed during our recent IEP meeting. Specifically, I do not consent to the decision to move my child to an abbreviated school day while awaiting

placement at another school. The school's actions to implement this change are not only premature but unlawful, as they are being carried out without completing the necessary evaluations under new eligibility categories and without any current data that justifies this drastic change. This limitation raises significant concerns about whether the school is fully meeting the requirements of **34 C.F.R. § 300.304**, which mandates thorough assessments and data collection in all areas of suspected disability. Allowing my child to be in school for only two hours a day does not provide sufficient instructional time for the school to collect meaningful data to make an informed placement decision.

* * * * *

Furthermore, I requested a second facilitated IEP meeting with Robin Day, an investigator from the Department of Education, to ensure that we could collaboratively reach an agreement on an appropriate educational plan for my child. However, you, Mrs. Bennett, unilaterally and without justification, denied this request for a second facilitated meeting. This refusal to engage in a collaborative process further illustrates the lack of willingness on the part of the district to resolve this matter in a meaningful way. Your failure to support this request demonstrates a concerning lack of respect for parental involvement and due process.

* * * * *

[D]uring past conversations, you stated that the school "Doesn't have the resources" to provide the necessary support for my child, and that the Paraeducator assigned to my child at one point was simply "Who they had available." These comments are nothing short of an abdication of responsibility. The school's inability or unwillingness to provide appropriate resources for my child is entirely unacceptable. Your attempt to justify the lack of appropriate support with an excuse about availability, rather than addressing the issue head-on, speaks volumes about the school's failure to prioritize my child's educational needs.

Additionally, I would like to bring to your attention that the current evaluations that have been used to guide my child's educational plan have proven to be inadequate. Specifically, the **Behavior Support Plan (BSP)** that was developed has not been effective in addressing my child's needs. The failure of the BSP to produce meaningful outcomes further highlights that the existing evaluations do not accurately reflect my child's current needs. This situation strengthens my position that additional, comprehensive evaluations are necessary before making any changes to my child's placement or services.

Furthermore, I would like to emphasize that other members of the IEP team have acknowledged the significant progress my child has made in various

areas. It was noted that my child has successfully met one of [his/her] goals, is completing more work, and has greatly improved [his/her] ability to self-regulate. These achievements clearly show that my child is making positive strides in [his/her] current educational environment. Any proposed change in placement at this time, without proper evaluations, seems not only premature but also contrary to the progress [he/she] has made.

* * * * *

Additionally, the following legal provisions under IDEA make it clear that the district is in violation of my child's rights:

1. Failure to Complete Necessary Evaluations

Under **34 C.F.R. § 300.304**, the school is required to conduct thorough evaluations to determine my child's eligibility under the new eligibility categories before making any changes to their placement. The failure to conduct these evaluations means the proposed change is premature and not based on complete and accurate data. This failure is a violation of IDEA, which mandates that placement decisions be based on a thorough and comprehensive evaluation process.

2. Failure to Provide Free Appropriate Public Education (FAPE)

As per **20 U.S.C. § 1400(d)**, my child is entitled to a Free Appropriate Public Education (FAPE) that is individualized to meet their unique needs. The school is moving forward with a change in placement before completing the necessary evaluations and without having accurate, up-to-date data. This action is a direct violation of my child's right to FAPE, as the school is failing to provide an individualized education that meets my child's needs.

3. Failure to Adhere to Least Restrictive Environment (LRE)

Under **20 U.S.C. § 1412(a)(5)**, children with disabilities are entitled to be educated in the Least Restrictive Environment (LRE). The school's proposed change in placement risks placing my child in a more restrictive setting than necessary, as the school has not completed the necessary evaluations. This is a violation of IDEA's requirement to ensure that my child remains in the least restrictive setting.

4. Parental Consent for Significant Placement Changes

Under **34 C.F.R. § 300.300**, the school is legally required to obtain informed parental consent before making significant changes to my child's placement. This includes changes to instructional time, such as moving my child to an abbreviated school day. Since I have not provided consent, the school is prohibited from proceeding with this change unless it initiates a due process hearing to justify their actions. If the school proceeds with this change without my consent, it will be in direct violation of IDEA.

5. Failure to Respond to Request for IEE

As per **34 C.F.R. § 300.502**, the school is required to respond to my request for an IEE. The failure to address this request within the required timeframe is a violation of my child's rights.

* * * * *

7. Invocation of Stay-Put Rights

In accordance with **34 C.F.R. § 300.518**, I am invoking my child's stay-put rights under IDEA. Since I have not consented to any changes in placement, including the abbreviated school day, my child is entitled to remain in their current placement — which includes attending a full school day — until this dispute is resolved. The school is not authorized to make any changes unilaterally, and I will not allow them to infringe upon my child's rights by acting outside the law[.]

(Ex. S18 at 1-2.) (Emphasis in original.)

95. On March 18 and 19, 2025, Student attended abbreviated school days (two hours total each day). During those two days, Student had two incidents of inappropriate language, no incidents of physical behaviors, no incidents of elopement, and no incidents of destruction. (Ex. D53 at 11.)

96. On March 20, 2025, Student returned to a full-day school schedule and had 28 incidents of inappropriate language, 13 incidents of physical behaviors (hitting staff), no incidents of elopement, and four incidents of destruction. (Ex. D53 at 11.) Student repeatedly told a paraeducator that "I'll kill you" and "you can go kill yourself" after he/she became escalated. (Ex. D62 at 1.)

97. There was no school for students in the District from March 21, 2025 through April 1, 2025. (Ex. D74 at 9.)

98. In April of 2025, Ms. White was assigned to investigate a second report made to the Oregon Department of Human Services where Student had reported wanting to "nuke" himself/herself. (Tr. Vol II at 797:2 through 15, 798:1 through 7.) When Ms. White interviewed Student at school, Student reported that "nuking" was "when you run into someone and you go boom," and then Student reenacted it in the room. (*Id.* at 798:5 through 13.) Following the conversation with Student, Ms. White did not have concerns that Student was suicidal. (*Id.* at 799:8 through 17.)

99. On April 2 and 3, 2025, Student had nine incidents of inappropriate language, no incidents of physical behaviors, no incidents of elopement, and no incidents of destruction. (Ex. D53 at 11-12.) Student was absent from school on April 4, 2025. (*Id.* at 12.)

100. On April 3, 2025, Student told a teacher that "I want to kill myself at school." (Ex. D57 at 1.) The District completed a student suicide risk referral. (*Id.*)

101. From April 7 to April 9, 2025, Student had seven incidents of inappropriate language, three incidents of physical behaviors (hitting paper out of paraprofessional's hand), six incidents of elopement (playing "chase" around the school and running away from staff), and no incidents of destruction. (Ex. D53 at 12.)

102. On April 8, 2025, Student was playing independently when he/she said "what if I just cracked my head open on this?" (Ex. D58 at 1.) The paraprofessional working with Student stated that they did not want that to happen and Student responded "Well, I do." (*Id.*) When asked why, Student responded "because I don't want to live anymore." (*Id.*) The District completed a student suicide risk referral. (*Id.*)

103. Also on April 8, 2025, Student's general education teacher sent a note home that read:

Just a note to brag about [Student] because [he/she] has [had] a great week in my class! [He/She] has joined us multiple times and participated in reading groups. I am very proud of [him/her].

(Ex. S24 at 1.)

104. On April 9, 2025, Student wrote a poem stating that he/she would "grab a knife and grab my shotgun and I shoot everyone. Then you lock the doors. Then you see the monsters chasing you. Then you grab the RPG." (Ex. D63 at 1.)

105. Student was absent from school on April 10, 2025. (*Id.* at 13.)

106. On April 11, 2025, the IEP team met to update Student's IEP. (Ex. D75 at 1.) The team decided that Student did not require extended school year (ESY) services because Student had made progress on his/her IEP goals throughout the school year. (Exs. D75 at 4, 5; D76 at 1.) The team amended Student's IEP to reflect their decision. (Ex. D75 at 4, 5.)

107. On April 14 and 15, 2025, Student had 26 incidents of inappropriate language, 13 incidents of physical behaviors (hitting staff, including in the head, and hitting self in head), nine incidents of elopement (running away from staff in the building, not staying in expected area), and five incidents of destruction (throwing items, taking items from classrooms and desks without permission). (Exs. D53 at 13, S25 at 1.)

108. On April 15, 2025, Student asked to use the restroom, but when he/she exited the classroom stated, "I lied" and then began running around the school and hiding from adults. (Ex. D55 at 6.) Later, when asked to complete schoolwork, Student refused and became escalated. Student began kicking a door, kicked an adult in the shin, and then punched the adult in the stomach and arm. (*Id.*) Student was also cutting paper in the shape of a pistol and bullets and "shooting" them at peers. (Ex. D64 at 1.) At one point, Student found [his/her] sibling in the hallway and they began to wrestle. (Ex. S26 at 1.) Student's assigned paraeducator noted that Student "did great" at lunch and recess. (*Id.*)

109. Starting around April 17, 2025, Mr. Gilstad was assigned to work directly with Student from the start of the day through 10:55 a.m. and then again from 1:00 p.m. until the end of the school day. (Tr. Vol II at 592:3 to 10, 614:20 through 615:1.) Since the transition to working primarily with Mr. Gilstad, Student's unwanted behaviors have decreased, but Student is refusing to go into the general education classroom. (*Id.* at 608:20 through 25.) Student continues to have daily verbal outburst using inappropriate language. Student has not exhibited any physical behaviors in LC1, but at a recess with peers, Student ran up to a peer and pushed the peer hard with two hands from behind, causing the peer to stumble. (*Id.* at 615:8 through 616:24.) Student has continued to engage in elopement. (*Id.* at 617:6 through 618:25.) Mr. Gilstad is concerned that he may be unable to ensure the safety of Student's peers when Student is around them. (*Id.* at 623:1 through 13.)

110. On April 19, 2025, Psychiatric Nurse Practitioner Tolu Dada diagnosed Student with ASD with ADHD. (Tr. Vol II at 635:10 through 637:3.)

111. On April 22, 2025, the District held a manifestation determination meeting regarding Student's behavior on April 15, 2025. (Ex. D78 at 1.) At that time, Student had been suspended a total of 19.5 days during the school year. (Ex. D79 at 1.) Present for the meeting were: Mother; Mother's attorney; Ms. Gilmour on behalf of Parents; an attorney for the District; Ms. Williams; the vice principal; Ms. Zeis; Ms. Bennett; and Ms. Norvald. (Ex. D80 at 1.) Mother requested that Student be provided a dedicated 1:1 paraeducator, but the District indicated that it was not able to dedicate one single person as the sole adult support for Student. The District agreed to assign two paraeducators to Student throughout his/her school day. (Ex. D79 at 1.) Mother also requested that a BCBA be utilized for "training and oversight." (*Id.*) The District indicated that it was in the process of contracting with a BCBA to review Student's existing FBA and BSP and suggest changes. (*Id.*) A majority of the team determined that the District followed Student's IEP (Mother did not agree). The entire team agreed that Student's behavior was caused by or had a direct and substantial relationship to Student's disability. (Ex. D78 at 2.)

Staff Training

112. During the 2024/2025 school year, Ms. Williams provided training to all staff working with Student in the Mandt system, a relationship-based crisis prevention program. The system focuses on prevention, intervention, and de-escalation techniques for working with students with challenging behaviors. (Tr. Vol I 220:1 through 11.)

113. Ms. Williams consults with the team working with Student every Friday, conducts debriefing sessions with staff who had been involved in unsafe incidents with Student, provides training on specific interventions to use with Student, and provided training on how to implement Student's BSP. (Tr. Vol I 220:12 through 24, 224:11 through 18.) Ms. Williams also tried to check in with staff working with Student on a daily basis and say "hi" to Student each day. (Tr. Vol I 223:25 through 224:6, 224:25 through 225:7.)

114. Ms. Peterson, the District's student services instructional coach, was involved in the

creation of Student's initial IEP with the District. (Tr. Vol I at 270:25 through 271:3, 274:13 through 21.) Thereafter, she would do check-ins with staff and consult or brainstorm on any problems they were encountering with Student, on a weekly or every-other-week basis. (Tr. Vol I at 284:14 – 285:17.)

Heron Creek

115. Heron Creek is a Kindergarten through grade 12 school with 11 classrooms: two social emotional classrooms for grades K-4; two social emotional classrooms for grades 4-6; two social emotional classrooms for grades 6-8; three social emotional classrooms for grades 9-12; and two K-12 skills for success classrooms. It is located in Marylhurst, Oregon. Each classroom has one teacher, 0.5 social skills specialists, two educational assistants, one therapeutic intervention coach, two lead therapeutic intervention coaches, a PE teacher, an art teacher, a nurse, an occupational therapist, a speech and language pathologist, a psychiatrist, an assistant director of therapeutic programs, a program coordinator, and a program supervisor. (Ex. D73 at 7.) Heron Creek has a closed campus to help prevent student elopement. (Tr. Vol I 104:22 through 105:3.)

116. The Mission Statement of Heron Creek is:

The Heron Creek Program assesses the collective strengths of students, families, school and the community to develop collaborative plans, enabling students with significant social, emotional, behavioral and academic challenges to learn and use skills to meet their educational goals in the least restrictive environment.

(Ex. D73 at 9.)

117. The Heron Creek handbook states that IEP meetings are held at least annually to “review goals, objectives, and placement needs of each student.” (Ex. D73 at 10.) “The IEP team consists of parents/guardians, Heron Creek staff and the assigned District Representative from your student's home school district. [Parent] attendance is required.” (*Id.*)

118. The “What to Expect in the Heron Creek Program” is outlined in the handbook as follows:

Step 1: Referral

Students are referred to the Heron Creek Program by their local school district. At that time, areas of concern are identified and an initial intervention plan is developed to address social, emotional, behavioral and academic needs taking into consideration each student's lagging skills and strengths.

Step 2: Evaluation

During the initial 45-60 days in the program the staff will gather information to refine the initial intervention plan. This information will be gathered through meetings with parents/guardians, consultation with the home school

district, and review of information from the school and observations of your students in the classroom. After the information is gathered, the data is used to develop or revise your student's Behavior Support Plan (BSP) and update their Individual Education Plan (IEP) as needed. The BSP is designed to assist your student in developing skills that are needed to address identified target behaviors and make progress on the goals and objectives on their IEP. Both the BSP and IEP will guide our work with your student during their placement at Heron Creek as well as during their transition when they leave the program.

Step 3: Settling and Stabilizing

When a student starts at Heron Creek, our first goal is to help them become more behaviorally and academically stable. The team focuses on reducing stressors that lead to acting out behaviors, emotional outbursts and/or withdrawal. During this time, the team works very hard to make sure that what they do, as well as how they do it, reduces the likelihood that the student's thinking, feeling and behavior issues are triggered.

Step 4: Skill Development

Learning and practicing new skills is most effective when students are emotionally and behaviorally stable. During this step, we continue to make sure that the school environment is very carefully individuated to maintain student stability. In addition, we begin teaching new skills. This occurs throughout the school day, individually and in group settings. We focus on teaching skills at the "point of performance". This means that skill training takes place during the time that the student would require the skills. For example, if a student has trouble with frustration tolerance during math, we teach skills during math instruction.

Step 5: Skill Transfer

After students have practiced and learned new skills in the Heron Creek program, the team begins to focus on strategies to help the students demonstrate these skills across settings. The focus is on students initiating and using these new skills with less adult assistance (fewer cues, less adult reinforcement). Our goal is to help students to manage themselves effectively in a less restrictive school environment.

Data and Communication

Regular communication between school and home is essential to proactively assist students. Weekly written communication along with emails and phone calls greatly help students achieve success. In addition, Heron Creek staff are collecting data daily both behaviorally and academically on all students to assist with individualized student planning. Parents/guardians will receive Incident Reports as incidents occur. Additionally, parents/guardians will receive weekly feedback forms to let them know their child's progress for each week.

Throughout All Steps

Each student's progress through these steps is likely to have ups and downs. It is common for students to take a step backward as they move forward. Heron Creek students tend to be impacted by stress, illness, lack of sleep, hunger, and changes in their home and school environments more than students who are typically developing. Parents/guardians and School Staff communicating and working together to develop stress reduction strategies across settings will help students greatly along the way and minimize setbacks. Let's make it work by working together!

(Ex. D73 at 14.)

119. Tuition for a student to attend Heron Creek is approximately \$73,000 per year. (Tr. Vol I at 111:4 through 6, 112:21 through 23.)

120. On March 18, 2025, Mother spoke with the program director of Heron Creek on the phone regarding the program. (Tr. Vol II at 638:17 through 639:20.) On approximately April 8, 2025, Mother visited Heron Creek. (*Id.* at 638:17 through 24, 640:22 through 641:3.) Based on her tour, Mother believes that Heron Creek is not an environment that is appropriate for Student. She believes the children at Heron Creek are "severely opposite of my child," in that they were severely developmentally delayed. (*Id.* at 642:10 through 20.) She felt the physical space inside Heron Creek was "messy and unorganized," "chaotic," and that the outdoor space lacked a playground and looked "like a prison yard." (*Id.* at 643:2 through 9.)

Serendipity Center

121. Serendipity Center is a privately owned center which provides a program for children similar to the services provided at Heron Creek. (Tr. Vol I at 45:6 through 12.)

122. The District would be willing to place Student in Serendipity Center or Heron Creek, depending on Parents' preference. (Tr. Vol I at 101:14 through 21.)

Laura Mlyn, M.Ed, BCBA, LBA

123. Ms. Mlyn is dual credentialed BCBA and TSPC-licensed Special Education Teacher. At the District's request, Ms. Mlyn has been working on an evaluation of Student to see if he/she is eligible under the category of ASD. As part of that evaluation process, Ms. Mlyn has formally observed Student once and informally observed Student in school. (Ex. D85 at 1.)

124. Ms. Mlyn noted that Student demonstrates strengths in creativity (art) and verbal communication with adults about interests, and also forms strong connections with adults. Ms. Mlyn has also observed Student engage in episodes of physical and verbal aggression towards adults and peers and elopement. She notes that Students appears to struggle with self-regulation and emotional calming. (Ex. D85 at 1.)

125. During Ms. Mlyn's evaluation, she observed and learned about some concerning

behaviors and responses of Student:

[Student] has been observed hoarding and sneaking food, making repeated comments that alarm adults and peers (e.g., “go kill yourself” repeatedly) in addition to other aggressive, profanity-laden language and gestures. In response to teacher cues, [Student] was observed often yelling “I don’t care”. [Student’s] immediate escalation to anger and task-refusal even with preferred adults has also been concerning.

(Ex. D85 at 2.)

126. Based on studies she has read, Ms. Mlyn opines that for children with certain mental health conditions, such as trauma-related disorders, mood disorders, or anxiety, applied behavior analysis (ABA) as the primary or sole intervention may not only be ineffective, but it can, in some cases, exacerbate the symptoms or undermine therapeutic processes. (Ex. A85 at 2; Tr. Vol I at 312:19 through 313:5.)

Maria Gilmour, Ph.D., BCBA-D

127. Dr. Gilmour has a Ph.D. in the field of special education, with an area of expertise in autism and ABA, learning and cognition, and educational administration and policy. She is also a board-certified behavior analyst – doctoral. (Ex. S1 at 1.)

128. As part of her work, Dr. Gilmour conducts FBAs. (Ex. S2 at 1.) When conducting an FBA, Dr. Gilmour provides details of her observations of a student in the FBA itself. She also uses a motivational assessment tool and a functional assessment interview for teacher(s), para educators, parent(s), and anyone else who works with the child. (Tr. Vol II at 420:2 through 23.) She gathers information from any teachers who have been with the student in the prior six months. (*Id.* at 421:11 through 21.)

129. When performing an FBA, Dr. Gilmour typically observes a student three to five times on separate days to try and observe an escalation of behavior occurring. (Tr. Vol II 422:21 through 423:7.) It typically takes Dr. Gilmour approximately three months to conduct an FBA, and three weeks is the quickest she has ever completed an FBA. It is “a 40-hour process” for Dr. Gilmour to do an FBA. (*Id.* at 423:8 through 23.)

130. At the request of Parents, Dr. Gilmour reviewed the FBA created by the District. When asked if she believed the FBA was deficient, Dr. Gilmour responded:

I just wouldn’t know how to implement this, how it’s -- as it’s written. So I just don’t know how to collect the data, or it looks like everybody is responsible for everything, which there’s -- I just wouldn’t be able to understand how to implement this exactly. So I’d want more specification on that, for sure.

It looks to me that I have a copy with some highlights in it and such, so I don't know if this was maybe -- I thought this was maybe a draft of like some -- started some ideas, but it just, it looks like there's no -- I'd want to have kind of exactly how you implement it, by who, and how you're collecting data and when do you check in about that, when do you make decisions on next steps. So it's just a very clear step-by-step process for everybody implementing it. That would be critical for everybody so they know what they're doing.

(Tr. Vol II at 424:23 through 425:17.)

131. Dr. Gilmour testified that without personally conducting an FBA for student in the school setting, she would be unable to say what supports should or should not be used in the school setting:

Q. So without personally conducting an FBA, you wouldn't -- in the school setting, you wouldn't be able to say what supports should or should not be used in the school setting?

A. Correct. I mean, obviously basic classroom management supports, I would assume, would be in place for, you know, for that age. So that's assumed. But I haven't conducted an FBA in the school, so you're right. I would not be able to specifically say for Student what those supports are.

Q. Does an FBA have to be conducted by a BCBA?

A. That's best practice. And it's -- and ethical guidelines are to -- we don't -- we always encourage people who are within their scope of practice to conduct the assessment. And BCBAs are -- that's what we do. That's in our -- our scope of practice.

(Tr. Vol II at 453:8 through 454:1.)

132. At the request of Parents, Dr. Gilmour also observed Student for two hours in his/her home to gather information about Student's typical behaviors and routines. (Ex. S1 at 2.) Based on her observations, Dr. Gilmour opined:

[Student] displayed an impressive range of independent skills typical for a 6-year-old during my visit and his/her capabilities span multiple domains of daily functioning.

[Student] exhibited strong social skills throughout the observation and was able to engage in meaningful, reciprocal conversations. [Student's] interactions with his/her [sibling] were kind and age appropriate.

[Student] was able to follow one and two step directions more than 90% of the time. [Student] also demonstrated emerging self-regulation when denied

access to preferred toys during snack time (twice).

Based on my home observation, parent interview, and review of records, I recommend a comprehensive FBA be conducted by a BCBA with school-based experience, and the creation of an effective BSP with function-based interventions implemented by staff trained to fidelity on all strategies.

At this time, an educational setting with consistent behavior supports in the least restrictive environment (e.g., a general education classroom) appears most appropriate.

* * * * *

It is best practice to trial interventions in a less restrictive environment, supported appropriately, before considering more restrictive placements. A structured, step-by- step approach — with meticulous data collection — should guide enhancements to [Student's] current educational supports.

* * * * *

[Student] presents as a student who can and should be served in the regular school setting albeit with appropriate behavioral supports implemented by trained staff.

(Ex. S1 at 2-3.)

133. Dr. Gilmour opined that the key components for educational success include:

Structured Support Plan

Implemented by a trained educational aide, including:

- Systematic prompting hierarchies
- Individualized reinforcement systems
- Consistent behavioral protocols
- Ongoing data collection on target behaviors

Dedicated Support Professional

A trained aide should support [Student] across educational settings by:

- Ensuring consistent implementation of [his/her] support plan
- Providing immediate guidance during transitions or challenges
- Monitoring and delivering behavioral interventions
- Offering academic support

Enrichment Opportunities

[Student] should have access to enrichment activities with support from [his/her] aide to foster participation and build on [his/her] strengths and interests.

Supporting Observations

[Student's] strengths include:

- Well-developed independent self-care and organization
- Strong social communication
- High compliance with directions
- Emerging problem-solving abilities

While these are notable, consistent support is recommended to ensure these skills generalize across environments and are maintained over time.

Considerations for Implementation

1. Schedule regular team meetings to monitor the effectiveness of [Student's] support plan
2. Develop a gradual fading protocol for areas showing sustained independence
3. Conduct ongoing evaluations to assess the continued need for support
4. Provide comprehensive, ongoing training for the educational aide on [Student's] needs and intervention strategies

(Ex. S4 at 3-4.)

CONCLUSIONS OF LAW

1. There is not a substantial likelihood that Student will engage in injurious behavior.
2. Student's placement should not be changed to an appropriate interim alternative educational setting for a period up to 45 school days.

OPINION

Applicable Laws and Rules

In due process proceedings held pursuant to 20 USC § 1400 *et seq.*, the party seeking relief has the burden of proof. *Schaffer v. West*, 546 US 49 (2005). In this matter, the District filed a Motion for an order placing Student in an Interim Alternative Educational Setting for a period up to 45 school days.

In administrative hearings, a party who bears the burden must establish each fact or position by a preponderance of the evidence. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (in administrative actions, the standard of proof that generally applies in agency proceedings, including license-related proceedings, is the preponderance standard.); see also *Cook v. Employment Division*, 47 Or App 437 (1980) (in absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

The IDEA was enacted to require state educational agencies (SEA) receiving federal funds to provide special education services for students with qualifying disabilities. See 20 USC § 1400(d)(1)(A). To meet its substantive obligation under the IDEA, a school must offer an “individualized education program” reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Endrew F. v. Douglas County School District*, 580 US 386, 399 (2017). Under the IDEA, all children deemed eligible for special education have a right to receive a free appropriate public education (FAPE). 20 USC § 1412(1). The IDEA defines FAPE as special education and related services that: (a) have been provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the state educational agency; (c) include an appropriate preschool, elementary, or secondary school education in the state involved; and (d) are provided in conformity with the IEP required under § 1414(a)(5) of the IDEA. 20 USC § 1401(a)(18); *Amanda J. v. Clark County School Dist.*, 267 F3d 877, 890 (9th Cir. 2001).

The IDEA further requires that, “[t]o the maximum extent appropriate, children with disabilities * * * are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 USC § 1412(a)(5)(A). This is commonly referred to as the “least restrict environment” (LRE). See, e.g. OAR 581-015-2240 to 581-015-2255. Oregon administrative rules similarly require that, to the maximum extent appropriate, children with disabilities are educated in the LRE. OAR 581-015-2240(1)-(2). Furthermore, Oregon rules provide that, unless a child’s IEP requires a different placement, a child should be in the same school they would attend if not disabled. OAR 581-015-2250(3).

The decision regarding the placement of child with a disability must, among other things, be determined by a group of people (including the parents and others knowledgeable about the child), be made in conformity with the LRE provisions, be based on the child’s current IEP, and be as close as possible to the child’s home. OAR 581-015-2250(1). Any significant changes in placement of a child with a disability require that the District provide parent(s) with written prior notice of the proposed change. OAR 581-015-2310(2)(a). See also, 29 USC § 1415(b)(3)(B).

Additionally, a parent may request a due process hearing if they do not agree with the identification, evaluation, educational placement, or provision of FAPE to their child with a

disability. OAR 581-015-2345(1)(a)(A). Likewise, a school district may request a due process hearing regarding the identification, evaluation, educational placement, or the provision of FAPE to a child with a disability. OAR 581-015-2345(1)(b)(A). This includes a request for an expedited hearing under OAR 581-015-2445:

(1) An expedited due process hearing must be held if a hearing is requested under OAR 581-015-2345 because:

(a) In a dispute over a disciplinary action for a child with a disability, the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding the child's educational placement; or

(b) The school district believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

See also ORS 343.165(7).

Once a due process hearing is initiated, by either a parent or school district, OAR 581-015-2360(5) requires that the student remain in their present educational placement (also known as "stay put") except in certain, limited circumstances. OAR 581-015-2360(5)(a) sets out the exceptions to the stay put requirement:

(5) Due Process Hearing Rights: Parties to a due process hearing conducted under OAR 581-015-2360 (Notice of Hearing, Hearing Rights, and Pre-Hearing Conference) or 581-015-2400 through 581-015-2445 (Discipline for Students with Disabilities) have the following rights:

(a) During the pendency of any due process hearing or judicial appeal, the child must, remain in the present educational placement unless:

(A) The school district and the parent agree otherwise;

(B) If applying for initial admission to a public school, the parent consents to the child's placement in a program provided or selected by the district at the district's expense until all proceedings are completed;

(C) The school district orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to a weapon, illegal drug, or controlled substance incident or for serious bodily injury;

(D) The administrative law judge orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to the substantial likelihood of injurious behavior; or

(E) The school district implements a disciplinary removal to an interim alternative educational setting for a student when the student's behavior is determined not to be a manifestation of the student's disability.

When a school district seeks an order from an administrative law judge to change the placement of a student to an appropriate interim alternative educational setting, OAR 581-015-2430 applies and provides, in relevant part:

(1) "Injurious behavior" means behavior that is substantially likely to result in injury to the child or to others.

(2) School districts may request an expedited due process hearing under OAR 581-015-2445 to obtain an order from an administrative law judge to order a change in placement of the child to an interim alternative educational setting for not more than 45 school days for injurious behavior.

(3) The interim alternative educational setting must meet the requirements of OAR 581-015-2435(2)[.]

OAR 581-015-2435(2) sets out the requirements for an interim alternative educational setting as follows:

An interim alternative educational setting * * * must:

(2) Enable the child to:

(a) Continue to participate in the general curriculum, although in another setting; and

(b) Progress toward achieving the goals in the child's IEP.

Present Matter

The District argues that Student is substantially likely to engage in injurious behavior if left in his/her current educational placement and that an order changing Student's placement to an interim alternative educational setting for a period up to 45 school days is necessary. To meet their burden in this matter, the District must show three things:

1. That there is a substantial likelihood that Student will engage in injurious behavior;
2. That the District has taken reasonable steps to minimize Student's risk of causing injury to self or others; and

3. That the interim alternative educational setting would allow Student to continue to participate in the general curriculum and allow Student to continue making progress towards achieving the goals in his/her IEP.

Parent argues that the District's request for an order changing Student's placement to an interim alternative educational setting for 45-days is improper under the IDEA and, to the extent Oregon Administrative Rules permit such a request, the Oregon Administrative Rules impermissibly conflict with and are preempted by the IDEA. Alternatively, Parent argues that the District has failed to establish that Student poses a substantial likelihood of serious injury to self or other if he/she were to remain in his/her current placement.

1. Whether the District's Request for an Order Changing Student's Placement to an Interim Alternative Education Setting for 45-Days violates the IDEA

In her closing brief, Parent argues that the District's request for a 45-day interim alternative educational setting placement is "improper under the IDEA, since the 45-day Interim Placement the District [seeks] subverts procedural protections and disrupts the IDEA's integration mandate, and is thus available only in rare situations involving guns, knives, drugs, or serious assault." Parent's Expedited Hearing Post-Hearing Brief at 2. To support her argument, Parent relies solely on the provisions found in 20 USC § 1415.

The District in this matter has sought an order from the ALJ for a 45-day interim alternative educational setting placement under the Oregon Administrative Rules, found in Chapter 581, Division 15. Thus, the District's motion was not filed under federal law. Under the Supremacy Clause of the US Constitution (Article VI, Clause 2), Federal laws take precedent over State laws. However, states are free to provide their citizens with more protection than the minimum protection guaranteed by federal law. Under the IDEA, states may promulgate and implement their own rules, as long as those rules do not supersede or restrict the protections offered by the IDEA.

In this matter, the District has filed a request for a 45-day interim alternative educational setting order under Oregon law, not federal law. As such, the hearing and subsequent ruling are bound by state law. Parent has not shown that the District's motion was improper under the applicable Oregon Administrative Rules. As such, Parent's argument is without merit. To the extent Parent argues that the Oregon Administrative Rules at issue conflict with or are preempted by the IDEA, this is not the appropriate forum to raise or decide the merits of that argument.

2. Whether there is a Substantial Likelihood that Student Will Engage in Injurious Behavior

As discussed above, the District requested an expedited hearing and an order for a change in Student's placement to an appropriate interim alternative educational setting for up to 45 school days. For an ALJ to issue such an order, the District must show that the Student is substantially likely to engage in injurious behavior. *See* OAR 581-015-2445(1)(b). Injurious behavior means "behavior that is substantially likely to result in injury to the child or to others." OAR 581-015-2430(1). Put another way, the District must show that there is a substantial likelihood that the Student will engage in behavior that is substantially likely to result in injury to

Student or others.

“Injury” is not defined in the applicable Oregon statutes or rules. Nor is there any Oregon-specific case law discussing what amounts to an injury under the applicable laws and rules. In Chapter 343 of the Oregon Revised Statutes, titled “Special Education and Other Specialized Education Services,” the term “serious bodily injury” is defined as set out in ORS 339.285(4) as “any significant impairment of the physical condition of a person, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.” In ORS 343.165(7)(b) and OAR 581-015-2445(1)(b) the term ‘injury,’ not ‘serious bodily injury’ is used. When interpreting statutes Oregon statutes, ORS 174.010 decrees that “In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.” (Emphasis added.) As such, it can be assumed that the legislature purposefully used the term ‘injury’ instead of ‘serious bodily injury’ when describing the standard to be applied under OAR 581-015-2430(1). It therefore reasons that ‘injury’ under OAR 581-015-2430(1) is a lesser standard than serious bodily injury.

Under the 29 USC § 1415(k), ALJs in other jurisdictions have discussed what “substantially likely to result in injury” means. While not dispositive in this matter, the cases are useful in informing the decision. In *El Segundo Unified School District*, 117 LRP 41962 (2017), the ALJ found that a 17-year-old student with an intellectual disability who engaged in a series of unsafe and aggressive behaviors, including chasing and threatening a peer, shouting threats such as “I’ll kill you,” and assaulting staff, was substantially likely to cause a risk of injury to herself or others. In *Corona-Norco Unified School District*, 125 LRP 4096 (2025), the ALJ found that a 7-year-old with an emotional disability and other health impairments was substantially likely to cause a risk of injury to self or others when the student engaged in repeatedly stabbing and aide with a pencil, biting, threatening to “shoot” or “kill everyone,” and assaulting peers and staff, even after the District conducted six manifestation determination reviews, 18 suspensions, and revised the child’s IEP and BIP. However, in *Saddleback Valley Unified School District*, 52 IDELR 56 (2009), an ALJ declined to find that a 13-year-old student was substantially likely to cause injury to self or others after he teased and verbally threatened a peer, even though he had a history of placement in interim alternative educational settings due to injurious behavior, because the ALJ found that student’s self-control had showed significant improvement since his prior placements.

In the present matter, the District made a showing that Student has engaged in unsafe and potentially injurious behavior throughout the 2024/2025 school year. While Student’s behaviors have changed over time, Student continues to engage in behaviors that could harm both Student and others. In April alone, Student has engaged in verbal behaviors, including statements that he/she wanted to kill himself/herself or others. Student has hit paper out of a paraprofessional’s hand, engaged in continued elopement, hit and kicked staff, hit himself/herself in the head, thrown items, and kicked doors. In the few weeks preceding the hearing in this matter, Student has continued to engage in elopement and has pushed a peer. Given Student’s consistent pattern of behaviors over the course of the 2024/2025 school year, the persuasive evidence shows that Student is substantially likely to continue to engage in those behaviors if he/she remains in

his/her current placement.

However, the evidence fails to show that, if Student remains in his/her current placement, Student's behavior is substantially likely to result in injury to Student or others. Throughout the year, Student has hit and kicked staff and students at school. Staff have, thankfully, been able to minimize the harm done to themselves and students and there is no evidence that anyone has sought medical treatment for injuries caused by Student. It is likely that Student's behaviors of hitting, kicking, and throwing objects at people have resulted in at least minimal pain and/or bruising to staff or students. However, the District failed to produce evidence that Student's behaviors have caused pain or other injury to Student, staff, or peers, or that there has been some change in Student's behavior that would make injury more likely in the future. The District failed to meet its burden to show that Student's behaviors are substantially likely to result in injury to Student or others if he/she remains in his/her current placement.

3. *Whether the District has Taken Reasonable Steps to Minimize Student's Risk of Causing Injury*

In *Light v. Parkway C-2 School Dist.*, 41 F.3d 1223, 1228 (1994), the Eighth Circuit Court of Appeals found that a District must have taken reasonable steps to minimize a student's risk of causing injury before seeking placement in an interim alternative educational setting. The court reasoned:

The school district must show that it has made reasonable efforts to accommodate the child's disabilities so as to minimize the likelihood that the child will injure herself or others. This * * * inquiry is necessary to ensure that the school district fulfills its responsibility under the IDEA to make available a "free appropriate public education ... for all handicapped children...." 20 U.S.C. § 1412(2)(B). While we do not intend to expand district court removal hearings into wide-ranging assessments of entire educational programs, we believe that school districts should not seek to remove disabled children until reasonable steps have been taken to mitigate the threat of injury. The scope of this inquiry is indicated by 20 U.S.C. § 1412(5)(B), which requires that the "removal of handicapped children from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily...." Before exercising its equitable authority to remove a disabled child from any placement, a district court should be satisfied that the school district has made reasonable use of "supplementary aids and services" to control the child's propensity to inflict injury.

Id. at 1228.

While this standard is, again, not controlling in this matter, as this matter is proceeding under Oregon Administrative Rules, the standard is instructive in reaching a decision. Without a standard requiring that a school district take reasonable steps to minimize the likelihood that a student would cause injury to self or others, a school district could take no steps to minimize the

risk of injury and seek placement of a student into an interim alternative educational setting for injurious behavior. As the Court in *Light v. Parkway C-2 School Dist.* concluded, such a standard is necessary to ensure that a school district fulfills its responsibility to provide FAPE to students under the IDEA. This standard does not, however, require that a school district explore and try every possible option to minimize the likelihood that a student would cause injury to self or others. Rather, the steps taken must have been reasonable under the circumstances.

The evidence in this record shows that the District took reasonable steps to minimize the likelihood that Student would engage in behaviors that would cause injury to himself/herself or others throughout the 2024/2025 school year. Shortly after Student began exhibiting worrisome behaviors in September of 2024, the District sought parental permission to conduct an FBA. Once the District had that permission, the District took steps to quickly conduct the FBA and call an IEP team meeting to create a BIP. The IEP team incorporated suggestions from Mother when creating the BIP, such as utilizing Student's siblings as resources. As it became clear to the District that Student's behaviors were continuing, the District took steps to amend Student's IEP and to increase adult support for Student throughout the school day. Ultimately, the District increased adult support to the point where Student had a full-time paraprofessional assigned solely to him/her during all school hours. The District implemented a visual schedule for Student, provided Student with structured recesses, updated Student's BSP (including warnings before transitions and increasing physical movement into Student's day), and instituted a daily backpack check for items that could pose a problem.

Parent argued that the school could and should have taken additional steps to support Student, such as enlisting the support of a BCBA, decreasing Student's transitions throughout the day, or providing Student with a single, dedicated 1:1 paraprofessional throughout Student's entire day. While there are likely many other things the District *could* have tried, the evidence is persuasive that the District took numerous reasonable steps throughout the school year to minimize the likelihood that Student would engage in behaviors that would cause injury to self or others. Thus, the District met its burden to show that it took reasonable steps to minimize Student's risk of causing injury before seeking placement in an interim alternative educational setting.

4. *Whether the Interim Alternative Educational Setting Meets the Requirements of OAR 581-015-2435(2)*

Pursuant to OAR 581-015-2430(3), the proposed interim alternative educational setting "must meet the requirements of OAR 581-015-2435(2)." OAR 581-015-2435(2) provides that an interim alternative educational setting must enable the child to (1) continue to participate in the general curriculum (in a different setting) and (2) progress toward achieving the goals in his/her IEP. In the present matter, the District proposes to place Student at either Heron Creek or Serendipity Center, depending on parental preference. At hearing, the District provided limited testimonial evidence regarding the programming and service available to students at Heron Creek. The District did provide the Heron Creek handbook as an exhibit, which provides some details regarding the programming available. The District, however, failed to provide any evidence regarding how Student would be able to continue to participate in the general curriculum while at Heron Creek and/or Serendipity Center. Similarly, the District provided no

information regarding how Student could make progress toward achieving the goals in his/her IEP while at Heron Creek and/or Serendipity Center. While it is quite possible that Student would be able to make progress towards his/her IEP goals and participate in the general curriculum while attending Heron Creek and/or Serendipity Center, the record is devoid of the necessary information to allow the ALJ to make a finding that the interim alternative educational setting would meet the requirements of OAR 581-015-2435(2).

5. Conclusion

In sum, the evidence in this hearing record is persuasive that Student has a prolonged history of unwanted behaviors throughout the 2024/2025 school year. The District took numerous reasonable steps to minimize Student's unwanted behaviors and to minimize the likelihood that Student would cause injury to himself/herself or others. However, Student's behaviors persisted. The District provided persuasive evidence that there is a substantial likelihood that Student's unwanted behaviors will continue if Student is to remain in his/her current educational setting. The District, however, failed to meet its burden to show that Student's behaviors are substantially likely to cause injury to Student or others if Student is to remain in his/her current educational setting. Additionally, the District failed to meet its burden to show that the proposed interim alternative educational setting(s) would allow Student to continue to participate in the general curriculum and that Student could continue to make progress toward achieving the goals in his/her IEP in the interim alternative educational setting. As such, the District is not entitled to an order changing the placement of Student to an interim alternative educational setting.

ORDER

The District's April 4, 2025, Motion for 45-Day Interim Alternative Educational Setting, is DENIED. Student shall remain in his/her current educational setting pending the outcome of the hearing on Parent's March 19, 2025, Complaint.

Kate Triana

Senior Administrative Law Judge
Office of Administrative Hearings

APPEAL PROCEDURE

NOTICE TO ALL PARTIES: If you are dissatisfied with this Order you may, within 90 days after the mailing date on this Order, commence a nonjury civil action in any state court of competent jurisdiction, ORS 343.175, or in the United States District Court, 20 USC § 1415(i)(2). Failure to request review within the time allowed will result in **LOSS OF YOUR RIGHT TO APPEAL FROM THIS ORDER.**

SERVICEMEMBERS' CIVIL RELIEF ACT

Unless otherwise stated in this order, the Office of Administrative Hearings (OAH) has no reason to believe that a party to this proceeding is subject to the Servicemembers' Civil Relief Act (SCRA). If a party to this proceeding is a servicemember who did not appear for the hearing, within the servicemember's period of service, or 90 days after their termination of service, that party should immediately contact the agency to address any rights they may have under the SCRA.

CERTIFICATE OF MAILING

On May 23, 2025, I mailed the foregoing FINAL ORDER in OAH Case No. 2025-ABC-06997 to the following parties.

By: Certified and Electronic Mail

Parent(s) of Student

[REDACTED]

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Hearings Coordinator
Office of Administrative Hearings

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF EDUCATION**

IN THE MATTER OF THE
EDUCATION OF:

**STUDENT AND ESTACADA
SCHOOL DISTRICT 108**

) **FINAL ORDER**
)
) OAH Case No. 2025-ABC-06997
) Agency Case No. DP 25-105
)

HISTORY OF THE CASE

On March 19, 2025, Parent filed a request for a due process hearing (Complaint) with the State Superintendent of Public Instruction on behalf of Student, alleging that Estacada School District 108 (District) violated federal and state statutes, federal regulations, and state administrative rules during the 2024/2025 school year, through the date of the Complaint.

Also on March 19, 2025, the Oregon Department of Education (ODE) referred this matter to the Office of Administrative Hearings (OAH) for a due process hearing. The OAH appointed Senior Administrative Law Judge (ALJ) Kate Triana to conduct the due process hearing and issue a Final Order in this case.

On April 4, 2025, the District filed District's Motion for 45-Day Interim Alternative Educational Setting seeking an order removing Student from his/her current placement pursuant to provisions of OARs 581-015-2360, 581-015-2425, and 581-015-2430. The hearing was bifurcated, with an expedited hearing scheduled to address the District's Motion and a non-expedited hearing scheduled to address Parent's Complaint.

On April 15, 2025, ALJ Triana conducted a prehearing conference by telephone to schedule the expedited hearing on the District's Motion. Lara Hruska and Whitney Hill, attorneys at law, appeared with Parent. Taylor Kinch and Joel Hungerford, attorneys at law, appeared on behalf of the District. Jill Bennett, Assistant Director of Student Services for the District, also appeared. At the prehearing conference, ALJ Triana scheduled the expedited hearing for April 30 and May 1, 2025. ALJ Triana also set briefing deadlines for Parent to file a Response to the District's Motion.

On April 18, 2025, Parent filed Parent's Response to District's Motion for 45-Day Interim Alternative Educational Setting seeking a ruling dismissing the District's Motion. On April 25, 2025, the District filed District's Reply. On April 28, 2025, ALJ Triana took the matter under advisement. On April 29, 2025, the OAH issued a Ruling on Motion to Dismiss District's Motion for 45-Day Interim Alternative Educational Setting, denying Parent's motion.

On April 23, 2025, ALJ Triana conducted a prehearing conference by telephone to schedule the hearing on Parent's Complaint. Ms. Hruska and Ms. Hill appeared with Parent. Ms. Kinch and Mr. Hungerford appeared on behalf of the District with Ms. Bennett. Parent requested that the hearing be open to the public. ALJ Triana granted Parent's request to file an Amended Complaint and set a due date of May 9, 2025. The ALJ granted Parent's unopposed request for a waiver of the 45-day final order due date. ALJ Triana scheduled the hearing, to be held by Webex Video Conference, on June 10, June 11, June 12, and June 13, 2025. ALJ Triana granted Parent's unopposed motion to add a third day (May 2, 2025) to the expedited hearing to allow an otherwise unavailable witness to testify.

On April 30, May 1, and May 2, 2025, ALJ Triana convened a Webex videoconference hearing. Ms. Hruska and Ms. Hill appeared and represented Parent and Student. Mr. Hungerford and Ms. Kinch appeared and represented the District. Ms. Bennett appeared as the District representative throughout the entirety of the proceeding. The following individuals appeared and testified on behalf of the District:

- Ms. Bennett^{*1};
- Kyle Gilstad,* Paraeducator for the District;
- Laura Mlyn, Autism Consultant and Board Certified Behavioral Analyst (BCBA) with Columbia Regional Inclusive Services²;
- Stephanie Peterson, Instructional Coach for the District³;
- Trevor Syring,* Vice Principal of River Mill Elementary in the District⁴; and
- Abby Williams,* School Psychologist for the District⁵.

In addition, the following individuals appeared and testified on behalf of Student:

- Parent⁶;
- Maria Gilmour, BCBA – Doctoral (BCBA-D) and CEO of Wynne Solutions

*

Witnesses with an asterisk (*) by their name were called to testify for both parties.

¹ Ms. Bennett was designated as an expert in the field of school psychology and Mandt systems.

² Ms. Mlyn was designated as an expert in the field of BCBA.

³ Ms. Peterson was designated as an expert in the field of special education.

⁴ Mr. Syring was designated as an expert in the fields of school administration and student discipline.

⁵ Ms. Williams was designated as an expert in the field of school psychology.

⁶ Student's Mother filed the Complaint in this matter and is the person who has primarily handled all matters related to Student's special education. For clarity, Student's Mother will be referred to as "Parent" in this order.

LLC⁷;

- Kristi Franke, Home Healthcare Aid and family friend of Parent and Student;
- JoAnne White, Social Services Specialist for North Clackamas Branch of the Oregon Department of Human Services⁸; and
- Alexandria Kolas (Olmstead), Paraeducator for the District in October and November of 2024.

During the third day of the hearing, on May 2, 2025, concerns were raised regarding the confidentiality of some of the testimony. The District made an oral motion for a protective order, which the ALJ granted. The ALJ closed the hearing to the public at that time and instructed the District to follow up with a written Motion for Protective Order. On May 7, 2025, the District filed a written Motion for Qualified Protective Order with a draft order attached. On May 8, 2025, the ALJ signed and issued the Qualified Protective Order.

On May 8, 2025, the District provided a copy of the transcript from the April 30, 2025, portion of the hearing (Volume I). On May 9, 2025, the District provided a copy of the transcripts from the remaining portions of the hearing (Volume II and Volume III).⁹

On May 12, 2025, Parent filed an Amended Due Process Hearing Request (Amended Complaint).

On May 15, 2025, Parent requested to rescind her waiver of the 45-day default period to issue a final order as to the non-expedited portions of the Complaint.

On May 16, 2025, the parties submitted written closing arguments. The record closed on that date.

On May 19, 2025, the parties filed a Joint Partial Motion to Dismiss, requesting to dismiss Claim No. 7 of Parent's Amended Complaint ("Whether the District is obligated to fund an independent educational evaluation per the Parent requests in December 2024 and March 2025"), and Claim for Relief No. 4 (Seeking "An Order that the District fund an independent educational evaluation"). ALJ Triana granted the motion.

Also on May 19, 2025, in response to Parent's request to rescind the earlier request to waive the 45-day final order due date, the District requested that the ALJ extend the final order

⁷ Dr. Gilmour was designated as an expert in the field of BCBA.

⁸ Ms. White was designated as an expert in the field of child welfare and child mental health.

⁹ The transcripts for the expedited hearing were provided in three volumes, one for each day. However, the page numbering system was continuous throughout the three volumes. Volume I included pages 1-387 (April 30, 2025 hearing); Volume II included pages 394-751 (May 1, 2025 hearing); and Volume III included pages 758-858 (May 2, 2025 hearing). For clarity, each transcript has been assigned an Arabic Numeral. Volume I will be referred to as "Tr. 1;" Volume II will be referred to as "Tr. 2;" and Volume III will be referred to as "Tr. 3." All citations to the transcripts will be as follows: Tr. [numerical reference] at [page number]:[line number] through [page number]:[line number].

due date in this matter beyond the 45-day default period, to allow the parties to maintain the previously-scheduled hearing timeline. ALJ Triana granted the motion.

On May 22, 2025, ALJ Triana conducted a second prehearing conference, by telephone. Mr. Hungerford and Ms. Kinch appeared and represented the District. Ms. Bennett also appeared on behalf of the District. No one appeared on behalf of Parent. That same day, ALJ Triana granted Parent's email request to schedule another prehearing conference.

On May 23, 2025, the OAH issued a Final Order on the District's Motion, finding that Student's placement should not be changed to an appropriate interim alternative educational setting for a period up to 45 school days because the District failed to meet its burden to show that there was a substantial likelihood that Student would engage in injurious behavior.

On May 29, 2025, ALJ Triana conducted a prehearing conference, by telephone. Ms. Hruska appeared on behalf of Parent. Parent also appeared. Mr. Hungerford represented the District. Jason Hobson, District Assistant Director of Student Services, also appeared on behalf of the District. Parent requested, over the District's objection, that the hearing be postponed. ALJ Triana denied Parent's request to postpone the hearing. ALJ Triana granted Parent's request to dismiss her motion to rescind her waiver of the 45-day default period to issue a final order in the non-expedited matter. The parties consented to the testimony and exhibits from the expedited hearing being incorporated into the non-expedited hearing. ALJ Triana also granted Parent's unopposed motion to have Dr. Gilmour testify on June 26, 2025, adding an additional day to the hearing.

On June 10, June 11, and June 12, 2025¹⁰, ALJ Triana convened a Webex videoconference hearing. Ms. Hruska and Ms. Hill appeared and represented Parent and Student. Mr. Hungerford and Ms. Kinch appeared and represented the District. Ms. Bennett appeared as the District representative throughout the entirety of the proceeding. The following individuals appeared and testified on behalf of the District:

- Ms. Peterson¹¹;
- Ms. Williams¹²;
- Lacy Norvald, Student's Kindergarten Teacher at River Mill Elementary*;
- Mr. Syring*¹³;
- Mr. Gilstad*; and
- Ms. Bennett*¹⁴.

¹⁰ The June 13, 2025 hearing date was not needed. The hearing did not convene on that date.

¹¹ Ms. Peterson retained her designation as an expert in the field of special education.

¹² Ms. Williams retained her designation as an expert in the field of school psychology.

¹³ Mr. Syring retained his designation as an expert in the fields of school administration and student discipline.

¹⁴ Ms. Bennett retained her designation as an expert in the field of school psychology and Mandt systems.

In addition, the following individuals appeared and testified on behalf of Student:

- Katherine Zeis, Learning Specialist at River Mill Elementary;
- Vanessa Tucker, Ph.D., BCBA-D, Licensed Behavioral Analyst (LBA)¹⁵; and
- Parent.

On June 26, 2025, ALJ Triana convened an additional day of the Webex videoconference hearing to receive testimony from Dr. Gilmour. Ms. Hruska and Ms. Hill appeared and represented Parent and Student. Mr. Hungerford and Ms. Kinch appeared and represented the District. Ms. Bennett appeared as the District representative. Dr. Gilmour testified on behalf of Student.¹⁶ Mr. Syring testified as a rebuttal witness for the District.

On June 27, 2025, the District provided a copy of the transcripts for the June 10 through June 12, 2025 portions of the hearing.¹⁷ On July 15, 2025, the District provided a copy of the transcripts for June 26, 2025 portion of the hearing.¹⁸

On July 16, 2025, the parties submitted written closing arguments. The record closed on that date.

ISSUES

1) Whether the District violated the Individuals with Disabilities Act (IDEA) and denied Student a Free Appropriate Public Education (FAPE) from August 2024 to May 12, 2025 (the date of the Amended Complaint), by failing to materially implement Student's Individualized Education Programs (IEPs) and Behavior Support Plans (BSPs). Specifically, by:

- a. Failing to deliver all of Student's minutes of Specially Designed Instruction (SDI) while he/she is at school and suspended, and
- b. Failing to implement the behavior interventions in the BSP with fidelity.

¹⁵ Dr. Tucker was designated as an expert in the fields of school-based behavioral supports and functional behavioral assessments.

¹⁶ Dr. Gilmour retained her designation as an expert in the field of BCBA.

¹⁷ The transcripts for the first three days of the non-expedited hearing were provided in three volumes, one for each day, with continuous page numbers throughout the three volumes. Volume I included pages 1-319 (June 10, 2025 hearing); Volume II included pages 320-588 (June 11, 2025 hearing); and Volume III included pages 590-852 (June 12, 2025 hearing). For whatever reason, page 589 was not included in the numbering. For clarity, each transcript has been assigned an Arabic numeral. Volume I will be referred to as "Tr. 4;" Volume II will be referred to as "Tr. 5;" and Volume III will be referred to as "Tr. 6."

¹⁸ The transcripts for the non-expedited hearing held on June 26, 2025, was labeled as Volume IV, with pages number 1-173. For clarity, this transcript has also been assigned an Arabic numeral. Volume IV will be referred to as "Tr. 7."

2) Whether the District violated the IDEA and denied Student a FAPE from May 2024 to May 12, 2025, by failing to develop appropriate IEPs and BSPs. Specifically, by:

- a. Failing to incorporate sufficient amounts of SDI for Student to make progress in the areas of behavior and social/emotional;
- b. Failing to develop measurable and reasonably ambitious goals;
- c. Failing to provide appropriate supplementary aids and services in the form of trained, dedicated 1:1 support; and
- d. Failing to provide appropriate behavior services such as a registered behavior technician (RBT) or a BCBA to consult on the BSP and oversee implementation, and training for staff members working with Student.

3) Whether the District violated the IDEA and denied Student a FAPE in March 2025 when it changed Student's placement to a therapeutic day school instead of considering additional supports and services to maintain Student in his/her least restrictive environment (LRE).

4) Whether the District violated the IDEA and denied Student a FAPE from August 2024 to May 12, 2025, by improperly changing Student's educational placement when it imposed more than 10 cumulative school days of disciplinary removals in violation of OAR 581-015-2415.

5) Whether the District violated the IDEA and denied Student a FAPE from August 2024 to May 12, 2025 by failing to either conduct a functional behavior assessment or review the behavior support plan and modify as necessary to address the behavior subsequent to manifestation determination reviews (MDR) in violation of OAR 581-015-2415(4)(b).

6) Whether the District violated the IDEA and denied meaningful parental participation from August 2024 to May 12, 2025, when:

- a. The District predetermined Student's placement at a therapeutic day school in March 2025;
- b. The District refused to allow an observation of Student's educational program by Parents' private BCBA, Dr. Gilmour;
- c. The District failed to provide the Parents with sufficient information about behavior incidents at school and behaviors that caused Student to be suspended; and
- d. The District failed to provide the Parents with documentation of suspensions.

7) Whether the District violated the IDEA and denied Student a FAPE from August 2024 to May 12, 2025, by failing to conduct an appropriate Functional Behavior Assessment (FBA) which includes the function of behavior, appropriate assessments, observation reports, and behavior data.

8) Whether Student is entitled to the relief sought in the Amended Complaint, specifically:

- a. A finding that the District violated the IDEA and denied Student a FAPE;
- b. Compensatory special education and related services for Student to allow him/her to obtain the educational benefit that he/she would have received but for the District's violations of the IDEA and denial of FAPE, consistent with 20 U.S.C. § 1415(i)(2)(c)(iii);
- c. An Order that the District develop an IEP going forward that is appropriate and reasonably calculated to meet Student's unique needs; and
- d. Whatever additional relief the Court may find just and equitable.

EVIDENTIARY RULINGS

The exhibits (D1 through D28; D30 through D86; and S1 through S31) and transcripts (Volumes 1, 2, and 3) from the expedited hearing were incorporated into the hearing record.

The District offered supplemental Exhibits D87 through D105, and supplemental rebuttal Exhibits D106 through D112. Exhibits D87 through D105 were admitted into the record without objection. Exhibits D106 and D107¹⁹ were admitted into the record over Parent's objection to their timeliness and completeness. Exhibits D108 and D109 were admitted into the record over Parent's timeliness objection. Exhibits D110 through D112 were admitted into the record without objection once a foundation was laid for the exhibits. At the end of the hearing, the District offered Exhibit D113 as a rebuttal exhibit. Exhibit D113 is admitted into the record over Parent's objection to its timeliness. Following the conclusion of the hearing, the District submitted Exhibit D114, which is admitted into the record without objection.

Parent offered supplemental Exhibits S32 through S34, and supplemental Exhibit S35 at hearing. Exhibits S32 through S34 were admitted into the record without objection. Exhibit S35 was admitted into the record without objection once Parent laid the foundation for the exhibit.

¹⁹ The District's original submission of D106 and D107 did not include a copy of the attachments the emails purported to include. At the ALJ's request, the District resubmitted Exhibits D106 and D107 with copies of the attachments. Exhibits D106 and D107 with the included attachments are admitted into the record.

FINDINGS OF FACT

Student History Prior to Entering Elementary School

1. Student was born in 2018 and is currently six years old. (Ex. D3 at 1.) Student lives in Estacada with his/her mother, father, and two older siblings (aged 9 and 15). (Ex. D59 at 5; tr. 2 at 685:1 through 8.) Student is approximately three feet tall and weighs approximately 39 pounds. Student's doctors consider him/her to be small for his/her age, falling in approximately the 11th percentile. (Tr. 2 at 660:1 through 8.)

2. When Student was approximately two-and-a-half years old, Parent took Student to a doctor who made a presumptive diagnosis of autism spectrum disorder (ASD) with attention deficit hyperactivity disorder (ADHD) and maladaptive behavior, but declined to formally diagnose Student at that time. (Tr. 2 at 634:17 through 635:9.)

3. Prior to Kindergarten, Student attended a private daycare. Student was disenrolled from the daycare due to safety concerns stemming from his/her behavioral issues. (Ex. D4 at 1.)

4. On August 16, 2022, Stephanie Rund, MS and Education Specialist with Clackamas Education Service District (CESD), and Natasha Stern, MS and Speech Language Pathologist, completed an Early Childhood Special Education Evaluation Report for Student (2022 Report). (Ex. D4.) In the 2022 Report, Ms. Rund and Ms. Stern noted the following behavioral issues from Student's preschool:

[T]hrowing chairs and dumping materials onto floor, punching, slapping, kicking, spitting on, pinching and biting Teachers. Bringing food, candy and toys from home and eating and taking it out. Throwing [a] plate of food across tables, launching over food cart, running out of the room and building, running away from teachers, calling teachers and children stupid, idiots, other foul language.

(*Id.* at 1.) Ms. Rund and Ms. Stern also noted that Student had difficulty with transitions. (*Id.*)

5. The 2022 Report identified several sources of information used including:

- Parental interviews
- Observation
- Standardized testing and assessments, including:
 - Battelle Developmental Inventory, Third Edition (BDI-3);
 - Assessment, Evaluation, and Programming System (AEPS)
 - Behavior Assessment System of Children, Third Edition (BASC-3)
 - Hearing screening

(*Id.* at 2-7.) Ms. Rund and Ms. Stern opined that Student's adaptive and social/emotional skills were delayed compared to children of the same age, and Student's cognitive skills were somewhat delayed compared to children of the same age. (*Id.* at 8.) Ms. Rund and Ms. Stern

further opined that the interviews, assessments, and observations of Student supported Early Childhood Special Education (ECSE) eligibility. (*Id.*)

6. Student was identified as eligible for, and received, Early Childhood Special Education (ECSE) services prior to attaining school age in the area of developmental delay (DD). (Exs. D3 at 1, D4 at 1.)

7. On March 8, 2024, CESD convened a meeting and developed an Individualized Family Service Plan (IFSP) for Student, intended to serve Student through August 31, 2024 (when Student was expected to enter Kindergarten). (Ex. D6 at 1.) The IFSP team determined that Student would attend a community preschool for 29 hours per week and receive 0.81 hours per week of ESCE services with typical peers in an early childhood program, to include 45 minutes, three times per month of specialized instruction in cognitive, adaptive, and social skills in the classroom and 45 minutes, three times per month of family training activities in the family home. (*Id.*) Additionally, the team determined that Student should have access to sensory supports/objects for transitions for 10 minutes per day; a timer or stopwatch and transition warnings eight minutes per day; and a visual system of routines in the classroom for 10 minutes per day. (*Id.* at 3.)

8. The team determined that Student needed to learn the following skills: remaining engaged during activities; transitioning between preferred and non-preferred activities; friendship skills; and self-regulation. (Ex. D6 at 6.) The team also noted that an idea for a next goal for Student in the area of social/emotional would be to “identify feelings and choose a calming strategy with adult support.” (*Id.*)

9. At the March 8, 2024 IFSP meeting, the team set the following cognitive goal: “[Student] will attend to activities across the classroom environment.” (Ex. D6 at 8.) The short-term objectives of the cognitive goal were for Student to demonstrate attending skills (including remaining in the area willingly and with reasonable calm, attending to materials being presented, and demonstrating listening skills by following the directions of the teacher), imitate actions of others (including a sequence of actions with objects and a sequence of motor activities), and completing tasks (including starting, attending to, and completing a task and working in a small group until the task was completed). (*Id.*)

10. The team set the following adaptive goal: “[Student] will independently transition between activities and participate in classroom routines.” (Ex. D6 at 8.) The short-term objectives of the adaptive goal were to demonstrate the following skills during classroom routines: cleaning up toys when requested, transitioning smoothly between activities, attending and participating in small group activities, and attending and participating in adult-led activities. (*Id.*)

11. The team set the following social/emotional goal: “during conflict [Student] will resolve [his/her] differences with [his/her] peers.” (Ex. D6 at 8.) The short-term objectives of the goal were for Student to work with an adult when a problem arose to name his/her emotions when frustrated or disappointed and to work to solve the problem. (*Id.*)

12. Student was enrolled in Gladstone Early Education through CESD. Student was fully integrated into a classroom with typically developing peers. The classroom included 25 children, one teacher, and multiple other adults for behavioral support. (Ex. S6 at 1.) Parent found that, during Student's time at Gladstone:

[Student] continued to make progress toward all of [his/her] IFSP goals. [Student] learned self-regulation tools and grew in [his/her] capacity to handle transitions, big emotions, and interactions with peers. This is documented by [Student's] progress report. By the time [Student] ended [his/her] pre-school program, it was clear that with proper supports, consistent reinforcement, and a dedicated teaching team²⁰, [Student] could handle transitions, interact well

²⁰ In closing arguments, Parent alleged that Student had a dedicated 1:1 aide with him/her at all times in preschool. See Parent's Closing Brief at 4 (arguing that "At Gladstone, [Student] was supported by two highly trained individuals, Ozzy and Robin, who provided dedicated one-on-one support throughout [his/her] preschool day."). However, the evidence in the record does not support such a conclusion. There is no indication in Student's IFSP that he/she would have a dedicated 1:1 aide with him/her at all times in preschool. Additionally, Parent's testimony regarding this topic was contradictory. At the expedited hearing Parent testified:

JUDGE TRIANA: Did [Student] have a dedicated one-on-one support at Gladstone?

THE WITNESS: [Student] had a team, I believe it was two or three of them, that would -
- that would help [him/her]. * * *

JUDGE TRIANA: And were they dedicated solely to Student when they were with [him/her]?

THE WITNESS: Somebody was always with [Student], but most of the time it was Robin. I don't know how they structured it[.] * * *

JUDGE TRIANA: Okay. And whoever was with [Student], whatever adult it was, was dedicated just to Student at that point?

THE WITNESS: No.

JUDGE TRIANA: So would they be taking care of other kids as well?

THE WITNESS: Yeah. I mean, there was like one teacher and then the classroom had like four or five people to help. And so I don't -- I don't know if they would just break it into a smaller group and they would go off. But most of the time when I would pick up Student, [he/she would] be with Ozzy. During the day [Student] was with like Robin. I don't know if they were specifically there just for Student. I can't attest to that, but I just know that they came together and it worked.

(Tr. 2 at 686:1 through 687:12.) By contrast, at the non-expedited hearing, Parent testified:

THE COURT: Okay. Ms. Hruska asked you a little bit about that transition meeting, the May meeting. And in there, she had asked about some things that were different from the IFSP into the IEP that was created for [Student]. And one of the things you said that had

with peers, and participate at school.

(*Id.* at 2.)

13. The IFSP set a number of goals and objectives for Student, including Cognitive, Adaptive, and Social/Emotional goals. (Ex. S6 at 30-31.) The goals included increasing Student's attention span during adult-directed activities; transitioning between activities, especially from preferred to non-preferred activities; adequately self-regulating to stay engaged in social and learning opportunities; and engaging in friendship skills (taking turns, inviting or joining in play, sharing, being happy for friends' successes, and resolving conflict without an adult). (*Id.* at 30-32.) A review of Student's progress on these goals in March of 2023 revealed that Student had made some progress towards the goals, but that at times, Student would "flip [his/her] lid, and become uncentered" if asked to change something or go do something unwanted. (*Id.* at 32.)

14. Preschool programs frequently differ from Kindergarten programs. Preschool programs tend to be play-based and focus on socialization skills and school readiness. Kindergarten is often the first time a child is introduced to the requirement to sit at a desk for an extended period and listen to a teacher for academic instruction. (Tr. 1 at 38:15 through 24, 252:5 through 16.)

May 30, 2024 IEP Team Meeting

15. On May 8, 2024, the District issued a Special Education Notice of Team Meeting to Student's parents. (Ex. D8.) The notice indicated that a meeting was scheduled for May 30,

been removed was the dedicated one-on-one support that [he/she] had received at Gladstone. What do you mean by dedicated one-on-one support that [he/she] got at Gladstone? I just want clarity on what it was that [he/she] had in preschool.

THE WITNESS: Yeah. So in preschool, [Student] had -- it was two -- two very highly trained people that would -- would be with [him/her]. It was either Ozzy or Robin that would be there solely to get -- like, to help [Student] throughout [his/her] day. And when one of them would, you know, tag out, the other one would tag in.

THE COURT: And were they responsible only for [Student]?

THE WITNESS: At all times, I believe one of them was, yes.

THE COURT: So for example, if they had tagged in and they were working -- I understand there may be other kids around that they were interacting with. But was their sole purpose to be [Student's] support? Or was their purpose to be in the classroom supporting multiple children?

THE WITNESS: No. Their sole purpose was to be [Student's] support. There were several other, like, adults that were there to support the classroom.

(Tr. 6 at 757:1 through 758:6.)

2024, to develop an IEP for Student. (*Id.* at 1.)

16. On May 30, 2024, the District convened an IEP meeting for Student for the 2024/2025 school year, when he/she would be starting Kindergarten at River Mill Elementary. (Exs. D8 at 1, D9 at 1, D10 at 14.) Student, Parent, Rebecca Sylvia (a special education teacher), Morgan Brotnov (a general education teacher), Ms. Peterson (a District representative), and Abby Williams (River Mill Elementary school psychologist) attended the IEP team meeting. (Ex. D10 at 2.) The IEP developed on that date was intended to serve Student's needs through May 29, 2025. (Ex. D10 at 1.)

17. At the May 30, 2024 meeting, Parent shared that positive reinforcement and redirection worked best for Student, and that occasionally bribery would also work. She shared that Student required a lot of patience and that she did not know what sets Student off, but that he/she can be very verbally and physically aggressive. She also noted that it can be difficult for Student to make friends because of his/her foul language. She shared that Student does well with routines. Sometimes Student uses a hammer to hit a box as a coping mechanism. Parent noted that Student's siblings could also be a good resource for Student. The team noted that Student likes art, creating things, and hands-on activities. Student shared some facts about dinosaurs and about his/her new kitten, Bug. (Ex. D12 at 1.)

18. The May 30, 2024 IEP (May 2024 IEP) found that Student was eligible for services under a disability code "98," Developmental Delay. It provided that Student would attend River Mill Elementary. (Ex. D10 at 1.) The IEP identified Ms. Zeis as Student's case manager. (*Id.*) The team determined that Student exhibited behaviors that impeded his/her learning or the learning of others, but that Student did not have limited English proficiency, was not blind or visually impaired, did not have communication needs, was not hard of hearing, did not require assistive technology devices or services, and did not require one or more specialized forms of educational materials because his/her disability prevented the use of standard print materials. (*Id.* at 3.) At the meeting, Ms. Peterson shared information about Student's current functional performance levels. The team agreed to monitor Student's behavior and possibly add a BSP when Student started school. The team determined that Student would receive push-in and pull-out support. (D12 at 1.)

19. Under Present Levels of Academic Achievement and Functional Performance, the team noted that Student's overall strengths, interests, and preferences included:

[Student] is a sweet, good, loving little [kid] when [he/she] wants to be.
[Student] is smart, funny, adorable and has such a huge personality. [Student] loves painting and coloring, wants to do everything [his/her] older [siblings] do. Loves to engage in large motor activities. [Student] loves dinosaurs, and small animals. [Student] likes [his/her] new kitten named, Bug. Very interested in animals living and dead.

(Ex. D10 at 4.)

20. The input from Student's parents included:

Parents report that [Student] is endearing and has a vibrant personality. [His/her] father shared [Student] is resilient, brave, tough and strong. [Student] can be very very sweet and caring when [he/she] wants to be. [Student] does well with art-based curriculum or activities. [Student] is very hands-on and likes to stay busy. At times others can underestimate [Student's] abilities, and [his/her] behaviors can come as a shock because [he/she] is small for [his/her] age. Mom reported that [Student] has maladaptive behavior. Positive reinforcement and redirection is *[sic]* best for [Student]. It's hard when [Student] uses foul language and kids don't want to be [his/her] friend. She suggests a lot of patience. [Siblings] can be a good resource.

(Ex. D10 at 4.)

21. The May 2024 IEP noted that there were no concerns regarding Student's academic achievement, as he/she could match and name colors, identify and sort shapes, had 1:1 correspondence, could count objects, and could look, point, and name pictures in a book. (Ex. D10 at 4.)

22. For narrative and supporting data, the team included the following information in the May 2024 IEP:

SOCIAL/EMOTIONAL/BEHAVIOR

[Student] shows enjoyment of preferred activities and situations. [Student] participates in cooperative and imaginary play and enjoys playing with [his/her] peers. [Student] responds positively to praise, adult encouragement and recognition. [Student] can explore [his/her] environment independently, but does not always follow safety boundaries. [Student] struggles with maintaining friendships, social skills, and self-regulation of [his/her] emotions. [Student] is small for [his/her] age. [Student] can get physical when dysregulated, uses foul language and verbal aggression. [Student] has demonstrated explosive behaviors including hitting, kicking, punching, running, knocking over items. Circumstances that might set off behaviors include transitioning away from something [he/she] wants to do, being told "no", or being told what to do by an adult, and peer conflicts. [Student] does well with explicit structure and routines, movement (has a hard time sitting for long periods), snacks, and being a helper. The team would like to see [Student] use self regulation strategies in order to safely engage in classroom activities and to help resolve peer conflicts. A Behavior Support Plan is not in place at this time. The team will continue to monitor [Student's] behavior and the impact of [his/her] behavior on [his/her] learning and the learning of others and will re-meet to consider this if needed.

SELF-MANAGEMENT

[Student] is able to engage in a preferred activity for 5 or more minutes at a

time. [Student] struggles with transitioning from a preferred activity to a non-preferred activity/task. [Student] can also struggle with staying engaged with what the class is doing. The team would like to see [Student] be able to transition between activities and participate in classroom routines. This might include following directions to stop an activity, clean up materials, follow routines (line up, sit on carpet), and tending to [a] given task.

Adult Assistance: [Student] will need adult assistance for safety (eloping and behavior), transitioning between activities, self-regulation when [Student] demonstrates behaviors, and for toileting (to ensure proper hygiene and to foster independence).

HEALTH STATUS

[Student] was born after an uncomplicated pregnancy. [Student] is currently small for [his/her] age and [his/her] doctors have been concerned about this. [Student] has had a broken arm that required casting. One time [Student] got stitches under [his/her] chin and another time staples in the back of [his/her] head from falling off of a bed (this happened around 1 year old). [Student] was not diagnosed with a concussion and didn't have other care for this. [Student] does not have any known allergies. Hearing- passed hearing screening; no hearing concerns Vision- has not had vision screening; no vision concerns. [Student] is independent with dressing and feeding. Regarding toileting, parent indicated that [Student] will say when [he/she] has to go, but if dysregulated will sometimes not wipe or practice hygiene routines. [Student] knows how to do this and may need an adult to help cue/guide [him/her] to complete the process. She also indicated that if [Student] does not want to help [himself/herself], [Student] won't, and it may cause more dysregulation.

Impact Statement: [Student's] developmental delay affect [his/her] ability to tend to tasks, follow adult directions, transition away from preferred activities and regulate [his/her] emotions when [he/she] feels wronged or things are not going [his/her] way. This may impact [his/her] ability to stay engaged in learning and make progress in the general education classroom.

(Ex. D10 at 4-5.)

23. The May 2024 IEP indicates the team considered two placement options for Student: general education and general education with push-in and/or pull-out support and selected the placement of general education with push-in and/or pull-out support because Student would receive small group and individualized instruction while still maintaining social interaction with typically developing peers. (Ex. D10 at 14-15.) The team determined that full-time general education would not provide Student with sufficient small group or individualized instruction. (*Id.* at 14.)

24. The team set two [annual] goals for Student, one in the area of social/emotional -

behavior and one in the area of self-management. (Ex. D10 at 8-9.) The social/emotional - behavior goal read:

Given a social scenario and an emotion visual, [Student] will identify a possible feeling of the individual in the scenario and a possible self-regulation activity they could implement with 80% accuracy in 3 out of 4 opportunities by spring 2025.

(*Id.* at 8.) The goal's progress would be measured by "teacher observation and record of data," and that progress would be reported "in writing during normal school district grading cycles." (*Id.*)

25. The goal in the area of self-management read:

Given verbal, tactile and/or visual cues during a transition time, [Student] will transition to the next activity within 1 minute of the given direction in 3 out of 4 opportunities by spring term of the following school year.

(Ex. D10 at 9.) The goal's progress would be measured by "teacher observation and record of data," and that progress would be reported "in writing during normal school district grading cycles." (*Id.*)

26. The May 2024 IEP provided for 30 minutes of weekly specially designed instruction (SDI) in the area of behavior/social/emotional, and 30 minutes of weekly SDI in the area of self-management. (Ex. D10 at 10.) The team set out the following supplementary aids/services and accommodations: adult assistance available (for safety (eloping), transitions, self-regulation, and toileting), sensory supports (including access to sensory supports during transitions, preferred object as long as it was being used appropriately and safely), transition support (including 5/2/1 warnings before transitions, visual and verbal cues, times, and first/then language), visual supports (including schedules, routines, expectations, directions, and self-regulation support), and break options (including in-class breaks or out-of-class breaks with adult support when dysregulated). (*Id.* at 10-11.) The team determined that Student would be removed from general education for 60 minutes per week to receive SDI in social/emotional - behavior and self-management. (*Id.* at 12.) The team did not make a determination regarding Student's edibility for extended school year services, finding that more information was required to determine if Student demonstrated a regression in learning and prolonged recoupment of skills during school breaks. (*Id.* at 13.)

27. At hearing, Ms. Peterson testified that, at the May 30, 2024 IEP meeting, the team was in "unanimous agreement" about the IEP and that the family did not object to any of the content in the IEP. (Tr. 4 at 26:11 through 18.) Ms. Peterson recalled that Parent had questioned whether the District would be able to handle Student's behaviors, including physical aggression towards property or others, verbal aggression and language, and eloping. (*Id.* at 26:25 through 27:20.) District staff discussed the least restrict environment with parent, and the District's desire to try and meet Student's needs at his/her neighborhood school. (*Id.* at 27:7 through 15.) Ms. Peterson believed the goals in the May 2024 IEP the logical next step from Student's IFSP

because they were written based on Student's identified lagging skills and they continued goals from Student's IFSP that had been written shortly before the meeting, in a way that "would be most appropriate for a school-aged student and a year's growth from this implementation of this IEP." (*Id.* 28:8 through 16.) Ms. Peterson believed the goals contained sufficient information to identify how the goals were to be measured, were appropriately ambitious for Student to make progress, and were written in a way that would allow the District to track Student's progress over time. Ms. Peterson did not recall Parent objecting to the goals or stating that the goals did not accurately reflect Student's present levels of performance/functioning. (*Id.* at 28:4 through 29:7.)

28. On May 30, 2024, the District issued a Prior Notice and Consent for Initial Provision of Special Education Services to Student's parents. The prior notice indicated that the IEP team had met and determined that Student continued to need SDI to support him/her in the general education classroom and, therefore, the team developed an initial IEP. (Ex. D9 at 1.) The decision was based on Student's eligibility for services at the time of the decision, Student's IFSP, progress notes, input from Student's teacher(s), input from specialists, and input from parents. (*Id.*)

29. On May 30, 2024, Parent signed the prior notice and checked the box that read "I give my permission for initial provision of special education services as described above. I understand my consent is voluntary and may be revoked for any reason before special education services begin." (Ex. D9 at 2.)

30. Also on May 30, 2024, the District issued a Prior Notice of Special Education Action to Student's parents. (Ex. D13.) The notice indicated that Student would spend 80-percent or more of his/her school day in general education with push-in and/or pull-out services. It reiterated the reasons for the team's placement determination and what information was reviewed to reach the decision. (*Id.* at 1.)

Summer of 2024

31. In June of 2024, a review of Student's goals at Gladstone showed that Student had made progress towards his/her goals. Student began attending group meetings with peers, cleaning up when asked, participating in group meetings when they were of interest to Student, transitioning between activities smoothly (occasionally requiring some wait time), and participating in his/her daily schedule. (Ex. S6 at 33-34.) However, Student's progress report noted that, while Student can name his/her emotions, Student "doesn't always, and sometime would rather throw and hit adults to let them know [he/she] is unhappy with an answer." (*Id.* at 53.)

Start of the 2024/2025 School Year

32. All students in the District are scheduled to attend school four days per week, typically Monday through Thursday. Friday of most weeks are designated as a "REID" day (Responsive Extension Intervention Development day). The District provides a two-hour block of time on Fridays where a student can elect to go to school and receive extra help with work, make up tests or work, or participate in small group activities or enrichment. Participation is

voluntary. If there are only four scheduled days in a week (due to a holiday, in-service, or other non-school day), no REID day occurs. (Tr. 1 at 46:14 through 47:21.)

33. The following days were REID days during the first half of the 2024/2025 school year: September 13, September 20, September 27, October 4, October 18, October 25, November 8, December 6, December 13, and December 20, 2024. The following days were REID days during the second half of the 2024/2025 school year: January 10, January 17, February 7, February 14, February 28, March 7, March 14, April 11, April 18, April 25, May 9, May 23, June 6, and June 13, 2025. (Ex. D74 at 1-12.)

34. During the first week of school in the District, Kindergarten students attend two half-days in small groups. This allows the teacher to meet the students and understand their needs and assign them to a classroom teacher. Kindergarten students then begin full-time Kindergarten the following week. Student attended two half-day sessions the week before September 3, 2024, and then started full-time Kindergarten on September 3, 2024. (Tr. 1 at 45:13 through 46:13.) Ms. Norvald was assigned as his/her classroom teacher. (Tr. 4 at 233:10 through 16.)

35. There was no school for students in the District on August 30, 2024, and September 2, 2024. (Ex. D74 at 2-3.)

36. At the beginning of the school year, Ms. Zeis provided the majority of Student's SDI minutes directly to Student. (Tr. 4 at 183:3 through 18.) By October of 2024, the majority of the SDI instructional minutes had transferred to the paraeducators supporting Student. (*Id.* at 186:5 through 14.) Ms. Zeis would manage the instruction and meet with the paraeducator to talk about the instruction they would deliver to Student. (*Id.* at 186:22 through 25.)

37. On September 5, 2024, the District began tracking Student's unwanted behaviors including inappropriate language, physical behaviors (towards people or property), and elopement (both inside and outside the school building). (Ex. D53.) Students who elope inside the building can hide from adults and access items or areas that would create a safety concern for the student. Also, in the need to evacuate the school, staff may be unable to find and evacuate the student. Elopement outside of the building can result in safety concerns if a student runs into the road or off campus. (Tr. 1 at 229:21 through 230:22.)

38. On September 5, 2024, a half school day due to heat, Student had five incidents of inappropriate language, one incident of inappropriate physical behaviors (flipping chairs and desks in the classroom), and one incident of elopement (running towards the baseball field during a fire drill). (Ex. D53 at 1.)

39. On September 6, 2024, a half school day due to heat, Student had eight incidents of inappropriate language, four incidents of inappropriate physical behaviors (flipping chairs, knocking books off shelves, and punching a teacher), and one incident of elopement (from the general education classroom). (Ex. D53 at 1.) Mr. Syring contacted parents at 8:34 a.m. about Student's behavior, but he/she was not sent home. (Ex. D110 at 1.) The District had Student spend "a little over an hour" in the office. (Tr. 7 at 110: 7 through 15.) The District did not

consider the incident a suspension. (*Id.* at 110:16 through 111:2; ex. D110 at 1.)

40. On September 6, 2024, Parent emailed the District, requesting that the District perform a Functional Behavioral Assessment (FBA) for Student. She noted, “I strongly feel that not understanding some of the reasons behind [Student’s] behaviors, is impeding an appropriate action plan that will set [him/her] up for success within the Estacada School District.” (Ex. S11 at 1.)

41. On September 9, 2024, Student had two incidents of inappropriate language, two incidents of inappropriate physical behaviors (hitting peers, throwing books, and knocking over chairs), and one incident of elopement (out of the classroom). (Ex. D53 at 1.) Mr. Syring called Student’s parents because Student was having a “rough day.” (Ex. D110 at 1.) Because of the call, Student’s parents picked Student up early, believing Student was being sent home. (Ex. S35 at 1.) The District did not consider this day a formal suspension because “we were getting to know [Student].” (*Id.*)

42. On September 10, 2024, Student had two incidents of inappropriate language, two incidents of inappropriate physical behaviors (knocking over chairs and kicking garbage cans), and no incidents of elopement. (Ex. D53 at 1.)

43. On September 12, 2024, Student had two incidents of inappropriate language, one incident of inappropriate physical behaviors (flipping chairs and hitting a peer), and three incidents of elopement (out of the classroom). (Ex. D53 at 1.) That day, Student called a peer an “asshole.” (Ex. D55 at 1.) When the peer stated that he would tell an adult, Student slapped the peer on the face. When a teacher told Student that he/she would have to talk to Mr. Syring, Student began destroying the classroom. (*Id.*) Mr. Syring called Student’s parents at 11:00 a.m. to notify them that Student was suspended for half a day. (Ex. D110 at 1.)

44. Following a suspension, District staff noticed that there may be a day or two where Student’s unwanted behaviors and language decreased, but following that, Student’s behaviors would return to the pre-suspension levels. (Tr. 4 at 171:7 through 17, 175:1 through 6.)

September 2024 FBA

45. On September 13, 2024, Student’s father signed a consent form for the District to perform an FBA. (Ex. D14 at 1.) The consent form indicated that the FBA should be completed by October 20, 2024, and that the information would be shared with parents. (*Id.*)

46. Abby Williams, school psychologist for River Mill Elementary, was assigned by the District to perform an FBA. (Tr. 1 at 202:11 through 203:7.) Ms. Williams was told by Ms. Bennett to prioritize and expedite the FBA due to the frequency and severity of Student’s unsafe behaviors. (*Id.* at 203:8 through 15.) Ms. Williams has an education specialist degree in school psychology and is licensed by the Teacher Standards and Practices Commission (TSPC) as a school psychologist in Oregon. (*Id.* at 196:22 through 197:1.) Ms. William has received training on how to conduct trauma-informed FBAs. (*Id.* at 197:4 through 12.) In her role as a school psychologist, Ms. Williams conducts psychoeducational evaluations, determines special

education eligibility for students, conducts FBAs, creates BSPs, leads small groups working on lagging skills for children in the school, and engages in crisis prevention assessments and trainings. (*Id.* at 198:22 through 199:10.)

47. Between September 16 and 24, 2024, Ms. Williams observed Student in multiple school settings over several hours and obtained information from Student's teachers, Parent, Student, and paraeducators working with Student to complete an FBA for Student. (Ex. D16; tr. 1 at 203:4 through 206:3.) Ms. Williams also reviewed Student's IFSP, current IEP, academic records, attendance records, and incident reports. (Tr. 1 211:16 through 212:2.)

48. Ms. Williams conducted a Collaborative Problem Solving – Assessment and Planning Tool (CPS-APT)²¹. Ms. Williams asked Ms. Zeis (Student's special education teacher) and Ms. Norvald (Student's general education teacher) to each complete a collaborative problem-solving assessment questionnaire, detailing Student's strengths and lagging skills. (Ex. D16 at 1; tr. 1 at 204:1 through 205:1, 205:22 through 206:3, 206:23 through 207:11.) The questionnaires sought information about Student's language and communication skills, attention and working memory skills, emotional and self-regulation skills, cognitive flexibility skills, and social thinking skills. (Ex. D16 at 1-3.) The CPS-APT results showed that Student had the following lagging skills: thinking rationally when frustrated; managing irritability, anxiety, and disappointment in an age-appropriate way; thinking before responding; seeking attention in appropriate ways; understanding how his/her behavior affects others; and empathizing with others and understanding others' perspective or points of view. (*Id.* at 3.) The CPS-APT results showed the following strengths for Student: understanding and processing spoken words with adequate speed; understanding and following conversations well enough to respond; expressing concerns, needs, or thoughts in word; and staying with tasks requiring sustained attention. (*Id.*)

49. Based on her observations of Student, the CPS-APT results, and the collateral information reviewed, Ms. Williams determined that Student's challenging behaviors usually occurred around lunch time and during times when demands were placed on Student. (Ex. D16 at 3.) She noted the following antecedents to Student's challenging behaviors: asked to be part of the group; a demand is placed on Student (complete an assignment, clean up, transition from activity); clean up to go home/transfer bus; and announcement at the end of the day. (*Id.*) She noted the following challenging behaviors: inappropriate language (average of six times per day but lowered to two times per day when replacement words were taught); physical behaviors occurring daily (hitting, throwing, destroying property); and elopement daily from the classroom with two occasions from the school building. (*Id.* at 3-4.) She hypothesized that the outcome of the challenging behavior was to avoid the work or demand that was placed on Student and/or possible sensory input. (*Id.* at 3.) She noted the 'function of the behavior' was lagging skills in managing irritability/emotions, thinking before acting, and understanding how behaviors affect others were related to Student's challenging behaviors. (*Id.*) Finally, she noted that the outcome

²¹ The FBA notes that the CPS-APT is "designed around a set of cognitive skills that children need in order to solve problems, be flexible, and tolerate frustration. Many children with academic, social, emotional, or behavioral challenges will have deficits or "lagging skills" in some of these areas. The skills are organized into five categories. By identifying which category(ies) may be impacted, and which specific skills may be what are considered "lagging skills", this can help to guide the team in determining an actionable plan for developing these skill areas in order to support the child's success." (Ex. D16 at 1.)

of the desired behaviors of using kind/appropriate language and safety would be Student engaging in the classroom community and work and regulating his/her emotions in an expected and safe manner and that the Functionally Equivalent Replacement Behavior would be to “regulate body to achieve necessary sensory input in an expected and appropriate way.” (*Id.* at 4.)

September 16 - 23, 2024

50. On September 16, 2024, Student had one incident of inappropriate language, three incidents of inappropriate physical behaviors (kicking garbage cans, flipping over stools, and dumping items out of bins), and one incident of elopement (out of the building, into the parking lot, and then into the street). (Exs. D53 at 1, D55 at 1.) Mr. Syring contacted Student’s parents around 9:30 a.m. and suspended Student for one day. (Ex. D110 at 1.)

51. On September 17, 2024, Student had two incidents of inappropriate language, two incidents of inappropriate physical behaviors (climbing shelves and ripping paper off the walls), and two incidents of elopement (out of the classroom and once out of the building and into the parking lot). (Exs. D53 at 1, D55 at 1.) Student was removed from class and spent approximately one hour in the office. (*Id.*; tr. 7 at 112:10 through 15.) The District did not consider this to be a suspension. (Ex. D110 at 1.)

52. On September 18, 2024, Student had two incidents of inappropriate language, two incidents of inappropriate physical behaviors (grabbing and hitting peers with lunchbox), and no incidents of elopement. (Ex. D53 at 1.)

53. On September 19, 2024, Student had three incidents of inappropriate language (including one verbal threat to kill another student), one incident of inappropriate physical behaviors (rolling around the school on a rolling chair), and one incident of elopement (out of the classroom). (Ex. D53 at 1-2.) Parent met with the IEP team that day and decided to take Student home early following the meeting.²² (Ex. D110 at 1.)

54. On September 19, 2024, Student began talking about a deer his/her father killed. Student then said “I’m going to bring a gun and kill you and everybody else here. Don’t even tell me the guns are locked up.” (Ex. D59 at 1.)

55. Student was absent from school on September 23, 2024. (Ex. D53 at 2.)

²² Parent argued that the school sent Student home early on September 19, 2024. While Parent has a remarkable memory regarding the numerous incidents involving Student during the school year, a few of her recollections appear inaccurate. For example, Parent indicated that Student was suspended for five days starting March 21, 2025. (Ex. S35 at 1.) However, there was no school from March 21 through April 1, 2025 for any students in the District. (Ex. D74 at 9-10.) Similarly, Parent indicated that Student was suspended for seven days from April 16 – 22, 2025. (Ex. S35 at 1.) However, two days of that period were weekend days. (Ex. D74 at 10.)

September 24, 2024 BSP

56. On September 23, 2024, the District issued a Special Education Notice of Team Meeting to Student's parents, notifying them of a meeting scheduled for September 24, 2024 at 2:45 p.m. (Ex. D15 at 1.) The purpose of the meeting was to "develop or review an [IEP] and placement for your child." (*Id.*)

57. On September 24, 2024, the IEP team convened a meeting to review and discuss the FBA and create a Behavior Support Plan (BSP). (Exs. D15, D17 at 1.) Present at the meeting were Parent, Ms. Williams, Ms. Bennett, Ms. Norvald, and Ms. Zeis. (Ex. D16 at 1.) The meeting notes indicated that Parent shared concerns that the District may be unable to handle Student's needs and stated that she felt Student had been more successful in preschool because of a "higher level of adult support." (Ex. D17 at 1.) In response, Ms. Williams suggested that the FBA and BSP would be a good place to start, as it "helps drive our understanding and response to [Student's] needs." (*Id.*)

58. Ms. Williams presented the draft FBA. Ms. Zeis noted that Student was coming into her room and following the room rules; Ms. Norvald noted that Student was "making improvements overall" since the beginning of the year; and Mr. Syring noted that Student's choice of language had improved and that Student's ability to communicate his/her interests had also improved. (Ex. D17 at 1.) Ms. Williams added the positive feedback to the draft FBA. Parent noted that Student could become "very clingy" onto an adult. (*Id.*; tr. 1 at 56:6 through 57:15.)

59. Ms. Williams explained the CPS strengths/lagging skills assessment which had been completed by Ms. Norvald and Ms. Zeis. Ms. Williams also explained that the data collected showed that Student's inappropriate language had decreased from approximately six or more times per day to approximately two times per day. She also noted that Student elopes and leaves the general education classroom multiple times per day, but Student generally goes to LC1.²³ Student had eloped a total of three times from the school building since the start of school. (Ex. D17 at 1.)

60. Ms. Williams opined that Student needed sensory outlets. She also described the Zones of Regulation curriculum and the need to intentionally teach it to Student. She suggested incorporating Zones of Regulation²⁴ techniques at the end of the day when transitioning to the bus. (Ex. D17 at 2.)

61. Parent asked the other team members if there were any triggers or antecedents to Student eloping. Ms. Norvald noted that the end-of-the-day transfer to the bus was usually a trigger. Mr. Syring suggested developing a leadership role for Student at that time of day. Mr.

²³ "LC1" stands for "learning center 1," a classroom set aside as a place for students who may require a break, sensory break, quiet time, etc. The school also has LC2 and LC3 rooms available for small group instruction for academics and/or breaks. (Tr. Vol I at 77:16 through 78:5.)

²⁴ Zones of Regulation is a curriculum that the District uses to teach students skills related to emotional regulation. (Tr. Vol I at 61:5 through 7.)

Syring also noted that the staff were learning not to chase Student when he/she eloped, except in emergency situations. (Ex. D17 at 1.) Ms. Williams shared that some antecedents she noted to Student's elopement included transitions (including the school bell, lunch, recess, coming back from specials, and the transition home). The team decided that the transition to bus bell would be Student's cue to go to LC1. (*Id.* at 2.) Ms. Norvald also noted that when Student arrived at school late, he/she was "really off." (*Id.* at 1.) Parent wondered if Student was hungry when arriving late, explaining that some days she had to leave early for work and Student's father had to get the children up and off to school. Parent added that she did not know what/if breakfast was offered to the children on those mornings. The team decided to offer Student breakfast when he/she arrived late. (*Id.*) Parent noted that her primary concern was Student's elopement, but that it sounded like the team had a plan to address that concern. (*Id.* at 2.)

62. Parent told the team that at preschool Student had been given a cardboard box and hammer to pound on when dysregulated and that this strategy was helpful for Student. Mr. Syring suggested weighted balls or a biking mechanism for Student to use as a sensory outlet, as a safer alternative. (Ex. D17 at 1.)

63. Parent asked if Student might need an adult focused solely on him/her (a "1:1" aide) to prevent eloping. The District declined to provide Student a 1:1 aide at that time because most of Student's elopement from the general education classroom was to a safe location within the school and staff could communicate with each other when Student eloped. (Ex. D17 at 1.)

64. The team decided that the plan moving forward was that if Student became escalated, staff would escort him/her to LC1 and support Student with snacks, Zones of Regulation techniques, and other support. (Ex. D17 at 2.)

65. At the September 24, 2024 meeting, the team created a BSP for Student (September BSP). (Ex. D16 at 4-5.) The BSP included Ms. William's FBA and her hypothesis regarding Student's function of behavior. (*Id.* at 1-4.)

66. The FBA included the following strengths of Student: creativity and art; conversations with adults to describe his/her interests; academic strengths; activity and games; playing with toys; riding his/her "quad" at home; knowing and following the rules in LC1; honesty; communicating likes and dislikes; and connection with others. (Ex. D16 at 1.) The FBA also included a statement that Student "shared previously that [he/she] doesn't like school," and "[he/she] likes building things and eating snacks when [he/she] wants to." (*Id.*)

67. The BSP provided that all staff working with Student would incorporate art and building things into Student's classwork to include his/her interests in learning, as a strategy for Student to use his/her strengths to develop competence and confidence. It also provided the following proactive regulation strategies to be utilized by all staff working with Student: access to snacks and breakfast; use of universal language and visuals when communicating with Student; redirecting inappropriate conversations or comments; sensory supports (weighted ball, heavy movement opportunities, safe hitting of an object or pad); and stop signs at exterior doors. (Ex. D16 at 4.)

68. The September BSP provided that Student's case manager and paraeducators working with student should utilize the following teaching strategies: teach replacement words for inappropriate language; provide a visual reminder when Student begins to use inappropriate language; teach Zones of Regulation; provide alternative location for breaks and/or work when eloping; and transition support, especially after lunch/recess. (Ex. D16 at 4-5.) Finally, it provided that all staff working with Student, Student's case manager, and any MANDT²⁵ trained professionals should utilize the following reactive strategies when Student was escalated: escort Student to LC1 and provide him/her with snacks, art, and a Zones check-in to help regulate; clear the room of other students if it is unsafe and call a trained professional to de-escalate Student; and Student's older sibling could be utilized as resources to help calm Student if needed. (*Id.* at 5.)

69. Finally, the September BSP instructed staff to complete data tracking sheets and Zones of Regulation curriculum progress monitoring to track Student's progress. (*Id.* at 4.) The data tracking sheets were to be reviewed by the school psychologist and then sent home with Student for Parent to review. (Tr. 1 62:17 through 63:5.)

September & October 2024

70. On September 24, 2024, Student had four incidents of inappropriate language, no incidents of inappropriate physical behaviors, and two incidents of elopement (outside the classroom). (Ex. D53 at 2.) Student was absent on September 25, 2024. (Ex. D66 at 6.) On September 26, 2025, Student had two incidents of inappropriate language, one incident of inappropriate physical behaviors (stomping and ripping papers belonging to a teacher), and no incidents of elopement. (Ex. D53 at 2.)

71. On September 30, 2024, Student had over 40 incidents of inappropriate language, 10 incidents of inappropriate physical behavior (stomping on toys and swinging a broom in the classroom), and four incidents of elopement (out of the classroom). (Exs. D53 at 2, D55 at 1.)

72. On October 1, 2024, Student had no incidents of inappropriate language, two incidents of inappropriate physical behaviors, and no incidents of elopement. (Ex. D53 at 2.) Student hit Ms. Norvald in the face with a clipboard chart, and tried to hit her a second time. Student then punched Ms. Norvald "repeatedly" before she was able to stop him/her (Ex. D55 at 1.) Student then went to LC1, where he/she continued to hit adults, use profanity, and attempt to "destroy" the room. (*Id.*) Mr. Syring contacted Student's parents at 10:00 a.m. and suspended Student for the day (one full day suspension). (Ex. D110 at 1.)

73. On October 2, 2024, Student had two incidents of inappropriate language (intentionally calling a peer the wrong name repeatedly, threatening peers, and threatening to stab an adult in the neck with a pencil Student was holding), two incidents of inappropriate physical behaviors (flipping off students and teachers, throwing furniture at peers, and knocking over chairs), and one incident of elopement (outside the classroom). (Exs. D53 at 2, D55 at 1.)

²⁵ MANDT is a relationship-based crisis prevention program. The system focuses on prevention, intervention, and de-escalation techniques for working with students with challenging behaviors. (Tr. 1 220:1 through 11.)

74. Student was absent from school on October 3, 2024. (Ex. D53 at 2.)

75. Over the three day period of October 7, 9, and 10, 2024, Student had over 42 incidents of inappropriate language, 37 incidents of inappropriate physical behaviors (ripping posters in the classroom, rolling around in the rolling chair, throwing bark chips at teachers, repeatedly punching a teacher, throwing chairs, hitting staff, swinging items around, and pulling on peers' ears and faces), and two incidents of elopement (out of the classroom). (Exs. D53 at 2-3, D55 at 2.)

76. There was no school for students in the District on October 11, 2024. (Ex. D74 at 4.)

77. On October 15, 2024, Student had over 40 incidents of inappropriate language (including threatening to kill others), over 30 incidents of inappropriate physical behaviors (threw a clipboard at a teacher, slapped another student, climbed on prohibited items, swung and threw items, knocked over furniture, ripped papers, and threw items down the hallway), and two incidents of elopement (out of the classroom). (Exs. D53 at 3, D55 at 2.) Mr. Syring contacted Student's parents at 11:20 a.m. and Student was suspended for half a day. (Ex. D110 at 1.)

78. On October 16, 2024, Student had over 30 incidents of inappropriate language, 13 incidents of inappropriate physical behaviors, and two incidents of elopement (outside the classroom). (Ex. D53 at 3.) Student climbed on prohibited items, spit at peers, tore things off the walls, threw a stapler at a teacher, spit in the teacher's face, and kicked and punched another teacher. (*Id.*; ex. D55 at 2.) Student also punched a peer in their stomach at recess, unprovoked, and threatened to kick the peer's genitalia. (Ex. D55 at 2.) Mr. Syring called Student's parents at 9:15 a.m. to notify them that Student was being suspended for one day. (Ex. D110 at 1.)

79. On October 17, 2024, Student had three incidents of inappropriate language, five incidents of inappropriate physical behaviors (kicking a peer and climbing on a bookshelf), and no incidents of elopement. (Ex. D53 at 3.)

80. On October 21 and 22, 2024, Student had over 180 incidents of inappropriate language (including threatening others), 40 incidents of inappropriate physical behaviors (climbing, throwing chairs, rolling around hallway on rolling chair, and hitting staff), and 21 incidents of elopement (out of the classroom or group setting). (Ex. D53 at 3.)

81. On October 23, 2024, the District began tracking "destruction" separate from inappropriate physical behaviors on Student's behavior tracking sheets. (Ex. D53 at 3.) On October 23 and 24, 2024, Student had over 126 incidents of inappropriate language, 37 incidents of inappropriate physical behaviors (climbing on shelves, ripping paper off walls, hitting staff, and hitting peers), three incidents of elopement, and eight incidents of destruction (throwing items and climbing on prohibited items). (Ex. D53 at 3-4.)

82. Around this time, the District began to notice that Student was choosing to spend less time in the general education setting and more time in LC1. The students who were typically

utilizing LC1 when Student was present were nonverbal or had some physical challenges and were very limited in their interactions between peers. (Tr. 1 at 109:5 to 18, Tr. 2 at 581:8 through 15.)

83. Student participated in “specials” (physical education (PE), music, and library) with his/her general education peers nearly every day during the 2024/2025 school year. (Tr. 4 at 254:18 through 255:6.)

October 23, 2024 IEP Amendment

84. On October 21, 2024, the District issued a Special Education Notice of Team Meeting to Student’s parents. (Ex. D18.) The purpose of the meeting was listed as “to develop or review” an IEP and placement for Student. (*Id.* at 1.)

85. On October 23, 2024, the IEP team met to amend Student’s IEP (October 2024 Amended IEP). (Exs. D19 at 1, D21.) Present at the meeting were Ms. Zeis, Ms. Bennett, Ms. Williams, Mr. Syring, Ms. Novald, and Parent. (Ex. D21 at 1.) The team reviewed data that had been tracked and collected since September of 2024, which showed Student had engaged in elopement, inappropriate physical behaviors, and inappropriate verbal behaviors. (Ex. D21 at 1.) The team discussed adding a goal in the area of transitions. Parent indicated that transitions continued to be difficult for Student, and suggested that further warning/special assistance can be helpful during transitions. (*Id.*) The team discussed adding all-day adult support as an accommodation for Student, removing toileting from the IEP, adding alternative methods for Student to indicate mastery of materials, and adding the BSP to the IEP. Parent asked about the training and identity of the proposed adult support. The District indicated that it would currently be someone named “Ali,” and that it would be “fluid” depending on scheduling. (*Id.*) Student’s non-participation in general education justification was adjusted to 40% or below, to align with the data showing the amount of time Student was choosing to be in the general education classroom. The team discussed amending that amount in the future if Student’s ability and desire to be in the general education classroom safely increased. The team agreed to add a daily communication log to the IEP to allow Student’s parents to be aware of what was happening at school each day. (*Id.*)

86. At the IEP meeting, Parent raised a concern that the placement page options appeared to be laying the groundwork for placing Student at a special school.²⁶ District staff shared that they strive for the least restrictive environment for students, but needed to put the continuum of placement options on the IEP. (Ex. D21 at 1.) Parent also asked about the possibility of Student participating in only a half-day of kindergarten. Ms. Bennet explained to Parent that parents could elect, in writing, to move Student to half-day kindergarten, but that the District would not shorten Student’s day to half-day without Parent’s written request. (*Id.*)

87. In the “Narrative and supporting data” section of the IEP, the team added the

²⁶ It is unclear when, exactly, Heron Creek and Serendipity Center were discussed as possible therapeutic or “special” schools. However, by March of 2025, when the District proposed changing Student’s placement to a therapeutic day school, the evidence is clear that the options included Heron Creek and Serendipity Center.

following:

[Student] prefers working on math and shows a strength in math. [Student] can count to 29 consistently. [He/She] often skips number (11, 12, 14, 15) and skips tens groups (28, 29, 40). [Student] can complete simple addition problems with assistance. [Student] received a 3²⁷ in the standard of number writing (numbers 1-10). Currently, [Student] knows 12 letter names and 3 letter sounds. [He/She] does not enjoy practicing reading, so [he/she] has missed out on learning much of the skills in this area. [Student] shows that [he/she] can copy a letter from a near-point model. [Student] shows skills in reading comprehension when [he/she] is read to and [he/she] shows interest in some books.

(Ex. D19 at 4.) The team also added the following narrative:

[Student] began attending River Mill Elementary in August 2024. Since beginning the school year, [Student] began by being in class throughout the entire day with push-in support. Within a week, [Student] began showing a need for breaks outside of the classroom. When [Student] began displaying unsafe behaviors, we began tracking data in a data tracking sheet. Overall, it was tracked that [Student] has displayed 200+ verbal behaviors, 100+ physical behaviors, and 22 instances of elopement (5 that exited the building). [Student] has received 4 out-of-school suspensions due to unsafe behavior. Behaviors that [Student] has displayed at school [include] swearing, inappropriate language, threats to hurt others, eloping from the area, destruction of property, hitting and kicking staff and students, and not being safe with object, including throwing items at others.

[Student] began the year with a paraeducator supporting [him/her] in the classroom. Now [Student] is receiving support throughout most of the day, to support [him/her] staying regulated, [Student] spends most of [his/her] day in a flexible learning environment. Typically staff rotate from supporting [Student] to complete work from [his/her] teacher, and taking breaks. [Student] can utilize sensory and regulation break items any time that [he/she] would like. [Student] is receiving Social Emotional and Behavior instruction throughout [his/her] school week. [Student] is very resistant to completing classwork, but [he/she] has an easier time if questions are asked verbally and if it is not called work. [Student] enjoys going to lunch, recess, and PE with [] peers, but [] has a hard time staying safe even in these areas.

(*Id.* at 5.)

88. The team maintained the two annual goals from the May 2024 IEP, and added a third goal to the IEP: “Given a 5 minute warning before a transition and a warning of what is

²⁷ For the 2024/2025 school year, a score of “3” meant that a student meets expectations in that standard. (Ex. D19 at 4.)

coming next, [Student] will safely complete the transition in 3 out of 4 transitions back to the classroom by spring 2025.” (*Id.* at 10.) Progress on the goal would be measured by “teacher observation and record of data.” (*Id.*) Progress on the goal would be reported “in writing during normal school district grading cycles.” (*Id.*)

89. The October 2024 Amended IEP increased Student’s SDI to 60 minutes per week for social/emotional behavior, 60 minutes per week for self-management, and added 60 minutes per week for transition support. (Ex. D19 at 11.) The amended IEP also increased Student’s supplementary aids/services of adult support to “throughout [Student’s] entire day to support safety, transitions, and self-regulation.” (*Id.*) For transition support, the team added “reminding [Student] what is next” to the amended IEP. (*Id.* at 12.) The team added that Student should be allowed to show knowledge and mastery of material in varied ways to support engagement. The amended IEP also directed all staff to utilize Student’s BSP and to communicate with Student’s home regarding behavior and time spent in the general education classroom. (*Id.*) The amended IEP removed Student from the general education classroom for 180 minutes per week for SDI in social/emotional/behavior, self-management, and transitions, with less than 40% of Student’s day in the general education classroom. (*Id.* at 13, 16.) The team delayed making a determination regarding Student’s need for extended school year services because additional information was needed to make the determination. (*Id.* at 14.)

90. The placement option selected by the IEP team was general education with program level of support outside of general education classroom. (Ex. D19 at 15.) The team determined that the benefit of this placement option was “[Receiving] more intensive individualized instruction. Will receive specific behavior monitoring, Adult coaching to address problem solving. Fewer transitions. Less stimulating environment. Attends neighborhood school.” (*Id.*) The possible harmful effects for Student included not being included in all general education activities, limited exposure to general education curriculum, and limited social interaction with typically developing peers. The team determined that the placement option was the least restrictive environment (LRE) for Student. (*Id.*)

October 28 – November 29, 2024

91. According to Ms. Zeis, from October to December of 2024, Student was able to access all three hours per week of his/her SDI minutes. (Tr. 4 at 189:10 through 190:9.) However, during this time, Student’s ability to access academics was “pretty low” – around one hour per day. (*Id.* at 190:10 through 20.)

92. On October 28, 2024, Student had over 80 incidents of inappropriate language, two incidents of inappropriate physical behaviors (throwing books at staff, pushing peers), three incidents of elopement (out of expected area), and six incidents of destruction (climbing on prohibited items). (Ex. D53 at 4.)

93. On October 29, 2024, Student had over 30 incidents of inappropriate language, over 40 incidents of inappropriate physical behaviors, six incidents of elopement (out of expected area), and over 50 incidents of destruction. (Ex. D53 at 4.) Student climbed on some cabinets and refused to climb down. When staff told Student that he/she would not be allowed to go to recess,

Student began throwing things, ripping paper off the walls, hitting and kicking furniture, knocking over furniture, and throwing items at staff and students, including a full metal water bottle and umbrella that both landed near other students. Student attempted to hit a staff member with a vacuum and threw chairs towards peers. As staff were trying to escort Student to an enclosed space, Student entered Mr. Syring's office and began throwing items at staff and attempting to destroy anything in reach. Student stated that he/she wanted to kill staff member and everyone in the school. (Ex. D55 at 2.) Mr. Syring called Student's parents at 9:00 a.m. to notify them that Student was being suspended for one day. (Ex. D110 at 1.)

94. On October 30, 2024, Student had over 80 incidents of inappropriate language, over 40 incidents of inappropriate physical behaviors (throwing items, hitting peers and staff, and pulling on peer's shirts), no incidents of elopement, and 15 incidents of destruction (climbing on prohibited items). (Ex. D53 at 4.)

95. On October 31, 2024, Student had 13 incidents of inappropriate language, three incidents of inappropriate physical behaviors, no incidents of elopement, and no incidents of destruction. (Ex. D53 at 4.)

96. There was no school for students in the District on November 1, 2024. (Ex. D74 at 5.) Student was absent from school on November 4, 2024. (Ex. D53 at 4.)

97. On November 5, 2024, Student had over 90 incidents of inappropriate language, and 20 incidents of inappropriate physical behaviors (including hitting, punching, and climbing on prohibited items). (Ex. D53 at 4.) Student pushed and shoved another peer, who reciprocated. When an adult intervened, Student hit the adult several times on her lower body. (Ex. D55 at 2.)

98. On November 6, 2024, Student had 55 incidents of inappropriate language, 37 incidents of inappropriate physical behaviors, no incidents of elopement, and no incidents of destruction. (Ex. D53 at 4-5.) Student began pushing over chairs, furniture, and other items in the classroom. When staff intervened, Student began hitting and throwing items at staff. Student spanked a peer, called other peers names, and flipped off a peer. When Mr. Syring intervened to support Student, Student began hitting, kicking, and throwing items at him. Staff attempted to distract Student, be silly, talk through Student's emotions, and ask Student what was needed to deescalate him/her. (Ex. D25 at 1.) Mr. Syring contacted Student's parents around 1:50 p.m. to notify them that Student was being suspended for half a day. (Ex. D110 at 1.)

99. On November 7, 2024, Student had 41 incidents of inappropriate language, 13 incidents of inappropriate physical behaviors (spanked a peer, punched a paraeducator, got into maintenance floor cleaner, and rolled chairs and carts around the hallway), one incident of elopement (from the expected area), and two incidents of destruction (ripping things). (Ex. D53 at 5.)

100. There was no school for students in the District on November 11, 2024. (Ex. D74 at 5.) Student was absent from school from November 12 through November 21, 2024, due to a burn injury [he/she] received outside of school. (Ex. D53 at 5.) There was no school for students in the District from November 22 through November 29, 2024. (Ex. D74 at 5.)

December 2, 2024 MDR

101. On November 8, 2024, the District issued a Special Education Notice of Team Meeting to Student's parents. The notice scheduled an IEP meeting for November 14, 2024, to review Student's IEP and placement, and to meet for an MDR. (Ex. D22 at 1.) Because Student was out of school for most of November, the District issued a new Special Education Notice of Team Meeting on December 2, 2024, for a meeting scheduled that same day. (Ex. D23 at 1.)

102. On December 2, 2024, the IEP team met for an IEP team meeting and an MDR. (Exs. D23, D24, and D25.) Present at the meeting were Ms. Norvald, Ms. Zeis, Ms. Bennett, Ms. Williams, Mr. Syring, Ms. Fullenwider, and Parent. (Ex. D26 at 1.)

103. At the meeting, the team discussed Student's behavior on November 6, 2024. The District indicated that because Student had been suspended six times so far that year, it wanted to hold an MDR. (Ex. D26 at 1.) The team determined that Student's behaviors were a pattern and a manifestation of his/her disability (developmental disability with lagging skills in social/emotional and adaptive). (Exs. D25 at 1-2, D26 at 1.) The District personnel stated that they believed the IEP was implemented as written during the incident. (Ex. D26 at 1.) Parent disagreed, stating that she did not believe adequate support was being provided during transitions. Parent also stated that she believed the staff working with Student were inadequately trained or unavailable, leading to Student's continued eloping. Parent expressed her belief that the District could do more to help Student. (*Id.*)

104. The team also reviewed Student's IEP, recognizing that the strategies being implemented were not decreasing Student's unwanted behaviors. Student's unwanted behaviors were impeding his/her social connections with peers and adults and his/her ability to access the general education, as Student was spending the majority of the day in LC1 or LC3. (Ex. D26 at 1.)

105. The team began discussing Student's placement. District personnel were concerned that Student's current placement did not meet his/her needs. (Ex. D26 at 1.) The District pointed out that Student's unwanted behaviors were significantly different than those of peers, with safety issues and a high number of incidents of unwanted behaviors. Parent argued that it was too early in the school year to be making a change in placement, as there was insufficient data regarding Student's unwanted behaviors. Parent stated that she did not believe the school was doing enough to stop the unwanted behaviors. The District responded that "schools have their limits and that we believe we have done all we can with our structure and that we should be considering an alternative placement." (*Id.* at 2.) The District indicated that it believed the alternative school would provide Student with the structure, support, and intensive, individualized support Student needed to help him/her develop his/her lagging skills. The District also raised concerns about Student's academic performance, since he/she was not accessing the general education classroom. While Ms. Norvald provided the work to Student's paraeducators or Ms. Zeis, Student's unwanted behaviors were impeding his/her ability to focus and learn the information. Ms. Norvald shared that she believed the team had done "everything possible" for Student in the River Mill environment and had never seen so many resources

brought in for one student. (*Id.* at 2.)

106. Parent also raised the concern that the staff working with Student were too unpredictable. The District indicated that the same people were working with Student, but that they rotated because Student is “very difficult to be with for long periods of time.” (Ex. D26 at 2.)

107. Parent brought up the option of an abbreviated school day because Student loses interest easily and begins to “falter by noon.” (Ex. D26 at 2.) Ms. Bennett indicated that the Department of Education considers an abbreviated school day a restrictive placement and the District would not offer that as an option. (*Id.*)

108. At the conclusion of the meeting, the District affirmed that it was recommending placement of Student in an alternative school setting, but would hold off on that because Parent wanted check on transferring Student to the Gladstone School District. The team agreed to meet in approximately one week to make a decision regarding alternative placement for Student. (Ex. D26 at 2-3.)

109. On December 6, 2024, Parents emailed the District stating, in part:

We are deeply concerned about the efficacy of [Student’s] Individualized Education Program (IEP) since its implementation. While we acknowledge the IEP team’s efforts, we believe substantial revisions are urgently needed to ensure [Student] receives the comprehensive academic, behavioral, and emotional support [he/she] requires to thrive.

[Student’s] documented behavioral challenges and difficulties adapting to new learning environments necessitate a more robust and proactive intervention strategy. The current lack of a dedicated, full-time paraeducator specializing in complex behavioral needs is significantly impeding [his/her] academic progress. We are particularly alarmed by the proposed swift transition to a more restrictive learning environment just one month after the initiation of [his/her] Behavior Support Plan (BSP). This accelerated timeline appears premature and potentially harmful to [his/her] long-term development, directly contradicting the collaborative spirit fundamental to the IEP process. This raises serious questions regarding the district’s adherence to its legal obligation to provide [Student] with a Free Appropriate Public Education (FAPE), as mandated by [his/her] IEP. The inadequate support [Student] currently receives not only limits [his/her] academic potential but also violates [his/her] right to an inclusive learning environment.

To address these critical concerns, we request a thorough and impartial review of all actions undertaken since the BSP’s implementation, with a paramount focus on preserving [Student’s] current school placement. We strongly oppose any transfer, believing it would be profoundly detrimental to [his/her] well-being and academic growth. We have already initiated a request for a

facilitated IEP meeting through the Department of Education to facilitate this review and encourage collaborative problem-solving.

To immediately alleviate current challenges and cultivate a more supportive learning environment, we propose a trial period of an abbreviated school day. This trial will allow us to objectively assess its effectiveness and inform future IEP modifications based on concrete data.

Furthermore, to gain a complete and nuanced understanding of [Student's] unique needs and formulate a truly effective IEP, we formally request an independent educational evaluation (IEE). An IEE will provide the objective, unbiased data necessary to create a plan that ensures [Student's] success within [his/her] current inclusive school setting.

Our primary objective is to collaborate effectively with the school district to develop a comprehensive and effective plan that enables [Student] to flourish academically and socially within [his/her] current inclusive school environment. We eagerly anticipate a prompt and constructive response and a commitment to collaborative problem-solving to meet [Student's] educational needs. We are available to discuss this matter further at your earliest convenience.

(Ex. S13 at 1-2.) On December 9, 2024, Ms. Bennett, on behalf of the District, responded to Parents' email:

Our team has reviewed your email dated 12/06/24 and would like to provide our thoughts to some of your ideas and concerns:

1. *Desire to participate in a facilitated IEP provided through the Department of Education:* We wholeheartedly agree with this idea and fully support the initiation of a facilitated IEP. You noted that you have already initiated this process, so we also will fill out the paperwork needed on our end to ensure a seamless initiation of that process.

2. *Concern regarding the implementation of the Behavior Support Plan (BSP):* Consent to conduct a Functional Behavior Assessment and Behavior Support Plan was attained on 09/13/24. The FBA and BSP were presented to the team on 09/24/24 and have been in place since that date. The data collected since 09/05/24 affirms that [Student's] behavioral struggles are complex. Despite reconvening the IEP team on 10/23/24 to increase adult support, [his/her] challenges continue to provide safety concerns for other students, staff and [Student]. Hence, the IEP meeting held on 12/02/24 was to (1) hold a Manifestation Determination and (2) begin discussion [of] if a traditional school setting is the best learning environment for [Student], or not. As you know, Estacada School District values inclusive practices, but we also have an obligation to discuss alternative learning environments if data

indicates a student may need higher levels of support than what a traditional school setting is able to offer.

3. *Proposal for trial period of an Abbreviated School Day*: You as a parent always have the right to shorten your student's school day as you see fit, but the district's offer of Free and Appropriate Public Education (FAPE) at this time is a full-school day and we will continue to offer that unless the IEP team determines differently.

4. *Request for an Independent Educational Evaluation (IEE)*: Per the Estacada School District, Oregon Department of Education and the Individuals Disabilities Education Act (IDEA). "Under the Individuals with Disabilities Education Act (IDEA), parents/guardians may request an independent educational evaluation (IEE) at the Estacada School District's/public expense if the parents disagree with the results of an evaluation conducted by the district. Please note though: An IEE is only available in areas in which the district has completed an assessment or evaluation." [Student's] initial eligibility evaluation was conducted by the Clackamas County Educational Service District Early Childhood Evaluation Team and has been in place since 08/16/22. Thus, the IEE in this instance wouldn't apply, as Estacada School District staff did not complete the evaluation. However, as noted at our recent 12/02/24 meeting, [Student's] three[-]year reevaluation will be due in August 2026. We are willing to move-up [*sic*] the three[-]year reevaluation process to begin that process earlier if you'd like, and it would be conducted by our district evaluation specialists.

Thank you for sharing your ideas and concerns. Please be assured that we too, wish to collaborate effectively with you on behalf of [Student]. We will look forward to meeting again soon within the collaborative, facilitated IEP process.

(*Id.* at 1.) (Emphasis in original.)

110. Also on December 9, 2024, the District issued a Prior Notice of Special Education Action to Student's parents. (Ex. D27.) The notice summarized key details from the December 2, 2024 meeting, and indicated that the District had proposed to change Student's placement, but had agreed to pause the meeting and reconvene in approximately one week to continue discussions regarding Student's placement. (*Id.* at 1.)

111. According to Ms. Williams, the purpose of holding an MDR is:

[F]or students with identified disabilities who have been suspended more than ten days, we are to conduct a manifestation determination meeting, one, to review the student's supports through their IEP. And if they don't have a functional behavior assessment or behavior support plan, that might prompt us to then conduct one. If the student does have one, then reviewing that kind of

in light of the incident and seeing if there are any other services or supports we can offer the student. And then determine, was the behavior a manifestation of their disability.

(Tr. 4 at 117:1 through 21.) If the team determines the IEP or BSP was not followed, the team documents that on the manifestation paperwork and the team “might need to review the student’s plan of support.” (*Id.* at 118:6 through 11.) If the team determines the IEP or BSP was followed, that is also documented in on the manifestation paperwork and the team may need to consider if student’s plan of support needs to be revised. (*Id.* at 118:12 through 119:12.)

December 2, 2024 – February 6, 2025

112. Between December 2 and 5, 2024, Student had 114 incidents of inappropriate language, 10 incidents of inappropriate physical behaviors (hitting staff, kicking doors, climbing on prohibited items, throwing things at peers, and punching a peer), three incidents of elopement (out of the classroom or expected area), and no incidents of destruction. (Ex. D53 at 5.)

113. Student was absent from school on December 9 and 10, 2024. (Ex. D53 at 5.)

114. On December 11 and 12, 2024, Student had 26 incidents of inappropriate language, nine incidents of inappropriate physical behaviors, two incidents of elopement, and no incidents of destruction. (Ex. D53 at 5-6.)

115. Between December 16 and 19, 2024, Student had 104 incidents of inappropriate language, 32 incidents of inappropriate physical behaviors (hitting teachers, pinching peers, and flipping chairs), one incident of elopement (out of expected area), and four incidents of destruction. (Ex. D53 at 6.)

116. On December 17, 2024, Student had 14 incidents of inappropriate language, 11 incidents of inappropriate physical behaviors, no incidents of elopement, and no incidents of destruction. (Ex. D53 at 6.) Student was standing on the school’s stage area, which was prohibited. When staff asked Student to come down, Student attempted to climb in a ball cage and staff became concerned that Student would get stuck inside the cage. Student dropped his/her lunch and a paraprofessional picked it up. Student began hitting the paraprofessional and using profanity. The paraprofessional directed Student to Mr. Syring’s office for lunch, where Student grabbed a pair of scissors and attempted to stab adults in the room. Student hit and punched Mr. Syring several times before Student began to cry. Student told Mr. Syring that Student was mad, but did not know how to handle it when he/she got that mad. (Ex. D55 at 3.) Mr. Syring called parents at 11:00 a.m. to notify them that Student was being suspended for half a day. (Ex. D110 at 1.)

117. There was no school for students in the District from December 23, 2024 through January 3, 2025. (Ex. D74 at 6-7.)

118. In January of 2025, the Oregon Department of Human Services received a report from the child abuse hotline regarding Student. (Tr. 3 765:19 through 767:17, 792:3 through 6.)

The report indicated that Student had been drawing a picture in class and said something like “this looks like when daddy hits mommy. Nope, it looks like when a kid hits daddy.” (*Id.* at 766:18 through 25.) Ms. White, a Social Services Specialist for North Clackamas Branch of the Oregon Department of Human Services, was assigned to investigate the matter. (*Id.* at 765:19 through 23.) In February of 2025, Ms. White visited the school to interview Student and Student’s nine-year-old sibling. (*Id.* at 780:10 through 23, 792:3 through 7.) While at the school, Ms. White spoke briefly to school psychologist who disclosed no specific concerns regarding Student. (*Id.* at 780:34 through 781:25.) Ms. White then visited Student’s home and spoke to Student’s Father, Student, and Student’s two siblings. Following those discussions, Ms. White had no concerns regarding family safety. (*Id.* at 794:19 through 795:11.)

119. On January 6, 2025, Student had 70 incidents of inappropriate language (including screaming), three incidents of inappropriate physical behaviors, no incidents of elopement, and seven incidents of destruction (flipping desks over). (Ex. D53 at 6.)

120. On January 7, 2025, Student had 47 incidents of inappropriate language, six incidents of inappropriate physical behaviors, seven incidents of elopement (out of expected area), and one incident of destruction (ripping papers). (Ex. D53 at 6.) Student and a peer got into a verbal argument regarding the height of a peer. Student punched the peer. Student flipped off and used profane language when Mr. Syring attempted to speak to Student. (Ex. D55 at 3.) Student also punched and hit teachers. (Ex. D53 at 6.)

121. On January 8, 2025, Student had 30 incidents of inappropriate language, five incidents of inappropriate physical behaviors (including punching and hitting peers), two incidents of elopement (out of expected area), and no incidents of destruction. (Ex. D53 at 6-7.) Student went to the cafeteria with an adult where two peers were playing basketball. Student pointed a “finger gun” at the peers and said that he/she was going to shoot them with a BB gun. (Ex. D55 at 3.) When reminded about appropriate school language, Student stated that he/she was “going to go home and get [sibling’s] gun and come and shoot them both.” (*Id.*; ex. D60 at 1.) Later, Student was able to verbalize that he/she gets “so mad,” but did not know what to do in those situations. (*Id.* at 7.) Mr. Syring called Student’s parents at 11:00 a.m. to notify them that Student was being suspended for half a day. (Ex. D110 at 1.)

122. On January 9, 2025, Student had 21 incidents of inappropriate language, 10 incidents of inappropriate physical behaviors, no incidents of elopement, and no incidents of destruction. (Ex. D53 at 7.) Student became upset in the classroom and began tearing up paper. Student then went into the hall, kicked the paraeducator who was with him/her, and crawled into his/her cubby. When Mr. Syring arrived, Student flipped him off, threw items at him, and then kicked him in the shin. (Ex. D55 at 4.)

123. On January 11, 2025, Mr. Syring sent an email to Student's parents that said:

Hi there! Just wanted you to know that [Student] had a great day today! The best part of my day was when [he/she] walked into my office and asked if [he/she] could give me a hug!

(Ex. S6 at 58.)

124. On January 13, 2025, Student had 26 incidents of inappropriate language, one incident of inappropriate physical behaviors (threw a toy at staff), one incident of elopement (out of expected area), and nine incidents of destruction (flipping chairs, throwing items in the hallway, rolling on a chair in the classroom). (Ex. D53 at 7.)

125. On January 14, 2025, Student had 16 incidents of inappropriate language, six incidents of inappropriate physical behaviors, no incidents of elopement, and 14 incidents of destruction (pushing and hitting furniture). (Ex. D53 at 7.) Student became agitated in LC1. Staff gave Student space, offered alternative outlets, ignored his/her unwanted behaviors, and attempted to brain switch/deescalate Student. Student hit two staff members and then picked up a stool and threatened to throw it at a staff member. (Ex. D55 at 4.) Mr. Syring called Student's parents at 1:30 p.m. to notify them that Student was being suspended for half a day. (Ex. D110 at 1.)

126. On January 15, 2025, Student had 20 incidents of inappropriate language, no incidents of inappropriate physical behaviors, no incidents of elopement, and no incidents of destruction. (Ex. D53 at 7.)

127. On January 16, 2025, Student had six incidents of inappropriate language, four incidents of inappropriate physical behaviors (hitting peers), one incident of elopement (ran out onto the playground and past the fence), and no incidents of destruction. (Ex. D53 at 7.)

128. There was no school for students in the District on January 20, 2025. (Ex. D74 at 7.)

129. Between January 21 and 23, 2025, Student had 48 incidents of inappropriate language, 22 incidents of inappropriate physical behaviors (swinging his/her body, throwing balls at others, punching staff, throwing stools, flipping chairs, grabbing clothes of others, and punched a peer), 10 incidents of elopement (from the expected area), and one incident of destruction. (Ex. D53 at 7-8.)

130. On January 24, 2025, Student had 15 incidents of inappropriate language, one incident of inappropriate physical behaviors, no incidents of elopement, and no incidents of destruction. (Ex. D53 at 8.) Student wanted to use a physical therapy bicycle that was specifically for a peer in a wheelchair. When a staff member told Student "no" and gave him/her alternative choices, Student hit the staff member. (Ex. D55 at 4.) Mr. Syring called Student's parents at 9:18 a.m. to notify them that Student was being suspended for the day. Student was picked up around 11:12 a.m. The District counted the suspension as half a day, due to the time

Student was picked up. (Ex. D110 at 1.) Between the time Mr. Syring called Student's parents and the time Student was picked up, Student would not have been allowed to return to the general education classroom with his/her peers if he/she had requested to do so. (Tr. 7 at 100:19 through 21.)

131. On January 27, 2025, Student had 38 incidents of inappropriate language, 6 incidents of inappropriate physical behaviors (pushing and punching peers), no incident of elopement, and one incident of destruction. (Ex. D53 at 8.)

132. On January 28, 2025, Student had 12 incidents of inappropriate language, six incidents of inappropriate physical behaviors, one incident of elopement (left the playground through the fence), and no incidents of destruction. (Ex. D53 at 8.) During recess Student kicked a peer, pushed another peer, slapped a third peer, and punched an adult. (Ex. D55 at 4.) Mr. Syring called Student's parents at 9:30 a.m. to notify them that Student was being suspended for one day. (Ex. D110 at 1.)

133. Student was absent from school on January 29, January 30, and February 3, 2025. (Ex. D53 at 8.) There was no school for students in the District on January 31, 2025. (Ex. D74 at 7.)

134. On February 4 through 6, 2025, Student had 59 incidents of inappropriate language, 10 incidents of inappropriate physical behaviors (hitting staff), no incidents of elopement, and no incidents of destruction. February 5, 2025, was a virtual school day due to inclement weather. (Ex. D53 at 8-9.)

February 5, 2025 MDR and IEP Team Meeting

135. On January 27, 2025, the District issued a Special Education Notice of Team Meeting to parents, scheduling a meeting on February 5, 2025. (Ex. D28.) The meeting was to review existing information to determine if additional testing was required for Student, to review Student's IEP, and to meet for an MDR. (*Id.* at 1.)

136. On February 5, 2025, the IEP team convened a virtual team meeting, facilitated by Robin Day, an Oregon Department of Education IEP facilitator. (Exs. D30, D37 at 1.) Ms. Williams, Mr. Syring, Ms. Fullenwider, Ms. Zeis, Ms. Bennett, and Parent attended the meeting via Zoom videoconference. (Ex. D30 at 2.)

137. During the meeting, Parent asked what constituted a suspension. The District clarified that suspensions typically occur when a behavior creates a safety concern. Additionally, any time an adult is hit and/or hurt, a suspension automatically occurs. Parent stated that sometimes when she received a call from the school, it is unclear whether Student is being suspended or not. The District clarified that any time a parent is called to pick up a child, it constitutes a suspension. And that any suspension occurring after 11:00 a.m. typically count as a half-day suspension. (Ex. D30 at 2; tr. 5 at 367:2 through 12.) Ms. Williams indicated that part of Student's BSP included the option for Student to call home if he/she needed a "pep talk," and that the District would make it clear that such a call was not a notification of a suspension. (Ex.

D30 at 3.) The District also indicated that it was using a new online platform to enter discipline incidents and that system should be generating a generic letter to the parents regarding the suspension. Due to a glitch, those letters were not being sent to Student's parents. However, all suspensions are communicated to parents via a phone call or email to parents. (*Id.* at 2.) Parent indicated that she wanted to better understand what was leading up to Student's dysregulated behavior and being sent home, so she could make decisions and provide additional input at meetings. The District indicated that it would discuss this concern later in the meeting. (*Id.*)

138. The team discussed Student's BSP and whether and how it should be amended. Ms. Williams stated that the BSP was "fluid," and that smaller things could be changed without a formal meeting, but larger changes require a formal meeting. (Ex. D30 at 3.) Parent raised concerns about the data collected for the BSP and that the time between the BSP being put in place and the discussions of placement changes had been too short. (*Id.*)

139. The team decided to revise Student's data collection sheet because it was not gathering the information the team needed to make decisions regarding Student's behavior. The team also discussed structuring Student's day differently to help with certain times of day that were challenging for Student. (Ex. D30 at 4.)

140. Parent asked if the staff working with Student were aware of Student's needs. She brought up a situation where someone sent Student's sibling away when he/she wanted to help Student. The District indicated that this incident happened before the BSP was in place, but also noted that Student's siblings had not been used in situations to help Student because there had "been a problem" when a sibling picked Student up and moved Student around the room when he/she was escalated, which further escalated Student. (Ex. D30 at 3-4.)

141. The District noted that October was a hard month for Student, but that there had been some improvement in some areas since the District increased the adult support for Student. (Ex. D30 at 4.) Student had eloped from the school building a total of five times in the school year. The District noted that recently, Student had slid behind a fence on the playground and stood there for a period before returning to the playground. (*Id.*)

142. The District noted that since January they have noticed a slight decrease in Student's behaviors, so the focus had switched from safety to increasing work engagement (academic tasks and participating in group work). The District noted that when Student completed work, it was typically during the 9:30 to 11:00 a.m. time period, but that was also the time period where Student had the most behaviors that resulted in a suspension. (Ex. D30 at 4.)

143. Student's special education teacher stated that she meets frequently with the paraeducators assigned to work with Student and they frequently discuss and try new strategies to manage Student's unwanted behaviors. She also noted that they were attempting to get peer involvement in Student's academic work. (Ex. D30 at 5.)

144. The team agreed that Student would benefit from additional structure, including at recess time (*i.e.*, the paraprofessional working with Student would say "at recess today you will be playing basketball"). (Ex. D30 at 5.) The team agreed that this could also help with peer

interactions. Parent shared that unstructured time at home resulted in student's senses/emotions becoming heightened or frustrated. Parent also shared that very explicit options would be best for Student instead of open-ended options. The team noted that Student had been making progress in the Zones curriculum, but continued to experience difficulty implementing what he/she learned into real life applications. (*Id.*)

145. Parent requested additional information about which staff were working with Student. She noted that Student likes "Mr. G." (Ex. D30 at 5.) District staff shared who worked with Student during the day (Devyn Ramos in the morning, then Mr. G, multiple staff available during lunch, and then Ashley or Ms. Zeis after lunch, followed by Devyn Ramos in the afternoon). The team agreed to include a visual schedule for Student with a picture of who would be supporting him/her during the day. (*Id.* at 6.)

146. Parent asked for additional information regarding elopement and what worked to get Student back inside the building. The District indicated that if there is a safety issue, staff will "get as close as possible to keep [Student] safe and get [him/her] inside." (Ex. D30 at 6.) Parent noted that Student will engage in elopement as a game and will run if chased. However, if Student is alone, he/she will typically "get a little scared" and return. (*Id.*)

147. Parent stated that she wanted to see what IEP and BSP accommodations were being tried to determine what was and was not working for Student. She requested that Student's day be "documented meticulously" with a "clear BSP to be followed." (Ex. D30 at 6.)

148. The District agreed to edit the daily behavior tracking sheet to include a more structured schedule for Student, and to more accurately track antecedents and staff responses to Student's unwanted behaviors. The parties agreed that the District would update Student's BSP based on updated behavioral data discussed at the meeting and provide a copy to Parents for input/review. (Ex. 30 at 7.) The District also agreed to ensure that all paraeducators in LC1 were familiar with Student's BSP, even if they did not work directly with Student. The District agreed to provide information to Parents about the Zones of Regulation. The District also indicated it would begin working on an assessment to evaluate Student under the eligibility category of ASD. Parent agreed to pause her request for an IEE as long as the team continued to work on revising Student's BSP. (*Id.* at 8.) The team agreed to meet in few weeks to discuss Student's progress. (*Id.* at 7.)

149. On February 5, 2025, the District issued a Prior Notice about Evaluation/Consent for Evaluation to parents. The notice proposed re-evaluating Student's eligibility to consider additional eligibility categories and conduct assessments to determine impact of any disabilities to Student's education. (Ex. D31 at 1.) The notice included a form requesting parent's consent for the evaluation and a list of proposed assessments to be conducted. (*Id.* at 2-4.)

150. On February 7, 2025, the District amended Student's Behavior Data Tracking Sheet. (Ex. D32 at 1.) The amended tracking sheet included Student's daily schedule with the name of each staff person scheduled to work with Student during each time; a column for staff to track behaviors, antecedents, and a list of work completed; and a list of accommodations and support staff should utilize and indicate what they tried when working with Student (reinforce

replacement words, zones check-in/use of zones toolbox, reminder of expectations, warning before transition, provide 2-3 options, and sensory supports/break). (*Id.*)

151. On February 7, 2025, the District revised Student's BSP to include additional regulation strategies including: incorporating physical movement/games into academic tasks; reviewing Student's schedule each morning and warning Student of any changes to schedule or personnel; providing 2-3 options for Student to choose from (not open-ended questions); and providing structured recess activities. (Ex. D33 at 4-5.) The District also revised Student's BSP to include additional support for Student during transitions, especially after lunch and recess by providing Student with warnings before the transition and using Student's visual schedule/expectation so Student knew what was coming next. (*Id.* at 5.) The BSP also indicated that staff were to use the revised tracking sheet to collect data to measure progress. (*Id.* at 4.)

152. Also on February 7, 2025, the District issued a Prior Notice of Special Education Action to Student's parents. (Ex. D34.) The notice indicated that:

This action is proposed because:

Through collaborative discussion, the team was able to identify a few adjustments that might be beneficial for [Student's] success in [his/her] general education placement setting. The team agreed to the following action items:

1. The District will revise the behavior data sheet that goes home to include a more structured schedule and more accurately reflect [Student's] day.
2. The District will revise [Student's] BSP based on the updated behavioral data discussed during the meeting and provide a copy to [Parent] for her review and input. The District will make its best effort to accomplish this by the end of next week.
3. Katherine Zeis will ensure that all of the paraeducators in LC-1 are familiar with [Student's] BSP, regardless of whether they regularly work with [him/her].
4. Abby Williams will provide [Parent] with information regarding Zones of Regulation.
5. Abby Williams will consult with additional District staff regarding assessment tools that will be used to evaluate [Student] under the eligibility category of ASD. A proposed Consent to Evaluate will be provided to [Parent] and she and Abby will arrange a time to discuss the details.
6. [Parent] agrees that she is putting her request for an IEE (regarding the FBA) on hold at this time, so long as the team continues to work on revising [Student's] BSP.

(*Id.* at 1, emphasis in original.) The notice also indicated that because the agenda was very full, the team was unable to revisit the topic of changing Student’s placement to an alternative school. (*Id.*)

February 5 – February 27, 2025

153. On February 5, 2025, Ms. Zeis completed an Annual Academic and Functional Goals and Objectives Progress Report for Student. (Ex. D52.) For Student’s social/emotional/behavior IEP goal, Ms. Zeis noted that:

[Student] has met [his/her] goal in this area! [Student] does well identifying emotions of individuals in a scenario, identifying possible self-regulation activities, and identifying appropriate solutions to the problem most of the time. Now [Student] would benefit from applying these skills to real-life situations like at lunch and recess.

(*Id.* at 1.) For Student’s self-management IEP goal, Ms. Zeis noted that:

[Student] has an easier time transitioning to an activity that interests [him/her] at this time like art, recess, special, or lunch. Transitioning to start work is difficult for [Student]. It is easier to transition to work when [he/she] has a motivator or earns something from completing that work. It also helps [Student] to work with peers or to be a helper. We love having [Student] at River Mill!

(*Id.* at 2.) For Student’s transition IEP goal, Ms. Zeis noted that:

Depending on whether the activity in the classroom excites [Student] or not, effects this transition largely. Returning to class before recess, lunch, or specials is more successful, but returning to class during academic times is challenging for [Student]. We will continue to support [Student] towards this goal.

(*Id.* at 3.)

154. On February 6, 2025, Student told a peer “I am going to kill your parents and your dog.” (Ex. D61 at 1.)

155. Student was absent from school on February 10, 2025. (Ex. D53 at 9.)

156. On February 11 and 12, 2025, Student had 39 incidents of inappropriate language, 16 incidents of inappropriate physical behaviors (hitting teachers and peers), no incidents of elopement, and no incidents of destruction. (Ex. D53 at 9.)

157. February 13, 2025, was a virtual school day due to inclement weather. (Ex. D53 at

9.) There was no school for students in the District on February 17, 2025. (Ex. D74 at 8.)

158. On February 18 and 21, 2025, Student had 55 incidents of inappropriate language (including talking about shooting using a sibling's gun), three incidents of inappropriate physical behaviors (hitting a paraprofessional), no incidents of elopement, and three incidents of destruction (throwing items). (Ex. D53 at 9.) Student was absent from school on February 19 and 20, 2025. (*Id.*)

159. On February 24 and 26, 2025, Student had 21 incidents of inappropriate language, no incidents of inappropriate physical behaviors, no incidents of elopement, and no incidents of destruction. (Ex. D53 at 10.) Student was absent from school on February 25 and 27, 2025. (*Id.*)

160. On February 26, 2025, the District issued a Prior Notice of Special Education Action to Student's parents. It provided that:

Parents approved and agreed to the following changes to [Student's] Behavior Support Plan (BSP) on 2/18/2025 after holding a meeting on 2/5/2025.

- Incorporate physical movement/games into academic tasks

- Review [Student's] visual schedule every morning and pre-warn [him/her] of any changes to [his/her] schedule or changes to personnel supporting [him/her]

- Provide 2-3 options for [Student] to choose from (not open-ended questions)

- Provide structured recess activities

- provide [Student] with warnings before transitions and [his/her] visual schedule/expectations so [he/she] knows what is coming next

- data tracking sheet revised

(*Id.* at 1.)

February 27, 2025 IEP Team Meeting

161. On February 24, 2025, the District issued a Special Education Notice of Team Meeting to Student's parents, scheduling a meeting for February 27, 2025. The meeting was to review existing information about Student and to decide whether additional testing was needed. (Ex. D36 at 1.)

162. On February 27, 2025, the IEP team met to discuss Student's reevaluation for special education services. (Ex. D37 at 1.) The team agreed to reevaluate Student on the basis of developmental disability, autism spectrum disorder (ASD), and emotional/behavioral disorder (EBD). The proposed assessments and observations included: Vineland Adaptive behavior

Scales; Behavior Assessment System for Children; Social Skills Improvement Scale; Autism Diagnostic Observation Schedule; Childhood Autism Rating Scale; Social Communication Assessment; Sensory Processing Measures; Fine Motor observation; Developmental History and Social Development History; Parent Interview; vision screening; hearing screening; and observations across different settings, including a direct interaction observation. (Ex. D38 at 3-4.) The team also agreed to meet in April to discuss Student's progress after changing Student's BSP and updating the tracking sheet. (Ex. D37 at 1.)

163. On March 3, 2025, Parent signed the Consent for Evaluation form. (Ex. D38 at 2.)

March 3, 2025 MDR

164. On March 3, 2025, Student and two peers began "throwing punches" at each other at recess. (Ex. D39 at 1.) Staff noted that it may have been play fighting at first, but turned mean. An adult told the three students to go and sit on the wall and the two peers obeyed. Student flipped the adult off and eloped from the playground through a gate and headed towards the high school. Mr. Syring attempted to get Student to return to the school, but Student refused. Student's high-school-aged sibling exited the high school and encouraged Student to return to school. Staff were slowly able to walk Student back to campus and get Student to reenter the school building. (*Id.*)

165. On March 3, 2025, Student had 13 incidents of inappropriate language, five incidents of inappropriate physical behaviors (punching peers), one incident of elopement (ran through the fence on the playground and sat by a tree), and no incidents of destruction. (Ex. D53 at 10.) Mr. Syring called Student's parents around noon to notify them that Student was being suspended for half a day. (Ex. D110 at 1.)

166. Also on March 3, 2025, the District convened an MDR meeting by phone because it was Student's tenth suspension. (Ex. D39.) Parent, Mr. Syring, and school psychologist were present at the meeting. (*Id.* at 3.) The District agreed to "tightening and solidifying" the expectation with staff for Student to have a structured recess. (*Id.*) The team also discussed trying to talk about situations like this with Student inside the building instead of outside where Student could elope. (*Id.*) Parent reported that Student had been "off" at the start of the day, and she wondered if something might happen at school. (*Id.*) The team determined that Student's behavior demonstrated a pattern of behavior, that the District implemented Student's BSP and IEP appropriately, and that Student's behavior was a manifestation of Student's disability. (*Id.* at 1-2.)

167. On March 3, 2025, the District issued a Prior Notice of Special Education Action to Student's parents. (Ex. D40.) It indicated that "[Student] eloped from the school campus and administration felt a suspension was needed due to safety concerns." (*Id.* at 1.) It also indicated that the team decided to brainstorm structured activities (such as games) to offer Student during recess to help prevent elopement. (*Id.*)

March 4, 2025

168. In March of 2025, Student began seeing a counselor outside of school for mental health support. (Tr. 2 at 668:14 through 669:6.)

169. On March 4, 2025, Student had nine incidents of inappropriate language, one incident of inappropriate physical behaviors (hit a peer), no incidents of elopement, and 10 incidents of destruction (breaking down the Lego builds of other students and throwing items). (Ex. D53 at 10.)

March 5, 2025 MDR

170. On March 5, 2025, Student had 12 incidents of inappropriate language, 14 incidents of inappropriate physical behaviors (hitting staff), no incidents of elopement, and 12 incidents of destruction (flipping chairs and throwing items). (Ex. D53 at 10.) Mr. Syring contacted Student's parents around 9:00 a.m. to notify them that Student was being suspended for one day. (Ex. D110 at 1.) That day, Student brought a cell phone to school. A teacher gave the cell phone to Mr. Syring for safe keeping. Before the first recess, Student became increasingly agitated and upset about the cell phone and entered Mr. Syring's office to search for it. During the search, Student became more frustrated, began using inappropriate language, and ultimately hit the paraprofessional who was supporting him/her at the time. (Ex. D42 at 1.) Student then hid in his/her cubby and cried. When the special education teacher and school psychologist were standing nearby, Student ran towards the special education teacher and began trying to punch her multiple times in the stomach. The special education teacher tried to back away, but Student continued trying to punch her. Student then returned to his/her cubby and cried some more. When the special education teacher attempted to walk away, Student ran at her again, attempting to punch her multiple times. (Ex. D55 at 5.)

171. On March 5, 2025, the District issued a Special Education Notice of Team Meeting, for an MDR scheduled that same day for Student's eleventh suspension. (Exs. D41 at 1, D42 at 4.) Parent, Mr. Syring, Ms. Fullenwider, and Ms. Williams attended the meeting. (Ex. D42 at 4.) The District requested that Parents allow staff to check Student's backpack before entering school, so they could send prohibited items (such as a cell phone) home. Parent stated that Student's backpack would be checked before Student left home and that if problems persisted, Student would be sent to school without a backpack. (Ex. D42 at 4.) The team determined that Student's behavior was a pattern of behavior, that his/her behavior was a manifestation of Student's disability, and that the District had followed Student's IEP and BSP. (*Id.* at 1-2.)

172. On March 5, 2025, the team also amended Student's BSP to include a backpack check before Student entered school to ensure items not needed for school were not brought in. (Ex. D43 at 5.)

173. On March 5, 2025, the District issued a Prior Notice of Special Education Action to parents, reviewing the reason for the MDR held that day. (Ex. D44 at 1.) The notice indicated that there "had been an increase in behaviors due to [Student] bringing items (toys, cell phone) from home. The team agreed in partnership with parents to add "backpack checks" to [Student's]

behavior support plan to ensure no items not required for school are brought into the school building that may cause distraction and dysregulation.” (*Id.*)

March 6 -11, 2025

174. On March 6, 2025, Student had five incidents of inappropriate language (threatened to send class “to heaven”), five incidents of inappropriate physical behaviors (kicking staff), one incident of elopement (out of the playground through a gate), and no incidents of destruction (). (Ex. D53 at 10.)

175. On March 10 and 11, 2025, Student had 20 incidents of inappropriate language, eight incidents of inappropriate physical behaviors (slapping others), no incidents of elopement, and no incidents of destruction. (Ex. D53 at 10-11.)

March 13, 2025 MDR and IEP Team Meeting

176. On March 11, 2025, the District issued a Special Education Notice of Team Meeting, scheduling an IEP team meeting for March 13, 2025. (Ex. D45 at 1.) The purpose of the meeting was listed as “review existing information about your child, * * * [d]evelop or review an individualized education program (IEP) and placement for your child * * *, [and] meet for [a] manifestation determination.” (*Id.*)

177. Prior to the meeting, Parent emailed the District the following information, which was included in the meeting notes:

To Whom It May Concern,

I am writing to provide input regarding the school’s initiation of an IEP meeting to discuss the proposed abbreviated school day for my child, * * * as well as the email notice I received concerning the consideration or reconsideration of this plan. I would like to formally request that this email be included in the meeting minutes for our upcoming meeting on March 13th at 1:00 pm, as I believe the information is highly relevant to the discussion.

This matter is particularly important in light of the ongoing assessments and evaluations for additional supports within new potential eligibility categories, for which I signed consent on March 3, 2025. I am unclear why this meeting is being initiated by the district when, as recently as February 5th, we held a facilitated IEP meeting in which the school completed [Student’s] 3-year re-evaluation. During that meeting, it was agreed that additional eligibility categories would be assessed to explore potential supports and create a more tailored behavior support plan that aligns with [Student’s] specific needs. However, to my knowledge, this process remains incomplete, and the necessary information is still being gathered.

Given that the evaluations and assessments are ongoing, I am concerned that

the discussion regarding an abbreviated school day may not align with the goals we have set. Therefore, I request that we proceed with an Independent Educational Evaluation (IEE) for the Functional Behavioral Assessment (FBA) conducted by the Estacada School District, with the goal of developing a more detailed and specific behavior support plan for [Student].

Additionally, I am concerned that shortening the school day could compromise the accuracy and completeness of these evaluations. As we have observed throughout the year, the consistent pattern of behavior, coupled with the interventions implemented since September 24, 2025 (based on the BSP created from the FBA conducted by the district), has not yielded the desired outcomes. These measures have, unfortunately, resulted in more consequential approaches rather than inclusive strategies. A more comprehensive evaluation is necessary to develop a truly effective and individualized behavior support plan.

The goal of evaluations is to provide a complete and accurate picture of a child's needs. A shortened school day could leave out crucial interactions, behaviors, or responses that would be more apparent during a longer school day. It is essential that these evaluations take place in an environment where all aspects of [Student's] day-to-day experiences can be observed and assessed.

In light of this, I kindly request that we further explore alternatives to ensure the evaluations are conducted within the context of a full school day. A full school day would offer a more comprehensive understanding of [Student's] needs, providing a clearer picture of [his/her] behaviors, challenges, and areas where [he/she] requires additional support.

Lastly, I would appreciate a written response to my previous email to Jill Bennett, dated March 10th, 2025, regarding the school's reasoning for requesting a meeting to discuss this change and the steps taken to date to try to avoid this.

I look forward to our continued collaboration in supporting [Student].

(Ex. D47 at 1-2.)

178. On March 12, 2025, Student was eating lunch next to a peer with two adults present. Student smacked the peer in the ear and then went and hid from adults. When Mr. Syring saw Student, he asked Student what was going on and Student "took off." (Ex. D49 at 1.) When Mr. Syring saw Student later, he asked Student what happened and Student responded "we won't be talking about that." (*Id.*) Later, Student told Mr. Syring what happened and that Student did not know why he/she did that. (*Id.*) Mr. Syring called Parent at noon and notified her that Student was being suspended for three and a half days (March 12 through 17, 2025). (Ex. D112 at 1.)

179. On March 13, 2025, the District convened an IEP team meeting, combined with an MDR for the March 12, 2025 incident (resulting in a total of 14.5 days of suspension for the year). (Exs. D45, D46, D47, D49.) Present at the virtual meeting were Parent, Ms. Williams, Ms. Bennett, Mr. Syring, Ms. Zeis, and Ms. Norvald. (Ex. D47 at 1.) The District reviewed the March 12, 2025 incident, noting that the “reason for [Student’s] physical behavior is unknown.” (*Id.* at 2.) The team agreed that the incident was a pattern of behavior, a manifestation of Student’s disability, and that the District followed Student’s IEP and BSP. (Ex. D49 at 1-2.) The team determined that a suspension was warranted due to “safety concerns.” (*Id.* at 5.)

180. At that time, Ms. Zeis reviewed Student’s academic performance, stating that math was a strength for Student, but he/she sometimes missed numbers when counting. Student could write the number 1 through 10. She noted that Student was engaging in “more work for us lately,” and that they found motivations (bargaining or rewards) were helpful for Student. (Ex. D47 at 3.) Student could name 12 letters and three letter sounds, but it was difficult to test Student in that area. Student could copy letters and was showing some interest in books. However, Student was receiving “1’s” (does not meet standard) in all academic standards. (*Id.*; ex. D46 at 6-7.)

181. The team determined that Student had met his/her social-emotional/behavioral goal in the IEP (Given a social scenario and an emotion visual, [Student] will identify a possible feeling of the individual in the scenario and a possible self-regulation activity they could implement with 80% accuracy in 3 out of 4 opportunities by spring 2025). (Exs. D20 at 2, D47 at 4.) The team updated Student’s social/emotional/behavioral goal to “when given two or more self-regulation strategy options, during a moment of frustration [Student] will choose a self-regulation strategy and implement that strategy when prompted verbally and/or visually in 3 out of 4 opportunities by winter 2025.” (Ex. D46 at 10.)

182. The District reviewed Student’s unwanted behaviors, noting that Student had, on average, 19 incidents per day of unwanted language, six incidents per day of physical aggression, four incidents per day of destroying property, and three incidents per day of elopement. The District also noted that Student was spending less than 20-percent of the day with peers. (*Id.* at 3.) Additionally, Student had started to regress in his/her learning, because he/she was not in the general education classroom. Student’s general education teacher was concerned about Student falling behind his/her peers. District staff noted that when they attempted to get Student to join the general education classroom, peers typically got hurt. (*Id.* at 5.)

183. At the March 13, 2025 meeting, District staff discussed how the school had implemented a “robust plan” to support Student, but unsafe and distracting behaviors were still occurring. (Ex. D47 at 4.) As of that date, Student had been suspended a total of 14.5 days. Ms. Bennett shared that:

[D]espite reasonable accommodations when a student continues to disrupt the learning environment of others or self and creates an unsafe environment for self, peers, and staff it is appropriate for teams to consider a more restrictive environment. [Ms. Bennett] reminded the team that we have tried multitude of

approaches without success, nor are we as a traditional brick and mortar obligated to create a specialized school or therapeutic setting within our school, that is why we have alternative learning settings.

(*Id.*) Parent stated that she was unaware that the purpose of the meeting was to discuss alternative placements for Student, and requested that the meeting be stopped so a facilitator could be present at the next meeting. Ms. Bennett stated that Parent could contact a facilitator, but the discussion regarding placement would continue. The District also informed Parent that the meeting notice included information about the purpose of the meeting. (*Id.*) Parent shared that she felt she had not been given proper prior notice of a placement discussion and that she considered herself an “observer” in the process at that point. (*Id.* at 5.)

184. The District members of the team discussed the pros and cons of the specialized school for Student. Ms. Williams pointed out that, as of that time, Student was receiving no explicit instruction, as he/she was not accessing the general education classroom. (Ex. D47 at 5.) She further stated that:

We are not expected to build a therapeutic school. We are expected to create a safe school. We’ve talked so much about how to keep trying new things. We thought we had some things under control, bringing toys, change this/change that. We are at a loss. We are still seeing issues daily. We’ve eliminated so many things and restricted [Student’s] day and still seeing behaviors.

(*Id.*) District personnel expressed their belief that placement in a specialized school would benefit Student by: smaller class and school size; fewer transitions; more intensive individualized instruction; specific behavior support and monitoring; a structured schedule; smaller staff to student ratios; and more specialized, therapeutic support for behaviors. (*Id.*; ex. D50 at 1.) They noted that the possible harmful effects included limited social interaction with typically developing peers, removal from Student’s neighborhood school, and commuting time to school. (Ex. D48 at 2.)

185. The District members of the team discussed alternative placement options, including an abbreviated school day, home instruction/tutoring, or total removal from peers with no explicit general education instruction. The team determined that these options were more restrictive than placement at a specialized school. (Ex. D47 at 5.) The team discussed that the goal of the placement in an outside school would be to eventually return Student to his/her local elementary school. (*Id.*)

186. At the end of the meeting, Ms. Bennett proposed changing Student’s placement to a special school. The four other District personnel in attendance agreed to placing Student in a specialized school and Parent disagreed with the recommendation. (Ex. D47 at 5.) The team also decided that, effective March 18, 2025, Student would have an abbreviated school day (two hours per day) until there was an opening at a specialized school. (*Id.* at 6.) Parent notified the District that she would be contacting a lawyer, initiating a due process hearing, and invoking “stay put.” (*Id.*)

187. At the March 13, 2025 IEP meeting, the team amended Student's IEP goals and placement (March 2025 Amended IEP). (Ex. D46 at 4.) The March 2025 Amended IEP included the following narrative about Student's behavior:

****The IEP was amended on 3/13/25 to include the following changes: revised IEP goal, and placement decision. A manifestation determination meeting happened on this same date.****

Between the dates of 1/6/25 and 3/11/25 [Student] attended school 30 days. During this time each day [Student] on average has 19 incidences of language, 6 physical incidences, 4 incidences of destroying property, and 3 instances of eloping. During this time period, [Student] has left the building 1 time and left school property 2 times. [Student] is physical both towards staff and students. As [Student's] physical behaviors have decreased, the team has been offering more work in academic and social emotional areas. Currently, [Student] completes work about 50% of the time when it is offered. [Student] is more likely to complete work with a motivator (basketball, fun activity, etc[.]), after [his/her] first recess, when working with peers, when the work is incorporated into a game or movement, and when the work is not labeled as work, but staff uses strategies to include [Student] in the work ("hmm I can't figure this out, can you help me?"). [Student] enjoys helping others with work.

[Student] has improved in [his/her] ability to hear a problem, identify an emotion of the individual involved, and provide a self-regulation strategy that they could implement. Currently when [Student] is given a problem, [he/she] can identify the emotion of the individual involved and provide a self-regulation strategy that [he/she] could implement with 90% accuracy. [Student] needs more work in practicing these skills with peers when problems do arise in-person. Currently, [Student] spends about 20% of [his/her] day with [] peers. This time spent with [Student's] peers mainly consists of recess, lunch, specials, and library.

[Student] has been suspended a total of 14.5 days this school year, accounting for 16 incidences[sic]. 15 of these incidences [sic] have been due to [Student] hitting a staff members. [Student] has been suspended for hitting staff members, students, and eloping the school campus leading to unsafe behaviors for [Student], staff, and students.

(*Id.* at 6.) The team amended Student's social/emotional/behavior goal to read, "when given two or more self-regulation options, during a moment of frustration Student will choose a self-regulation strategy and implement that strategy when prompted verbally and/or visually in 3 out of 4 opportunities by winter 2025." (*Id.* at 10.) Progress on the goal was to be measured by teacher observation and record of data, reported in writing during normal school district grading cycles. (*Id.*) The team declined to make a determination about Student's eligibility for extended school year services, finding that more information was needed to determine if Student regressed in learning and demonstrated prolonged recoupment of skills over breaks. (*Id.* at 16.)

188. On March 13, 2025, the team drafted a Special Education Placement Determination, which outlined the various placement options considered by the team. (Ex. D48.) The first option considered and rejected was general education with push-in and/or pull-out services. The benefits of this option included social interaction with typically developing peers and access to the general education curriculum. The possible harmful effects of this option were that it lacked adequate structure and behavioral support and that the core general education curriculum was not at Student's current academic level. (*Id.* at 1.) The second placement option considered and rejected was general education with extensive push-in and/or pull-out support outside the general education classroom. (*Id.* at 1-2.) The benefits of this placement option included more intensive individualized instruction for Student, specific behavior monitoring, and the ability attend his/her neighborhood school. The possible harmful effects of this placement option included lacking adequate structure and behavioral support, potentially posing a danger to other students, or potentially harming relationships Student built. (*Id.* at 2.) The third option considered and selected was placement at a special or separate school. The potential benefits of this option included more intensive individualized instruction, specific behavior monitoring, smaller class size, small student to teacher ratio, and the ability to continue to work on his/her academic skills. The potential harmful effects included limited social interaction with typically developing peers, removal from his/her neighborhood school, and increased commuting time to/from school. (*Id.*) The fourth placement option considered and selected until a spot at a specialized school was available, was an abbreviated school day. The benefits of this placement included avoiding being at school during difficult times of the day to promote Student's regulation, would receive specific behavior monitoring, and Student could continue to attend his/her neighborhood school. The potential harmful effects of this placemen option included Student not being at school for the entire school day, missing out on instruction time, less opportunity to work on IEP goals, and limited social interaction with peers. (*Id.*) The final placement option considered and rejected was home instruction with 1:1 tutoring. The benefits of this placement option included more intensive individualized instruction with the ability to continue working on academic skills. The possible harmful effects included not promoting necessary transition/generalized skills for community success in larger groups, removal from his/her neighborhood school, and limited exposure to the general education curriculum. (*Id.* at 3.)

189. On March 14, 2025, the District issued a Prior Notice of Special Education Action to Student's parents. (Ex. D50.) It provided, in part:

The team met on 3/13/2025 to hold a Manifestation Determination, review data, amend [Student's] Individualized Education Plan (IEP), and discuss placement. The team acknowledged that [the] most recent physical altercation with a peer (3/12/25) which resulted in a three day out of school suspension does appear to be a manifestation of [his/her] disability. The team believes the Behavior Support Plan and IEP Plan was in place as written. The team updated the Present Levels of Performance, and adjusted one of [Student's] goals. The team noted that [his/her] behavior challenges continue to create an unsafe learning environment for [Student] and others. The team discussed how and what setting [Student's] IEP needs can be best met within. The team determined that [Student's] educational placement will change to a

separate/special school setting. Until a placement at a separate/special school can be secured, [Student] will receive two hours of instruction each school day at [his/her] neighborhood school in order to provide [Student's] IEP specially designed instruction beginning on 3/18/25.

[This] is a **proposal to change** the following aspect of [Student's] special education: * * * placement * * * [and the] provision of a free, appropriate public education[.] * * *

This action is proposed because:

[Student] continues to struggle managing [his/her] emotions and behaviors. [Student] displays difficulty using school-appropriate language and has had numerous incidences [*sic*] of hitting peers and staff as well as destruction of property and elopement from the building and campus. Despite reasonable accommodations and use of a multitude of approaches to [Student's] behavior support plan and increased levels of support, [his/her] behaviors continue to disrupt the learning of others and for [Student], and continues to create an unsafe environment for [Student], [Student's] peers, and staff. The team has decided that [Student] needs higher levels of support than what a traditional brick and mortar school can provide. [Student] would benefit from a smaller school setting, more [i]ntensive individualized instruction, specific behavior support and monitoring, structured schedule, fewer transitions, smaller class sizes and staff to student ratio, and more specialized, therapeutic support for behaviors. The district has determined that [Student's] educational placement will be changed to a separate/special school and that the district will provide two hours of instruction per day in [Student's] neighborhood school until an outside separate/special educational placement is secured.

This action is based on the following evaluation procedures, tests, records, or reports:

Review of current data, review of current Behavior Support Plan, progress monitoring data, observations, incident report data, input from team members.

Other options we considered were:

The team acknowledged that [Student's] current level of support (less than 40% of [his/her] time in a general education classroom setting) is not enough. The team discussed separate/special school, abbreviated school day, and community-based tutoring options. The team felt community-based tutoring was too restrictive, not allowing opportunities with same age peers. The team discussed an abbreviated school day (coming to [his/her] neighborhood school for partial day) was also not an appropriate long-term solution. The team discussed that [Student's] educational placement at a separate/special school would provide the structure and specialized learning opportunities [he/she] needs.

We rejected these options because:

The current setting is not offering the level of support and structure the team believes [Student] needs to be successful. The team rejected abbreviated school day and community/tutor instruction as they do not provide the level of structure [he/she] needs in the long-term.

Any other factors considered by the team:

Parent rights provided by attachment to the 3/13/25 meeting invite. Parent stated she did not understand placement would be a part of today's meeting. It was noted that when she was called to set up the meeting it was mentioned then, as well as noted on the Notice of Team Meeting. She noted that when the Google Invite was sent, it also had a notice that abbreviated school day may be discussed and in response sent an email prior to the meeting with her input which was acknowledged and placed into the meeting minutes. Parent shared she thought abbreviated school day was what we would be talking about and not other options. Parent does not agree with the placement decision at a separate/specialized school. Parent expressed concerns that the three year evaluation could not be completed comprehensively without the context of a full school day.

(*Id.* at 1-2, emphasis in original.)

190. On March 14, 2025, Parent emailed the District about her concerns from the March 2025 Amended IEP meeting and subsequent decision of the District to change Student's placement:

I am writing to formally refuse the proposed change in placement for my child * * * discussed during our recent IEP meeting. Specifically, I do not consent to the decision to move my child to an abbreviated school day while awaiting placement at another school. The school's actions to implement this change are not only premature but unlawful, as they are being carried out without completing the necessary evaluations under new eligibility categories and without any current data that justifies this drastic change. This limitation raises significant concerns about whether the school is fully meeting the requirements of **34 C.F.R. § 300.304**, which mandates thorough assessments and data collection in all areas of suspected disability. Allowing my child to be in school for only two hours a day does not provide sufficient instructional time for the school to collect meaningful data to make an informed placement decision.

* * * * *

Furthermore, I requested a second facilitated IEP meeting with Robin Day, an investigator from the Department of Education, to ensure that we could collaboratively reach an agreement on an appropriate educational plan for my child. However, you, Mrs. Bennett, unilaterally and without justification, denied this request for a second facilitated meeting. This refusal to engage in a

collaborative process further illustrates the lack of willingness on the part of the district to resolve this matter in a meaningful way. Your failure to support this request demonstrates a concerning lack of respect for parental involvement and due process.

* * * * *

[D]uring past conversations, you stated that the school “Doesn’t have the resources” to provide the necessary support for my child, and that the Paraeducator assigned to my child at one point was simply “Who they had available.” These comments are nothing short of an abdication of responsibility. The school’s inability or unwillingness to provide appropriate resources for my child is entirely unacceptable. Your attempt to justify the lack of appropriate support with an excuse about availability, rather than addressing the issue head-on, speaks volumes about the school’s failure to prioritize my child’s educational needs.

Additionally, I would like to bring to your attention that the current evaluations that have been used to guide my child’s educational plan have proven to be inadequate. Specifically, the **Behavior Support Plan (BSP)** that was developed has not been effective in addressing my child’s needs. The failure of the BSP to produce meaningful outcomes further highlights that the existing evaluations do not accurately reflect my child’s current needs. This situation strengthens my position that additional, comprehensive evaluations are necessary before making any changes to my child’s placement or services.

Furthermore, I would like to emphasize that other members of the IEP team have acknowledged the significant progress my child has made in various areas. It was noted that my child has successfully met one of [his/her] goals, is completing more work, and has greatly improved [his/her] ability to self-regulate. These achievements clearly show that my child is making positive strides in [his/her] current educational environment. Any proposed change in placement at this time, without proper evaluations, seems not only premature but also contrary to the progress [he/she] has made.

* * * * *

Additionally, the following legal provisions under IDEA make it clear that the district is in violation of my child’s rights:

1. Failure to Complete Necessary Evaluations

Under **34 C.F.R. § 300.304**, the school is required to conduct thorough evaluations to determine my child’s eligibility under the new eligibility categories before making any changes to their placement. The failure to conduct these evaluations means the proposed change is premature and not based on complete and accurate data. This failure is a violation of IDEA,

which mandates that placement decisions be based on a thorough and comprehensive evaluation process.

2. Failure to Provide Free Appropriate Public Education (FAPE)

As per **20 U.S.C. § 1400(d)**, my child is entitled to a Free Appropriate Public Education (FAPE) that is individualized to meet their unique needs. The school is moving forward with a change in placement before completing the necessary evaluations and without having accurate, up-to-date data. This action is a direct violation of my child's right to FAPE, as the school is failing to provide an individualized education that meets my child's needs.

3. Failure to Adhere to Least Restrictive Environment (LRE)

Under **20 U.S.C. § 1412(a)(5)**, children with disabilities are entitled to be educated in the Least Restrictive Environment (LRE). The school's proposed change in placement risks placing my child in a more restrictive setting than necessary, as the school has not completed the necessary evaluations. This is a violation of IDEA's requirement to ensure that my child remains in the least restrictive setting.

4. Parental Consent for Significant Placement Changes

Under **34 C.F.R. § 300.300**, the school is legally required to obtain informed parental consent before making significant changes to my child's placement. This includes changes to instructional time, such as moving my child to an abbreviated school day. Since I have not provided consent, the school is prohibited from proceeding with this change unless it initiates a due process hearing to justify their actions. If the school proceeds with this change without my consent, it will be in direct violation of IDEA.

5. Failure to Respond to Request for IEE

As per **34 C.F.R. § 300.502**, the school is required to respond to my request for an IEE. The failure to address this request within the required timeframe is a violation of my child's rights.

* * * * *

7. Invocation of Stay-Put Rights

In accordance with **34 C.F.R. § 300.518**, I am invoking my child's stay-put rights under IDEA. Since I have not consented to any changes in placement, including the abbreviated school day, my child is entitled to remain in their current placement - which includes attending a full school day - until this dispute is resolved. The school is not authorized to make any changes unilaterally, and I will not allow them to infringe upon my child's rights by acting outside the law[.]

(Ex. S18 at 1-2, emphasis in original.)

March 18 – April 10, 2025

191. On March 18 and 19, 2025, Student attended abbreviated school days (two hours total each day). During those two days, Student had two incidents of inappropriate language, no incidents of inappropriate physical behaviors, no incidents of elopement, and no incidents of destruction. (Ex. D53 at 11.)

192. On March 20, 2025, Student returned to a full-day school schedule and had 28 incidents of inappropriate language, 13 incidents of inappropriate physical behaviors (hitting staff), no incidents of elopement, and four incidents of destruction. (Ex. D53 at 11.) Student repeatedly told a paraeducator that “I’ll kill you” and “you can go kill yourself” after he/she became escalated. (Ex. D62 at 1.)

193. There was no school for students in the District from March 21, 2025 through April 1, 2025. (Ex. D74 at 9.)

194. In April of 2025, Ms. White was assigned to investigate a second report made to the Oregon Department of Human Services where Student had reported wanting to “nuke” himself/herself. (Tr. 2 at 797:2 through 15, 798:1 through 7.) When Ms. White interviewed Student at school, Student reported that “nuking” was “when you run into someone and you go boom,” and then Student reenacted it in the room. (*Id.* at 798:5 through 13.) Following the conversation with Student, Ms. White did not have concerns that Student was suicidal. (*Id.* at 799:8 through 17.)

195. On April 2 and 3, 2025, Student had nine incidents of inappropriate language, no incidents of inappropriate physical behaviors, no incidents of elopement, and no incidents of destruction. (Ex. D53 at 11-12.) Student was absent from school on April 4, 2025. (*Id.* at 12.)

196. On April 3, 2025, Student told a teacher that “I want to kill myself at school.” (Ex. D57 at 1.) The District completed a student suicide risk referral. (*Id.*)

197. From April 7 to April 9, 2025, Student had seven incidents of inappropriate language, three incidents of inappropriate physical behaviors (hitting paper out of paraprofessional’s hand), six incidents of elopement (playing “chase” around the school and running away from staff), and no incidents of destruction. (Ex. D53 at 12.)

198. On April 8, 2025, Student was playing independently when he/she said “what if I just cracked my head open on this?” (Ex. D58 at 1.) The paraprofessional working with Student stated that they did not want that to happen and Student responded “Well, I do.” (*Id.*) When asked why, Student responded “because I don’t want to live anymore.” (*Id.*) The District completed a student suicide risk referral. (*Id.*)

199. Also on April 8, 2025, Student’s general education teacher sent a note home that read:

Just a note to brag about [Student] because [he/she] has [had] a great week in

my class! [He/She] has joined us multiple times and participated in reading groups. I am very proud of [him/her].

(Ex. S24 at 1.)

200. On April 9, 2025, Student wrote a poem stating that he/she would “grab a knife and grab my shotgun and I shoot everyone. Then you lock the doors. Then you see the monsters chasing you. Then you grab the RPG.” (Ex. D63 at 1.)

201. Student was absent from school on April 10, 2025. (*Id.* at 13.)

April 11, 2025 IEP Team Meeting

202. On April 11, 2025, the IEP team met to update Student’s IEP. (Ex. D75 at 1.) The team added the following narrative to Student’s IEP:

****The IEP was amended on 4/11/25 to include the following changes:
updated ESY decision.****

Social/ Emotional/ Behavior Goal: [Student] has continued to make progress on this goal throughout the school year. [Student] had made so much progress that [he/she] met [his/her] original IEP goal, and the team updated it to reflect what [he/she] needs to work on next.

Self Management: [Student] has continued to make progress on this goal. On 2/5/25 [Student] was recorded to transition from one activity to the next 25% of the time within 1 minute. Currently [Student] can complete this transition 50% of the time within 1 minute.

Transition: [Student] has continued to make progress on this goal. On 2/5/25 it was recorded that [Student] could complete transitions back to the classroom when given a 5 minute warning 40% of the time. Currently, when given a 5 minute warning [Student] completes transitions back to the class 75% of the time.

(*Id.* at 4.)

203. The team determined that Student did not experience regression in his/her IEP goals and objectives and does not experience a prolonged recoupment period to relearn previously learned skills. (*Id.* at 5.) The team decided that Student did not require extended school year (ESY) services because Student had made progress on his/her IEP goals throughout the school year. (Exs. D75 at 4, 5; D76 at 1.) The team amended Student’s IEP to reflect their decision. (Ex. D75 at 4, 5.)

204. On April 11, 2025, the District issued a Prior Notice of Special Education Action to Student’s parents, notifying them of the decision that Student was not eligible for ESY services.

(Ex. D76 at 1.) The notice indicated that the decision was based on behavioral and observational data and that Student has “shown progress on [his/her] IEP goals throughout the school year.” (*Id.*)

April 14 - 19, 2025

205. On April 14, 2025, Student had seven incidents of inappropriate language, one incident of inappropriate physical behaviors (hitting self in head), one incident of elopement (running away from staff in the school building), and no incidents of destruction. (Ex. D53 at 13.)

206. On April 15, 2025, Student had 19 incidents of inappropriate language, 12 incidents of inappropriate physical behaviors, eight incidents of elopement (running away from staff in the school building and not staying in the expected area), and five incidents of destruction (throwing items, taking items from classrooms and desks). (Ex. D53 at 13.) Student asked to use the restroom, but when he/she exited the classroom stated, “I lied” and then began running around the school and hiding from adults. (Ex. D55 at 6.) Later, when asked to complete schoolwork, Student refused and became escalated. Student began cursing, kicked a door, kicked an adult in the shin, and then punched the adult in the stomach and arm. (*Id.*) Student was also cutting paper in the shape of a pistol and bullets and “shooting” them at peers. (Ex. D64 at 1.) At one point, Student found [his/her] sibling in the hallway and they began to wrestle. (Ex. S26 at 1.) Mr. Syring called Student’s parents around 1:30 p.m. and notified them that Student was suspended for five days²⁸ beginning on April 16. (Ex. D110 at 1.)

207. On the daily tracking sheet for April 15, 2025, Student’s assigned paraeducator noted that Student “did great” at lunch and recess. (Ex. S26 at 1.)

208. Starting around April 17, 2025, Mr. Gilstad was assigned to work directly with Student from the start of the day through 10:55 a.m. and then again from 1:00 p.m. until the end of the school day. (Tr. 2 at 592:3 to 10, 614:20 through 615:1.) Since the transition to working primarily with Mr. Gilstad, Student’s unwanted behaviors have decreased, but Student is refusing to go into the general education classroom. (*Id.* at 608:20 through 25.) Student continues to have daily verbal outburst using inappropriate language. Student has not exhibited any inappropriate physical behaviors in LC1, but at a recess with peers, Student ran up to a peer and pushed the peer hard with two hands from behind, causing the peer to stumble. (*Id.* at 615:8 through 616:24.) Student has continued to engage in elopement. (*Id.* at 617:6 through 618:25.) Mr. Gilstad is concerned that he may be unable to ensure the safety of Student’s peers when Student is around them. (*Id.* at 623:1 through 13.)

209. Mr. Gilstad has worked as a paraeducator for over 12 years. (Tr. 2 585:5 through 11.) Mr. Gilstad has worked as one of the paraeducators assigned to Student since approximately December of 2024. (Tr. 2 at 591:1 through 7.) Student has expressed a preference for working

²⁸ While Parent argues that Student was suspended for seven days for this occurrence, the evidence does not support such a finding. Student attended school all day on April 15, and the suspension began on April 16. Student returned to school on April 23, as evidenced by attendance records (Exhibit D111). Thus, the record indicates Student’s suspension was five school days (April 16, 17, 18, 21, and 22).

with Mr. Gilstad. (Tr. 2 at 651:17 through 652:4.) Mr. Gilstad received training specifically regarding Student and Student's IEP and BSP from Ms. Williams, Ms. Bennett, Ms. Zeis, and Ms. Peterson. On Fridays, the team supporting Student conducts a group check-in to discuss issues or new behaviors that have arisen. Anytime there is a change to the BSP the team also meets to review the revisions. (Tr. 2 at 588:4 through 590:20.) Student has hit and kicked Mr. Gilstad during the period in issue. Student has also attempted to grab a chair and hit Mr. Gilstad with it. (Tr. 2 at 595:2 through 11.)

April 22, 2025 MDR

210. On April 22, 2025, the District issued a Special Education Notice of Team Meeting to Student's parents, scheduling an MDR for that same day. (Ex. D77.)

211. On April 22, 2025, the District held an MDR regarding Student's behavior on April 15, 2025. (Ex. D78 at 1.) At that time, Student had been suspended a total of 19.5 days during the school year. (Ex. D79 at 1.) Present for the meeting were: Parent; Parent's attorney (Ms. Hill); Dr. Gilmour on behalf of Parent; an attorney for the District; Ms. Williams; Mr. Syring; Ms. Zeis; Ms. Bennett; and Ms. Norvald. (Ex. D80 at 1.)

212. At the meeting, the District reviewed what happened during the event on April 15, 2025. Ms. Hill asked what had happened right before Student asked to use the bathroom. Ms. Zeis shared that they had been doing schoolwork, and Student appeared to be doing well. Ms. Zeis guessed that Student may have become bored with the schoolwork. (Ex. D80 at 1.)

213. District staff shared that Student's dysregulation lasted about 20 minutes. In an attempt to calm Student, staff offered a task of taking a piece of paper to the secretary and returning an item to LC1. (Ex. D80 at 1.) When Parent asked for additional information about what was done when Student became dysregulated, District staff indicated that a Zones check-in was done, redirection, and sensory support. When Parent asked what sensory support was provided, District staff indicated that they did not know specifically what was offered during this incident, but generally sensory support can include seats with wheels for moving, a sand tray, tactile items, and music. (*Id.* at 2.) By dismissal time, Student was calm and regulated. (*Id.* at 1.)

214. Parent requested that Student be provided a dedicated 1:1 paraeducator, but the District indicated that it was not able to dedicate one single person as the sole adult support for Student. The District agreed to assign two paraeducators to Student throughout his/her school day. (Ex. D79 at 1.) Parent also requested that a BCBA be utilized for "training and oversight." (*Id.*) The District indicated that it was in the process of contracting with a BCBA to review Student's existing FBA and BSP and suggest changes. (*Id.*) The entire team agreed that Student's behavior demonstrated a pattern of behavior. A majority of the team determined that the District followed Student's IEP (Parent did not agree). The entire team agreed that Student's behavior was caused by or had a direct and substantial relationship to Student's disability. (Ex. D78 at 2.)

April 28 – May 16, 2025

215. On April 28, 2025, Psychiatric Nurse Practitioner Tolu Dada diagnosed Student with autism spectrum disorder attention deficit hyperactivity disorder, combined type; and disruptive mood dysregulation disorder. (Ex. S33 at 3; tr. 2 at 635:10 through 637:3.)

216. There was no school for students in the District on May 2, 2025. (Ex. D74 at 11.)

217. On May 8, 2025, the District recorded the following on a Manifest Determination form:

[Student] was in and out of the classroom this morning (5/8/2025). At 9:30 [he/she] went to the bathroom and started cussing at some peers in there. Then instead of going back to class [he/she] ran around the halls and climbed onto the stage going through storage lockers. [Student] was redirected to LC-1 and went into there. Shortly after being there (at 9:45) [he/she] yelled “Kill Mr. G” repeatedly. [Student] then punched Mr. G, threw things at him, and said to him “you’re a b****”, “mother f****”, “son of a b****”, “kill yourself”, and lots of flipping off.

[Mr.] Syring arrived at 10:00 to assist and try to de-escalate. [Student] said “f*** you” several times and “kill yourself.” [Student] then punched [Mr. Syring] on the back while * * * talking to Mr. G and then swung a plastic lid at [Mr. Syring] trying to hit him. [Mr. Syring] was able to try several different items to try to brain switch [Student] and finally one worked. While [Student] was calming down, [Mr. Syring] let [Student] know that if [he/she] is tired because of [his/her] cold, [he/she] could sleep. Once [Student] was calm, [Mr. Syring] started gathering the information and then called parents.

What led up to this was that [Student] didn’t want to do anything today and this all started when [he/she] came in from AM recess and didn’t want to go to class, LC-1, or do anything. Some things we tried throughout this process were reinforced replacement words, reminded of expectations, provided 2-3 options, offered sensory break, and break in LC-1.

(Ex. D88 at 1.) Mr. Syring called Student’s parents and left a message regarding the incident and to let them know that Student would be suspended for one and a half days. (*Id.*; ex. D110 at 1.)

218. There was no school for students in the District from May 12 - 16, 2025. (Ex. D74 at 11.)

May 19, 2025 MDR

219. On May 17, 2025, the District issued a Special Education Notice of Team Meeting, scheduling an MDR for May 19, 2025. (Ex. D87 at 1.)

220. On May 19, 2025, the IEP team met to hold an MDR regarding Student's behavior on May 8, 2025. Present at the meeting were Parent, Mr. Syring, Ms. Williams, and Ms. Zeis. (Ex. D88 at 4.) The team agreed that the behavior in question demonstrated a pattern and that Student's behavior had a direct and substantial relationship to Student's disability. (*Id.* at 2, 4.) Parent was "unsure" whether the District failed to implement Student's IEP, but the rest of the team found that the District did not fail to implement the IEP. (*Id.* at 4.)

221. That same day, the District issued a Prior Notice of Special Education Action to Student's parents, regarding the MDR. (Ex. D89.) The notice indicated that Student had been suspended a total of 21.5 days that year. The notice also indicated that the District was not implementing the alternative placement into a special school because the District was honoring "stay put" as part of the due process hearing matter that was ongoing. (*Id.* at 1.)

May 23, 2025 Annual Academic and Functional Goals and Objectives Progress Report

222. On May 23, 2025, Ms. Zeis conducted an Annual Academic and Functional Goals and Objectives Progress Report for Student. (Ex. D94.) For Student's social/emotional/behavior IEP goal (when given two or more self-regulation strategy options, during a moment of frustration Student will choose a self-regulation strategy and implement that strategy when prompted verbally and/or visually), Ms. Zeis noted that "[Student] still needs instruction and practice utilizing a self-regulation strategy when [he/she] becomes frustrated." (*Id.* at 1.) For Student's self-management IEP goal, Ms. Zeis noted that:

[Student] has an easier time transitioning to tasks that are fun to [him/her] or that include preferred peers. Motivators help [Student] complete [his/her] work as well, and the motivators that [Student] likes include playing basketball, watching a preferred video, or doing a special project in or out of the classroom.

(*Id.* at 2.) For Student's transition IEP goal, Ms. Zeis noted that:

[Student] returns to the classroom 4/5 times when [he/she] is returning for an activity of interest such as specials, library, lunch, or recess. [Student] returns to the classroom 1/5 times when returning for an academic group or main instruction time. [Student] has a difficult time engaging in activities that are not of interest to [him/her].

(*Id.* at 3.)

May 27, 2025 IEP Meeting

223. On May 20, 2025, the District issued a Special Education Notice of Team Meeting to Student's parents, for an IEP meeting scheduled on May 27, 2025. (Ex. D90 at 1.) The District also sent a copy of the draft IEP with the notice. (Ex. D92 at 1.)

224. The IEP team convened an annual IEP review meeting on May 27, 2025. (Ex. D92

at 1.) Parent, Parent's attorney (Ms. Hill), Ms. Zeis, Ms. Bennett, Ms. Williams, Mr. Syring, Ms. Peterson, Ms. Norvald, and the District's attorney (Mr. Hungerford) were present at the meeting. (*Id.*) Student had been given an "informal interview" prior to the IEP meeting to add Student's voice to the IEP. (*Id.* at 2.) Ms. Zeis reviewed Student's strengths, interests, and preferences from Student's interview. Student indicated that he/she liked animals, Skyzone, and riding his/her quad. Student identified that he/she was good at math, letter writing, drawing, and giving comfort to others. The team had no additional input to add regarding Student's strengths or interests. (*Id.*)

225. Ms. Zeis reviewed Student's present levels of academic performance. She noted Student knew 26 letter names and 16 letter sounds, could answer questions about text that was read to him/her, had been engaging in some sight-word work (jumping on sight-word cards to learn them) but had since refused to participate, could write his/her first name, could copy letters with a near point model, skipped number when counting, could add within 10 with assistance, and could identify and write numbers under 10. (Ex. D92 at 3.) Ms. Norvald concurred with the information shared by Ms. Zeis. Ms. Zeis shared that Student had difficulty persisting through challenging tasks. Student was spending approximately 20 percent of his/her day with peers, primarily during lunch, recess, and specials. Some strategies that staff found helpful to get Student to engage in schoolwork included: rewards, chunking work, testing Student in alternative ways, turning the work into a game, working with a peer, or helping a peer. (*Id.*) The District recommended adding academic goals to Student's IEP. (*Id.* at 2.)

226. Ms. Norvald shared that Student did not participate in classroom routines or expectations consistently, even when he/she was in the classroom. Student also scored "1's" in all areas of 'traits of a successful learner' standards. (Ex. D92 at 4.) During the relevant period, Student continued to hit peers, call peers names, or intentionally call peers the wrong name. Student demonstrated strength in communication, being very social and trying to make connections with staff and students when regulated. (*Id.*) However, when dysregulated, Student had difficulty processing verbal language, responding to questions, making choices, or following directions. (*Id.* at 5.)

227. The team discussed amending Student's IEP regarding identifying emotions and coping strategies to make it more challenging. Student was able to identify emotions and coping strategies when regulated, but could not when escalated. Ms. Zeis shared some successful ways to support Student's behavior: giving space, using minimal language, offering distractions, offering two to three choices, using visuals, movement and/or sensory breaks, and reminders of safety. Ms. Zeis reviewed some of the unwanted behaviors Student was exhibiting, including the use of sexualized language (e.g., "does this p*ssy scare you" or "I will f*** your mom"). (Ex. D92 at 4.) District staff reiterated that the period between 9:30 a.m. to 11:30 a.m. was the most challenging for Student because it was the time between recess and lunch. (*Id.*)

228. The team discussed Student's social skills. The team noted that Student does well with positive peer models. District staff reported that Student used to join a social skills group with peers, but Student was recently refusing to attend. (Ex. D92 at 5.)

229. The District proposed adding a reading goal to Student's IEP. Parent's attorney

objected to the addition of any academic goals to Student's IEP, arguing that it was premature because Student's reevaluation was not complete. (Ex. D92 at 5-6.) The District proposed leaving the goals in the IEP, since they were based on data showing Student's specific lagging academic skills. Additionally, the District believed that Student's lagging skills in academic areas were a direct result of Student's behaviors. (*Id.* at 6.)

230. When discussing school-to-home communications, Parent brought up a concern that the daily tracking sheets did not show all incidents that staff reported occurring, and that she received conflicting reports about how Student's day went. The team agreed to work on adding more detail and clarity about circumstances of unwanted behaviors on daily tracking sheet. (Ex. D92 at 11.)

231. Parent's attorney requested that the District stop suspending Student for unwanted behaviors, arguing that the suspensions were "making the behaviors worse." (Ex. D92 at 14.)

232. When the issue of placement options came up, Parent's attorney argued that the District had already predetermined placement in a special or alternative school, so further discussion was unnecessary. The District argued that no decision had been made, and a discussion about placement was appropriate. After some discussion, all District team members continued to recommend placement in a special or alternative school for Student. Parent was opposed to this decision. No details, such as the name or location of the proposed program, were discussed. (Ex. D92 at 14.)

233. Parent's attorney requested that the body of an email Parent sent prior to the meeting be placed in the parent input section of the May 2025 IEP. The team agreed and added the following:

Per email from [Parent] on May 28, 2025. Parent and Whitney Hill (Attorney) requested that this email be copied and pasted into the parent input section of the IEP. Attorney specifically requested the body of the email be entered in this section, and not the attached document included in that email.

As you know [Student] received a formal autism diagnosis (confirming [his/her] long-suspected autism dx) from on 4/29 per the attached from Tolulope Dada, PMHNP. I am attaching that here so that we can make an individualized plan for how to respond to [his/her] autism-related behaviors that have not been successfully addressed to date.

In light of this diagnosis and [Student's] ongoing autism-related behavioral needs, we are reiterating our request for a dedicated, appropriately trained 1:1 paraprofessional or registered behavioral technician (RBT) and an independent FBA/BSP developed by a PhD level BCBA and have located Dr. Maria Gilmour (CV & intro letter attached) who serves Oregon school districts and is willing to contract with Estacada.

I did speak to the DOE and they confirmed that IEEs for FBAs are allowed.

Please see email for continued request, for IEE sent on 4/23/2025 with reference guide.

Dr. Gilmour has confirmed that her FBA process (protocol attached) can be completed in 6-8 weeks, that she would then promptly develop the BSP with the IEP team, and then she could train district paraprofessionals and provide oversight & ongoing support for implementation of the BSP with fidelity over a three-month period. Obviously since we're at the end of this school year this would need to start in September unless she was able to work on the FBA during ESY.

We are also reiterating our request for ESY for [Student] since [he/she] has missed so much instruction and requires recoupment as a result of improper response to and support for [his/her] behaviors. We are also seeking it under "emerging skill" for [his/her] social emotional since [he/she] is still inconsistently able to progress in that area due to autism-related behaviors.

Thanks & we look forward to discussing at the meeting. Please capture this request and the district's response in the prior written notice following the meeting.

(Ex. D91 at 4-5, emphasis in original.) Parent did not have any additional input in the areas of academic achievement, functional performance, or concerns for enhancing [Student's] education. (*Id.*)

234. The May 2025 IEP included the following information in the "narrative and supporting data" section under present levels of academic achievement:

[Student] is a kindergarten student nearing the end of the academic year. [His/her] initial IEP focused primarily on behavior and self-management skills, and without specific goals or specially designed instruction related to academics. Throughout the school year, [Student's] academic progress has been affected by ongoing behavioral challenges.

Strengths of the student: [Student] enjoys math, and [he/she] is more willing to participate in math academic activities. When [Student] does complete school work, [he/she] shows that [he/she] can learn quickly.

Kindergarten Academic Standards: 2024-2025 School year

Below is how [he/she] is achieving kindergarten academic standards.

**4: exceeds expectations*

3: meets standard

2: progressing

1: does not meet standard

K.ELA.1 Demonstrate understanding of the organization of basic features of print. 1

K.ELA.2 Demonstrate understanding of spoken words, syllables, and phonemes. 1
K.ELA.3 Know and apply grade-level phonics and word analysis skills in decoding words. 1
K.ELA.4 Read emergent-reader texts to develop fluency and comprehension skills. 1
K.ELA.5 Use a combination of drawing, dictating, and writing to narrate a single event or several loosely linked events, sequence the events in the order in which they occurred, and provide a reaction to what happened. 1
K.ELA.6 Demonstrate command of the conventions of standard English capitalization, punctuation, and spelling when writing. 1
K.ELA.7 Participate in collaborative conversations with diverse partners about kindergarten topics and texts with peers and adults in small and larger groups. 1
K.MA.1 Understand addition and subtraction. 1
K.MA.2 Know number names in the count sequence. 1
K.MA.3 Count to tell the number of objects. 1

Reading: Currently [Student] knows 26 out of 52 letter names (a mix of upper and lower case letter names) and 16 letter sounds. [Student] shows skills in reading comprehension (answering questions orally) when [he/she] is read to[,] and [he/she] shows interest in the book or story. [Student] previously learned sight word lists by jumping on sight word cards placed on the ground, and saying the word out loud. As the sight words became more challenging for [him/her], this activity began to result in more escalated behavior. [Student] should continue to learn letter names and sounds to build foundational reading skills.

Writing: [Student] can write numbers 1-10. [Student] can copy letters from a near-point model. [Student] can write [his/her] first name. [Student] should work on independently writing letters when given the name or sound of the letter, in order to eventually be able to write complete words.

Math: [Student] can count to 30 consistently. [Student] often skips numbers (11, 12, 14, 15) and may skip full groups of tens (example [he/she] may go from 14 to 24). [Student] can complete simple addition problems (within 10) with assistance. [Student] should continue to work on identifying and writing numbers 1-100 independently. [Student] would benefit from math visuals, such as 100s charts, or number lines.

Needs of the student:

[Student] has a difficult time persisting through tasks that [he/she] doesn't already know or that are challenging for [him/her]. Because [he/she] has a hard time persisting through challenging tasks, [Student] is missing out on learning skills taught in the classroom. [Student] has a hard time participating in assessments. [Student] often demonstrates dysregulated behavior or refusal

to engage in assessments; which makes it difficult to understand [his/her] true knowledge of some skills.

[Student]'s participation and engagement in both classwork and assessments varies daily. It can sometimes be easier for [Student] to engage in academic testing or classwork when [he/she] is given a motivator. Motivators may include: playing basketball, doing an activity involving movement, or watching a show/ video. At times, [Student] may be more receptive to engaging in work or assessments if completing the test in an alternate way. This could include: chunking work, the work being made into a game, work that involves movement, working with a peer, or when [he/she] can be a peer "helper" (helping other students complete the same work).

The team would like [Student] to increase [his/her] independence in demonstrating basic skills in the areas of reading, writing, and math. When [Student]'s behaviors are unsafe, the demand of academics decreases in order to maintain the safety of staff and students.

* * * * *

How the student's disability affects involvement and progress in the general education curriculum:

[Student] is a Kindergarten student identified with a developmental delay. This delay impacts [his/her] ability to fully engage in the general education curriculum and achieve at the same rate as [his/her] typically developing peers. [Student] exhibits challenges in self-regulation, which often result in physical and verbal aggression, as well as eloping from the classroom. These behaviors significantly disrupt [his/her] ability to remain focused and engaged during academic instructional activities and impact interactions with peers and adults in the classroom. As a result, [Student] benefits from specialized instruction, behavioral supports, and a structured environment to help manage behaviors and increase participation and engagement in learning in order to make progress in the general curriculum.

(Ex. D91 at 5-7, emphasis in original.)

235. For the present levels of functional performance section, the May 2025 IEP included the following narrative and supporting data:

[Student's] current eligibility is Developmental Delay. [Student] is also undergoing a school evaluation at this time to determine re-eligibility for Special Education.

[Student] started [his/her] kindergarten year in general education for 80% or more of the day. As the year progressed, the team met to amend the IEP to

address [his/her] needs. [Student] currently spends 80% or more of the day outside of general education. [Student] has adult support with [him/her] throughout the day.

Attendance:

	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
Enrolled	17	18	12	12	16	16	12	19	5
Present	12.5	13.5	2.5	9.5	13.5	10	8.5	12	3
Absent	4.5	4.5	9.5	2.5	2.5	6	3.5	7	2
% Present	73%	75%	20%	79%	84%	62%	70%	63%	60%

Students identified as chronically absent miss more than 10 percent of school days in a school year. As of May 2025, [Student] has been absent for 33% of school days in the 2024-2025 school year. This includes days that [Student] was suspended.

Traits of a Successful Learner

Kindergarten students are scored on specific traits called “Traits of a Successful Learner”. Below are [Student’s] scores.

**4: exceeds expectations*

3: meets standard

2: progressing

1: does not meet standard

Standards of the 2024-2025 school year:

K.PTSL.1 Work completion - I complete work on time. 1

K.PTSL.2 Engagement - I actively participate in class activities, listen, and follow directions. 1

K.PTSL.3 Social responsibility - I demonstrate kindness and respect. 1

Strengths of the student:

[Student] shows strength in the area of communication. [Student] is a very social student who is inquisitive and has a large vocabulary. [Student] can continue a conversation with an individual on a preferred or non-preferred topic with several back and forth turns. [Student] also has a good memory of individuals. [Student] will ask questions about them and show interest in them. There are no concerns with [Student’s] adaptive (toileting, dressing, feeding), fine motor, or gross motor skills at this time.

Behavior:

[Student] continues to demonstrate significant behavioral challenges at school. When [Student] is regulated, [he/she] is able to identify [his/her] emotions, the emotions of others, and identify coping strategies. However, [he/she] is still learning to identify and implement those strategies when dysregulated.

[Student] has been involved in selecting strategies (choices) that may work for

[him/her] to regulate [his/her] emotions and body. These strategies change at times, depending on [Student's] voice and input. These strategies may include: deep breathing, breaks, movement, snack/drink, balance board, bean bag chair, rest/nap, animals (stuffed, videos), sand table, art, or putty.

When [Student] is escalated, [he/she] has a difficult time regulating [his/her] emotions. Strategies that adults can do to help support [Student's] regulate [sic] are giving [him/her] space, using minimal language, offering a distraction, offering 2-3 choices using a visual, offering movement and sensory breaks, and reminders of expectations for safety.

Behavioral data is being tracked on the four following behaviors: language, physical behaviors, destruction of property, and elopement. "Language" behaviors include swearing, threatening harm, flipping off, sexualized language, demeaning language. "Physical" behaviors include hitting, kicking, punching, spitting, pushing. "Destruction of property" behaviors include throwing items and/or furniture, pushing over furniture, kicking items/furniture, ripping items (student work, hallway displays), and breaking items. "Elopement" behaviors include running away from staff, hiding, not staying in the expected area, leaving the school or playground.

Occurrence of Behaviors by Month

	Language	Physical Behaviors	Destruction of Property	Elopement from Expected Area
Month # days present/ total days	Total <i>Average per day</i>	Total <i>Average per day</i>	Total <i>Average per day</i>	Total <i>Average per day</i>
September 12.5/17	74 <i>11</i>	29 <i>2</i>	<i>Not tracked</i>	16 <i>1</i>
October 13.5/18	656 <i>39</i>	292 <i>17</i>	91 <i>13</i>	40 <i>2</i>
November 2.5/12	186 <i>62</i>	70 <i>23</i>	2 <i>0.5</i>	1 <i>0.3</i>
December 9.5/12	244 <i>24</i>	51 <i>5</i>	4 <i>0.5</i>	6 <i>0.5</i>
January 13.5/16	349 <i>25</i>	70 <i>5</i>	33 <i>2</i>	22 <i>1.5</i>
February 10/16	174 <i>22</i>	29 <i>4</i>	3 <i>0.3</i>	0 <i>0</i>
March 8.5/12	108 <i>11</i>	47 <i>5</i>	32 <i>3</i>	1 <i>0</i>
April 12/19	72 <i>6</i>	26 <i>2</i>	9 <i>1</i>	17 <i>1.5</i>
May 3/5	36 <i>9</i>	7 <i>2</i>	0 <i>0</i>	10 <i>2.5</i>

[Student] has received 18 out-of-school suspensions totaling 21.5 school days as of May 19th, 2025 during the 2024-2025 school year. The suspensions were due to physical aggression towards staff or elopement from school property. Data shows that coming back from recess (9:30am) through lunch and recess (11:30am) are the most challenging times of day for [Student]. It is between 9:30-11:30am that [Student] receives the most behavioral referrals.

[Student] has a well-developed and robust behavior support plan that includes proactive/preventative strategies, teaching strategies, and reactive strategies.

Self Management:

[Student] has shown some progress in transitioning between activities. However, [he/she] continues to require support, especially when faced with transitions [he/she] finds challenging or not desirable. [Student] is more successful when provided with adult assistance, advance notice, and an activity or outcome to look forward to. The transition coming back to class after recess is the biggest transition challenge for [Student]. [Student's] behaviors significantly disrupt [his/her] ability to remain focused and engaged during academic instructional activities. [Student] struggles to initiate tasks, persist on tasks, and complete tasks without significant adult support. The team would like to see [him/her] work on increasing [his/her] stamina for engaging in academic work.

[Student] is given the opportunity to be in [his/her] general education classroom multiple times throughout the day (in between activities or classes). When given the option, [he/she] often chooses to be in a smaller, separate setting. The majority of [his/her] instruction takes place in a 1:1 setting outside the general education classroom. [Student] currently spends about 20% or less of the day in [his/her] general education classroom. [Student] is primarily with [his/her] typically developing peers during lunch, recess, and specials (music, PE, *etc*[.]).

Social Skills:

When regulated, [Student] has shown some prosocial behavior when interacting with [his/her] peers. During the school year, [Student] has sporadically participated in a social skills group with same-aged peers. During this group, students work on identifying emotions of themselves and others, utilizing the Zones of Regulation toolbox and other resources, and interacting with peers. [Student] has shown that [he/she] can participate appropriately in this group (ask for items, ask to play, take turns in an activity, offer play items to another student, say please/thank you), complete the assigned activities, and answer questions posed by the instructor.

[Student] has also engaged in negative social interactions with peers. These interactions include hitting, pushing, threatening, and swearing at peers. When

[Student] perceives that a friend has been treated unfairly, [he/she] typically will want them to pay a consequence for how they treated [his/her] friend. This may look like [Student] trying to hurt or push the other student, or put [his/her] fists up and say “I’m going to get them.” Most recently, [Student] has been refusing to attend the social skills group. The team’s approach to addressing [Student’s] lagging skills in this area is to address [his/her] social needs through accommodations rather than direct instruction at this time. Accommodations may include reminders, prompts, and visuals to promote prosocial behavior.

The team will continue to work with [Student] on [his/her] own social/emotional regulation through specially designed instruction around behavior and self[-]management.

Adult Support

[Student] needs adult support with [him/her] throughout the day for instructional times, transitions (including line of sight to/from bathroom), lunch/recess for safety, and support for regulation. [Student] requires support to interact in a prosocial way with [his/her] peers. [Student] does well with strong peer models and is highly motivated by older-aged peers. When dysregulated, [Student] has difficulty processing verbal language, responding to questions, making choices, and following directions. [Student] requires direct support and additional time to regulate [his/her] body and return to a ready-to-learn state.

[Student] utilizes a daily visual schedule with names and pictures of the adults supporting [him/her]. Starting on 4/28/2025, [Student’s] support schedule changed from 3 adult staff rotating throughout the day to 2 adult staff alternating throughout the day.

How the student’s disability affects involvement and progress in the general education curriculum:

[Student] is a Kindergarten student identified with a developmental delay. This delay impacts [his/her] ability to fully engage in the general education curriculum and achieve at the same rate as [his/her] typically developing peers. [Student] exhibits challenges in self-regulation, which often result in physical and verbal aggression, as well as eloping from the classroom. These behaviors significantly disrupt [his/her] ability to remain focused and engaged during academic instructional activities and impact interactions with peers and adults in the classroom. As a result, [Student] benefits from specialized instruction, behavioral supports, and a structured environment to help manage behaviors and increase participation and engagement in learning in order to make progress in the general curriculum.

(Ex. D91 at 7- 11, emphasis in original.)

236. The May 2025 IEP indicated that Student was to be removed from the general education classroom for 480 minutes a week. The justification for the removal was:

[Student] requires extensive support throughout the day in order to work on [his/her] goals in a smaller, quieter setting. [Student] is given the opportunity to be in [his/her] general education classroom multiple times throughout the day (in between activities or classes). When given the option, [Student] often chooses to be in a smaller, separate setting. The majority of [Student's] instruction takes place in a 1:1 setting outside the general education classroom. [Student] currently spends about 20% or less of the day in [his/her] general education classroom. [Student] is primarily with [his/her] typically developing peers during lunch, recess, and specials (music, PE, etc[.]).

(Ex. D91 at 26.)

237. There was no school for students in the District on May 26, 2025. (Ex. D74 at 11.)

May 30, 2025 MDR

238. On May 29, 2025, Student left the classroom without permission. Once staff located Student, he/she returned to the classroom for an assessment. Student became frustrated when staff were unwilling to help him/her spell a word during the assessment. Staff reminded Student that this was a “try your best” activity. (Ex. D96 at 1.) Student ripped up the paper and threw it away, saying “I’m not doing this sh**.” (*Id.*) Staff reminded Student that in order to do the fun activity after the assessment, he/she would need to complete the assessment, and that staff could read any words for Student, but could not help with spelling. Student began to escalate, and staff gave Student the option to work in a different location. Student began to curse, throw pencils, and write on the desk. Mr. Gilstad took student to the hallway, where Student began throwing things off tables and out of cubbies, and continued to use foul language. Mr. Gilstad gave Student the option to take a break, take a walk, or go to LC1. Student did not pick any of the options offered and began hitting Mr. Gilstad several times. Mr. Syring was called to assist, and Student attempted to hit him several times. Mr. Syring was able to “brain switch” Student. (*Id.*) Student then took a break in Mr. Syring’s office. (*Id.*) Mr. Syring called Student’s parents around 12:45 p.m. to notify them that Student was being suspended for a day and a half. (Ex. D110 at 1.)

239. On May 29, 2025, the District emailed Parent, requesting to meet the following day for an MDR. (Ex. D97 at 1.)

240. On May 30, 2025, the District issued a Special Education Notice of Team Meeting to Student’s parents, scheduling an MDR for that same day at 7:30 a.m. (Ex. D95 at 1.) The meeting was to review Student’s behavior on May 29, 2025. (Ex. D96 at 1.)

241. On May 30, 2025, the District convened an MDR. Only Mr. Syring and Ms. Williams attended. (Ex. D97 at 1.) The team determined that Student’s behavior demonstrated a pattern, that the behavior in question was not a direct result of the District’s failure to implement Student’s IEP, that the behavior in question was caused by or had a direct and substantial

relationship to Student's disability, and therefore, the behavior was a manifestation of Student's disability. (*Id.* at 2.)

242. On May 30, 2025, the District issued a Prior Notice of Special Education Action to Student's parents. (Ex. D98.) The notice indicated that an MDR had been held because Student had been suspended a total of 22.5 days during the school year. It also indicated that "the team reviewed the incident and determined that the IEP and BSP were being followed[,] and the behavior is a manifestation of [Student's] disability." (*Id.* at 1.)

243. On June 2, 2025, Parent sent the following email to Mr. Syring about the incident:

Thank you for the update regarding the alleged incident involving [Student].

While I understand the need to maintain classroom safety and expectations, I am growing increasingly concerned that the school's current approach – particularly the pattern of repeatedly suspending [Student] – may be reinforcing the very behaviors we're trying to address. [Student] has begun to associate dysregulated behavior at school with being sent home, and we are now seeing clear signs of school avoidance. This cycle is not only counterproductive to [his/her] progress, but it also undermines efforts to support [him/her] in developing regulation strategies in the school environment, which is where [he/she] needs them the most.

In light of [Student's] medical diagnosis, all of which require targeted, individualized supports rooted in evidence-based practices, not punitive measures. Suspension should never be used in place of appropriate behavioral and therapeutic interventions, particularly for a student whose behaviors are a manifestation of their disability.

(Ex. D97 at 1.)

244. The last day of school for students in the District was June 12, 2025. (Ex. D74 at 12.)

Suspensions

245. As of the last day of the 2024/2025 school year, the District considered Student to have been suspended a total of 23 days. (Tr. 7 at 91:23 through 92:1.)

246. Any time Student was suspended, Mr. Syring called Parents to relay details of the incident and to notify them that Student was being suspended. If Parents did not answer his call, Mr. Syring left a voicemail message. Sometimes, Mr. Syring would follow up his phone call with an email message regarding the suspension. (Tr. 5 at 344:23 through 346:12, 347:11 through 348:5.) Had Parents wanted additional information about the incident(s) leading to the suspension, Mr. Syring would have provided them that information. (*Id.* at 363:8 through 14.)

247. During the year, the District had some problems with its online system not sending out written notices of suspensions. While the issue was eventually fixed, Parents received written notices for only some of Student's suspensions. (Tr. 5 at 346:13 through 347:6.)

248. According to Mr. Syring, the purpose of suspending a student is to give the student a break and to allow staff to "reset" and discuss the incident to see what could be done differently. (Tr. 360:3 through 14.)

249. Parent believes that the repeated suspensions have reinforced Student's unwanted behaviors; Student has told her that he/she will not be good because he/she wants to come home. (Tr. 6 at 695:4 through 9.)

Make-Up SDI Services

250. Starting on April 23, 2025, the District began providing make-up SDI time to Student to compensate him/her for the time lost due to suspensions. (Ex. D102; tr. 4 at 162:21 through 171:5.) The District provided Student with the following compensatory time spent on SDI learning:

- April 23, 2025: 80 minutes
- April 24, 2025: 80 minutes
- April 28, 2025: 75 minutes
- April 29, 2025: 50 minutes
- May 1, 2025: none (Student refused all work)
- May 6, 2025: 30 minutes
- May 20, 2025: 60 minutes
- May 21, 2025: 45 minutes

(*Id.* at 1.)

Progress Reports

251. At the start of the school year, Student's academic abilities in reading, writing, and math were similar to his/her peer's abilities. During the beginning of the year, when Student spent some time in the general education classroom, initial testing showed that he/she had picked up some of the skills taught to the class, such as the ability to read some sight words. However, as the year progressed and Student stopped attending the general education classroom, Student showed regression on the skills that he/she had initially learned. (Tr. 4 at 260:3 through 22.) By the end of the school year, Student was behind his/her peers in every area of academics. (*Id.* at 261:24 through 7.)

252. For the first semester of the 2025/2025 school year, Student received a score of "1" (does not meet standard) in the following standards:

- Demonstrate understanding of the organization of basic features of print.
- Demonstrate understanding of spoken words, syllables, and phonemes.

- Know and apply grade-level phonics and word analysis skills in decoding words.
- Read emergent-reader texts to develop fluency and comprehension skills.
- Use a combination of drawing, dictating, and writing to narrate a single event or several loosely linked events, sequence the events in the order in which they occurred, and provide a reaction to what happened.
- Demonstrate command of the conventions of standard English capitalization, punctuation, and spelling when writing.
- Participate in collaborative conversations with diverse partners about kindergarten topics and texts with peers and adults in small and larger groups.
- Count to tell the number of objects.
- Demonstrates an understanding of the science content.
- Demonstrates a knowledge of the social studies content.
- Work completion - I complete work on time.
Engagement - I actively participate in class activities, listen, and follow directions.
- Social responsibility - I demonstrate kindness and respect.

(Ex. D54 at 1-2.) Student received a score of “2” (progressing in standard) in the standard of “Understand addition and subtraction.” (*Id.* at 2.) Student received a score of “3” (meets standard) in the standard of “ Know number names in the count sequence.” (*Id.*) For the second semester of the 2024/2025 school year, Student received a score of “1” in the following standards:

- Know and apply grade-level phonics and word analysis skills in decoding words.
- Use a combination of drawing, dictating, and writing to narrate a single event or several loosely linked events, sequence the events in the order in which they occurred, and provide a reaction to what happened.
- Demonstrate command of the conventions of standard English capitalization, punctuation, and spelling when writing.
- Understand addition and subtraction.
- Know number names in the count sequence.

(*Id.* at 1-2.) For all other standards, Student received no score. (*Id.*)

Staff Training and the Provision of SDI and Behavioral Supports

253. During the 2024/2025 school year, Ms. Williams provided training to all staff working with Student in the MANDT system. (Tr. 1 220:1 through 11.)

254. Ms. Williams consults with the team working with Student every Friday, conducts debriefing sessions with staff who had been involved in unsafe incidents with Student, provides training on specific interventions to use with Student, and provided training on how to implement Student’ BSP. (Tr. 1 220:12 through 24, 224:11 through 18.) Ms. Williams also tried

to check in with staff working with Student daily and say “hi” to Student each day. (Tr. 1 223:25 through 224:6, 224:25 through 225:7.)

255. Ms. Peterson, the District’s student services instructional coach, was involved in the creation of Student’s initial IEP with the District. (Tr. 1 at 270:25 through 271:3, 274:13 through 21.) Thereafter, she would do check-ins with staff and consult or brainstorm on any problems they were encountering with Student, on a weekly or bi-weekly basis. (Tr. 1 at 284:14 – 285:17.)

256. Ms. Peterson has observed District staff working one-on-one with Student and in small groups to provide Student SDI time. (Tr. 4 at 34:17 through 36:3.) Ms. Williams has also observed staff providing SDI time to Student, including Ms. Zeis or a paraeducator working with Student on behavior regulation strategies, scenarios, prompting Student to use tools in his/her regulation toolbox, offering warnings before transitions, and supporting Student through the transitions. (*Id.* at 96:19 through 97:5.) Mr. Syring has observed staff providing SDI to Student, including sitting alone with a paraeducator working on SDI specific assignments. (Tr. 5 at 333:2 through 20.)

257. When a paraeducator was assigned to provide Student SDI, Ms. Zeis would first work with the paraeducator and show them what to teach Student. Ms. Zeis would also check in as Student and the paraeducator were working through the SDI, or afterwards to see how the instruction went. (Tr. 4 at 223:3 through 224:8.)

258. Mr. Gilstad has personally provided SDI to Student during the 2024/2025 school year. Ms. Zeis would give Mr. Gilstad material to work with Student on, or Mr. Gilstad would print material out based off goals that he and Ms. Zeis had talked about. Mr. Gilstad has no reason to believe that Student was not provided with all the SDI outlined in his/her IEP. (Tr. 5 at 392:13 through 395:4.)

259. Ms. Peterson has observed District staff using the following behavioral interventions with Student when he/she was escalated: reduce lighting in the room, use first/then language, attempt to distract by discussing subjects that are of interest to Student, use art, give Student space, or offer breaks. Ms. Peterson has used the following behavioral interventions when working with Student when escalated: given space, reduced the amount of language used, offered water, offered movement activities, and offered a choice activity. (Tr. 4 at 37:5 through 21.)

260. Ms. Williams has observed District staff using the following behavioral interventions with Student when he/she was escalated: visuals, referencing Zones of Regulation Toolbox, first/then visuals, giving space, giving two or three options, distraction, sensory support, and offering breaks. (Tr. 4 at 100:10 through 16.) Ms. Williams has used the following behavioral interventions when working with Student when escalated: clearing the room of other students, giving Student time and space, offering some options of preferred things, and offering a snack or drink. (*Id.* at 100:17 through 101:4.)

261. Student has a “toolbox” of strategies that include several visuals that may help him/her regulate when escalated. (Tr. 4 at 38:15 through 21.) These are things that Student

picked out to assist with regulation. They include pictures of items such as a beanbag chair, a person napping, and a bouncy ball. (*Id.* at 38:22 through 39:1.)

262. At the time of hearing, the District was in the process of hiring an outside consultant, with BCBA credentials, to conduct an updated FBA for Student. (Tr. 5 at 457:3 through 459:3.) The person selected by the District was Forest Howard. (*Id.* at 459:4 through 8.) Mr. Howard estimates it would require up to 10 hours of time to conduct the FBA, which would include three to four hours of observations, one to two hours of interviews, and one to four hours of writing the FBA. (*Id.* at 460:15 through 461:20.)

263. At the time of hearing, the District was also in the process of conducting a reevaluation of Student based on his/her ASD diagnosis. (Tr. 4 at 150:5 through 10.)

Heron Creek

264. Heron Creek, located outside the District, is a Kindergarten through grade 12 school with 11 classrooms: two social emotional classrooms for grades K-4; two social emotional classrooms for grades 4-6; two social emotional classrooms for grades 6-8; three social emotional classrooms for grades 9-12; and two K-12 skills for success classrooms. It is located in West Linn, Oregon. Each classroom has one teacher, 0.5 social skills specialists, two educational assistants, one therapeutic intervention coach, two lead therapeutic intervention coaches, a PE teacher, an art teacher, a nurse, an occupational therapist, a speech and language pathologist, a psychiatrist, an assistant director of therapeutic programs, a program coordinator, and a program supervisor. (Ex. D73 at 7.) Heron Creek has a closed campus to help prevent student elopement. (Tr. 1 104:22 through 105:3.)

265. The Mission Statement of Heron Creek reads:

The Heron Creek Program assesses the collective strengths of students, families, school and the community to develop collaborative plans, enabling students with significant social, emotional, behavioral and academic challenges to learn and use skills to meet their educational goals in the least restrictive environment.

(Ex. D73 at 9.)

266. The Heron Creek handbook states that IEP meetings are held at least annually to “review goals, objectives, and placement needs of each student.” (Ex. D73 at 10.)

267. The “What to Expect in the Heron Creek Program” is outlined in the handbook as follows:

Step 1: Referral

Students are referred to the Heron Creek Program by their local school district. At that time, areas of concern are identified and an initial intervention plan is developed to address social, emotional, behavioral and academic needs

taking into consideration each student's lagging skills and strengths.

Step 2: Evaluation

During the initial 45-60 days in the program the staff will gather information to refine the initial intervention plan. This information will be gathered through meetings with parents/guardians, consultation with the home school district, and review of information from the school and observations of your students in the classroom. After the information is gathered, the data is used to develop or revise your student's Behavior Support Plan (BSP) and update their Individual Education Plan (IEP) as needed. The BSP is designed to assist your student in developing skills that are needed to address identified target behaviors and make progress on the goals and objectives on their IEP. Both the BSP and IEP will guide our work with your student during their placement at Heron Creek as well as during their transition when they leave the program.

Step 3: Settling and Stabilizing

When a student starts at Heron Creek, our first goal is to help them become more behaviorally and academically stable. The team focuses on reducing stressors that lead to acting out behaviors, emotional outbursts and/or withdrawal. During this time, the team works very hard to make sure that what they do, as well as how they do it, reduces the likelihood that the student's thinking, feeling and behavior issues are triggered.

Step 4: Skill Development

Learning and practicing new skills is most effective when students are emotionally and behaviorally stable. During this step, we continue to make sure that the school environment is very carefully individuated to maintain student stability. In addition, we begin teaching new skills. This occurs throughout the school day, individually and in group settings. We focus on teaching skills at the "point of performance". This means that skill training takes place during the time that the student would require the skills. For example, if a student has trouble with frustration tolerance during math, we teach skills during math instruction.

Step 5: Skill Transfer

After students have practiced and learned new skills in the Heron Creek program, the team begins to focus on strategies to help the students demonstrate these skills across settings. The focus is on students initiating and using these new skills with less adult assistance (fewer cues, less adult reinforcement). Our goal is to help students to manage themselves effectively in a less restrictive school environment.

Data and Communication

Regular communication between school and home is essential to proactively assist students. Weekly written communication along with emails and phone calls greatly help students achieve success. In addition, Heron Creek staff are

collecting data daily both behaviorally and academically on all students to assist with individualized student planning. Parents/guardians will receive Incident Reports as incidents occur. Additionally, parents/guardians will receive weekly feedback forms to let them know their child's progress for each week.

Throughout All Steps

Each student's progress through these steps is likely to have ups and downs. It is common for students to take a step backward as they move forward. Heron Creek students tend to be impacted by stress, illness, lack of sleep, hunger, and changes in their home and school environments more than students who are typically developing. Parents/guardians and School Staff communicating and working together to develop stress reduction strategies across settings will help students greatly along the way and minimize setbacks. Let's make it work by working together!

(Ex. D73 at 14-15.)

268. Tuition for a student to attend Heron Creek is approximately \$73,000 per year. (Tr. 1 at 111:4 through 6, 112:21 through 23.)

269. On March 18, 2025, Parent spoke with the program director of Heron Creek on the phone regarding the program. (Tr. 2 at 638:17 through 639:20.) On approximately April 8, 2025, Parent visited Heron Creek. (*Id.* at 638:17 through 24, 640:22 through 641:3.) Based on her tour, Parent believes that Heron Creek is not an environment that is appropriate for Student. She believes the children at Heron Creek are "severely opposite of my child," in that they were severely developmentally delayed. (*Id.* at 642:10 through 20.) She felt the physical space inside Heron Creek was "messy and unorganized," "chaotic," and that the outdoor space lacked a playground and looked "like a prison yard." (*Id.* at 643:2 through 9.)

270. Ms. Williams believes that Heron Creek is an appropriate placement option for Student because:

* * * They have specialists there that are trained in supporting students with very intense and unsafe behaviors. They have very small class sizes and a high adult-to-student ratio, meaning there's -- there's a lot of adults that support, you know, one or two students. There's fewer transitions and very specialized instruction for the students that go there according to their needs and their lagging skills.

(Tr. 4 at 106:18 through 107:6.) Ms. Williams believes that Heron Creek would be able to implement all aspects of Student's IEP. (*Id.* at 107:7 through 107:14.)

271. Ms. Peterson is familiar with and has visited Heron Creek. She has worked with other students who have attended Heron Creek, who exhibited behaviors similar to Student's unwanted behaviors. She believes Heron creek would be an appropriate placement for Student

because it is a smaller school with smaller class sizes, and a high staff-to-student ratio. It has trained skill-specialists and behavior coaches who work in the classroom. There are fewer transitions for students. She has no concerns that Student's IEP could not be implemented at Heron Creek. (Tr. 44:12 through 45: 20.)

Serendipity Center

272. Serendipity Center is a privately owned center which provides a program for children similar to the services provided at Heron Creek. (Tr. 1 at 45:6 through 12.)

273. The District would be willing to place Student in Serendipity Center or Heron Creek, depending on Parents' preference. (Tr. 1 at 101:14 through 21.)

Laura Mlyn, M.Ed., BCBA, LBA

274. Ms. Mlyn is dual credentialed as a BCBA and TSPC-licensed Special Education Teacher. At the District's request, Ms. Mlyn has been working on an evaluation of Student to see if he/she is eligible under the category of ASD. As part of that evaluation process, Ms. Mlyn has formally observed Student once and informally observed Student in school. (Ex. D85 at 1.)

275. Ms. Mlyn noted that Student demonstrates strengths in creativity (art) and verbal communication with adults about interests, and also forms strong connections with adults. Ms. Mlyn has also observed Student engage in episodes of physical and verbal aggression towards adults and peers and elopement. She notes that Student appears to struggle with self-regulation and emotional calming. (Ex. D85 at 1.)

276. During Ms. Mlyn's evaluation, she observed and learned about some concerning behaviors and responses of Student:

[Student] has been observed hoarding and sneaking food, making repeated comments that alarm adults and peers (e.g., "go kill yourself" repeatedly) in addition to other aggressive, profanity-laden language and gestures. In response to teacher cues, [Student] was observed often yelling "I don't care". [Student's] immediate escalation to anger and task-refusal even with preferred adults has also been concerning.

(Ex. D85 at 2.)

277. Based on studies she has read, Ms. Mlyn opines that for children with certain mental health conditions, such as trauma-related disorders, mood disorders, or anxiety, applied behavior analysis (ABA) as the primary or sole intervention may not only be ineffective, but it can, in some cases, exacerbate the symptoms or undermine therapeutic processes. (Ex. A85 at 2; tr. 1 at 312:19 through 313:5.)

Maria Gilmour, Ph.D., BCBA-D

278. Dr. Gilmour holds a Ph.D. in the field of special education, with an area of expertise in autism and applied behavioral analysis (ABA), learning and cognition, and educational administration and policy. She is also a board-certified behavior analyst – doctoral (BCBA-D). (Ex. S1 at 1.)

279. As part of her work, Dr. Gilmour conducts FBAs. (Ex. S2 at 1.) When conducting an FBA, Dr. Gilmour provides details of her observations of a student in the FBA itself. She also uses a motivational assessment tool and a functional assessment interview for teacher(s), paraeducators, parent(s), and anyone else who works with the child. (Tr. 2 at 420:2 through 23.) She gathers information from any teachers who have been with the student in the prior six months. (*Id.* at 421:11 through 21.)

280. When performing an FBA, Dr. Gilmour typically observes a student three to five times on separate days to try and observe an escalation of behavior occurring. (Tr. 2 422:21 through 423:7.) It typically takes Dr. Gilmour approximately three months to conduct an FBA, and three weeks is the quickest she has ever completed an FBA. It is “a 40-hour process” for Dr. Gilmour to complete an FBA. (*Id.* at 423:8 through 23.)

281. At the request of Parents, Dr. Gilmour reviewed the FBA and BSP created by the District. At hearing, Dr. Gilmour indicated that she would not know how to implement the BSP as written. She testified that it was unclear how data would be collected and who was responsible for implementing which portions of the BSP. (Tr. 2 at 424:23 through 425:11.) According to Dr. Gilmour, a BSP should explain “exactly how you implement it, by who, and how you’re collecting data and when do you check in about that, when do you make decisions on next steps.” (*Id.* at 425:11 through 17.)

282. Without personally conducting an FBA for Student in the school setting, Dr. Gilmour would be unable to say what supports should or should not be used in the school setting. Dr. Gilmour also believes best practices dictate FBA’s for students with disabilities similar to Student should be conducted by a BCBA. (Tr. 2 at 453:8 through 454:1.)

283. At the request of Parents, Dr. Gilmour observed Student for two hours in his/her home to gather information about Student’s typical behaviors and routines. (Ex. S1 at 2.) Based on her observations, Dr. Gilmour opined:

[Student] displayed an impressive range of independent skills typical for a 6-year-old during my visit and his/her capabilities span multiple domains of daily functioning.

[Student] exhibited strong social skills throughout the observation and was able to engage in meaningful, reciprocal conversations. [Student’s] interactions with his/her [sibling] were kind and age appropriate.

[Student] was able to follow one and two step directions more than 90% of the

time. [Student] also demonstrated emerging self-regulation when denied access to preferred toys during snack time (twice).

Based on my home observation, parent interview, and review of records, I recommend a comprehensive FBA be conducted by a BCBA with school-based experience, and the creation of an effective BSP with function-based interventions implemented by staff trained to fidelity²⁹ on all strategies.

At this time, an educational setting with consistent behavior supports in the least restrictive environment (e.g., a general education classroom) appears most appropriate.

* * * * *

It is best practice to trial interventions in a less restrictive environment, supported appropriately, before considering more restrictive placements. A structured, step-by- step approach - with meticulous data collection - should guide enhancements to [Student's] current educational supports.

* * * * *

[Student] presents as a student who can and should be served in the regular school setting albeit with appropriate behavioral supports implemented by trained staff.

(Ex. S1 at 2-3.)

284. Dr. Gilmour opined that the key components for educational success include:

Structured Support Plan

Implemented by a trained educational aide, including:

- Systematic prompting hierarchies
- Individualized reinforcement systems
- Consistent behavioral protocols
- Ongoing data collection on target behaviors

Dedicated Support Professional

A trained aide should support [Student] across educational settings by:

²⁹ Dr. Gilmour opines that implementing the BSP to fidelity means that “everybody is implementing the strategies in the same way and data are collected, and it’s strategic, and the programming is supervised * * by an expert, such as a BCBA.” (Tr. 7 at 22:21 through 23:7.)

- Ensuring consistent implementation of [his/her] support plan
- Providing immediate guidance during transitions or challenges
- Monitoring and delivering behavioral interventions
- Offering academic support

Enrichment Opportunities

[Student] should have access to enrichment activities with support from [his/her] aide to foster participation and build on [his/her] strengths and interests.

Supporting Observations

[Student's] strengths include:

- Well-developed independent self-care and organization
- Strong social communication
- High compliance with directions
- Emerging problem-solving abilities

While these are notable, consistent support is recommended to ensure these skills generalize across environments and are maintained over time.

Considerations for Implementation

1. Schedule regular team meetings to monitor the effectiveness of [Student's] support plan
2. Develop a gradual fading protocol for areas showing sustained independence
3. Conduct ongoing evaluations to assess the continued need for support
4. Provide comprehensive, ongoing training for the educational aide on [Student's] needs and intervention strategies

(Ex. S4 at 3-4.)

285. When asked about the use of suspensions as a form of discipline for Student, Dr. Gilmour opined that it could “inadvertently reinforce the challenging behavior” and increase the likelihood that the behavior will reoccur in the future. (Tr. 7 at 13:21 through 14:12.)

286. On June 3, 2025, Dr. Gilmour toured Heron Creek. (Tr. 7 at 15:19 through 16:6, 24:6 through 8.) Dr. Gilmour observed “a therapeutic setting where there were a lot of mental health professionals, speech pathologists, and some basic positive behavior interventions and supports for school-wide level.” (*Id.* at 16:20 through 24.) She did not observe any behavior experts present at the school, nor were any behavior experts discussed during her visit. (*Id.* at 16:25 through 17:1.) When asked what Dr. Gilmour meant by “behavior experts,” she testified that “I asked if they had behavior experts, and they said they have mental health counselors and a

speech pathologist. And they called the person that conducts an FBA, the FBAer, and that just means that they didn't really know the terminology for experts that conduct assessments.” (*Id.* at 29:6 through 14.)

287. During the tour, Dr. Gilmour asked how the school would respond to elopement, severe aggression, and property destruction. (Tr. 7 at 62:20 through 63:5.) Heron Creek staff described some proactive strategies they had in place to prevent elopement and if those did not work they would use physical restraint methods. If the student continued to escalate, the school would call the parent to “see if they want to call law enforcement.” (*Id.* at 63:6 through 15.) Regarding aggressive behaviors, Heron Creek staff talked about calming strategies, school-wide behavior support including visual sand reorienting to the rules. (*Id.* at 63:23 through 64:4.) Regarding property destruction, Heron Creek staff reported that their response varies with specific reaction or consequence. (*Id.* at 64:11 through 16.)

288. Dr. Gilmour does not believe that Heron Creek is an appropriate placement for Student. (Tr. 7 at 19:25 through 20:6.) She opined that this was because “That setting at Heron Creek is a therapeutic support setting, and it does not work on the fundamental skills with programming, intensive ABA programming that’s really needed for Student given [his/her] behaviors and * * * current level of social skills.” (*Id.* at 20:8 through 13.)

289. On June 5, 2025, Dr. Gilmour also toured Serendipity Center. (Tr. 7 at 21:2 through 5, 24:24 through 25:2.) Dr. Gilmour found that Serendipity Center had very similar supports to Heron Creek. (*Id.* at 21:13 through 18.) She opined that Serendipity Center would not be an appropriate placement for Student because there was “no intensive programming to develop fundamental skills that we would do in ABA.” (*Id.* at 22:4 through 12.) Based on answers to her questions during the tour, Dr. Gilmour found that Serendipity Center also does not have any kind of behavior experts on staff and that they “hired out” for someone to provide behavior supports to students. (*Id.* at 40:1 through 5, 50:22 through 51:9.)

290. During the tour, Dr. Gilmour asked how the school would respond to elopement, severe aggression, and property destruction. (Tr. 7 at 62:20 through 63:5.) Serendipity staff reported that they used restraint as a last resort to elopement. They attempt to contain the Student in the building, but once the student leaves the building and is a certain distance from the school, the school calls law enforcement. (*Id.* at 63:16 through 22.) When asked about their response to aggressive behavior, Serendipity staff reported using a school-wide approach and sometimes restraint. Staff also reported the use of some restrictive interventions. (*Id.* at 64:5 through 10.) When asked about their response to property destruction, Serendipity staff reported that they have the student do clean up and call for support. (*Id.* at 64:17 through 21.)

Vanessa Tucker, Ph.D., BCBA-D, LBA

291. Dr. Tucker holds a bachelor of the arts degree in special education (K-12) and elementary education (K-8). She is a licensed teacher in the state of Washington. She received a Master of Education, Special Education, Low Incidence Disabilities, from the University of Washington in 2003. She earned her Doctorate in 2020 from the University of Washington, with a specialization in low incidence disabilities, autism, and applied behavior analysis. She is a

Board Certified Behavior Analyst, doctoral (BCBA-D). (Ex. S32 at 1.)

292. At the request of Parent's attorney, Dr. Tucker reviewed exhibits from the expedited hearing (Exhibits D1 through D28, D30 through D86, and S1 through S31) and the Final Order issued following the expedited hearing in this matter. (Tr. 6 at 606:8 through 20, 674:15 through 675:19.) Dr. Tucker also met with Parent. (*Id.* at 606:11 through 13.)

293. Following her review, Dr. Tucker wrote a summary of her findings and opinions. (Ex. S34.) In it, she opined about what constitutes a "well-formed FBA" stating:

[An] FBA, is designed to better understand the function of the behavior, or more specifically, what is maintaining it. A well-formed FBA typically includes, in addition to a beginning section on strengths, (a) operational definitions of the target behavior(s), (b) a direct observation of the student in various settings to obtain frequency, duration or other measurable data to determine a baseline, (c) indirect, qualitative information including a background/history (usually obtained via interview of school and parents), (d) indirect assessments (rating scales), and (e) data regarding setting events, antecedents, behaviors and the consequences of those behaviors. The entire data set leads to a set of summary statements that assist the team to understand what is maintaining the behavior. The potential functions include a) attention, b) escape, c) automatic (sensory) and d) pain attenuation. Some characterize function as to "access"-or "get something" and "escape"-to "get out of something."

(*Id.* at 1-2.) She went on to further opine that Student's FBA "comes short of addressing the function(s) of [Student's] behavior, which are the main reason we conduct [FBAs]." (*Id.* at 2.) Instead of listing the functions of behavior, the FBA lists skill deficits from assessments. (*Id.*)

It is only through a proper analysis that the team could hypothesize what is maintaining [his/her] behavior. The appropriate terminology would be "escape from task demand" and "obtain sensory input" (although there is no data to show this as an automatic function and no clear connection to [his/her] behavior). There is no observational data and limited baseline averages of target behaviors. There is no indirect assessment. The main elements of a well formulated FBA appear to be missing from this initial plan created only weeks after [his/her] first ODR [*sic*] of [his/her] kindergarten year.

* * * * *

Based upon the first analysis, the functionally equivalent intervention or replacement should have also noted a way to selectively address [his/her] need to escape. While it does mention sensory, it does not mention ways to address [his/her] desire to avoid work/escape task demand situations, except to block exits and give breaks. The inherent desired behaviors and outcomes are age appropriate but lack a clear connection to any function.

* * * * *

The FBA as written did not identify a clear function or target [Student's] behavioral struggles. It lacked the rigor required for the analysis of such complex behaviors. The FBA should have included [his/her] struggles with transitions and peer interactions as part of the overall findings. It should have included a summary statement that acknowledged these setting events as well as the hypothesized function(s). It should have analyzed and determined how [his/her] behaviors resulted in crisis-like responses that required intensive interventions.

(*Id.* at 2-3, 4.)

294. Regarding suspensions, Dr. Tucker opined:

Out of school suspension was used 16 times by March 12th, 2025. Despite repeated out of school suspensions, [Student's] behaviors continued, including use of inappropriate language, physical aggression toward peers and adults, large behavioral outbursts and elopements. These episodes led to contingent escape from school and access to home. The repeated exclusion of this child did not work and resulted in the “progressive discipline” of more out of school suspension. In essence, [Student's] behavior was being reinforced by contingent escape from school and task demands.

* * * * *

Suspension is a form of exclusionary discipline-it does not and did not teach [Student] anything other than “the way to home is to misbehave.” That is not FAPE. There are ample and extensive resources available to provide districts options for reducing and eliminating this type of exclusionary practice. In fact, NAEYC (National Association for Education of Young Children) published a joint statement against the practice. It is surprising, considering the sheer amount of published information designed to support behavior in early childhood (which goes through third grade), that the district resorted to this with a complex kindergarten student like [Student]. Suspension was inappropriately used in replacement of tiered interventions, use of effective consultation and re-evaluation to determine [his/her] true needs for instruction.

(Ex. S34 at 3, 4.)

295. At hearing, Dr. Tucker summarized her impressions of Student following her review of records:

Well, my sense of the profile is this is a very complex little [child]. And my

impression is that [Student] was almost consistently dysregulated in the school setting, engaging in high and variable rates of challenging behavior. And that continued from the beginning of the school year until I wrote my report. I don't have knowledge of what happened afterwards.

(Tr. 6 at 607:22 through 608:4.)

296. Dr. Tucker further opined regarding the importance of accurately identifying the function of behavior in an FBA:

When you do a functional behavior assessment, you are not proving what the function is. What you are doing is building the best case scenario of having identified a function. And the importance of that cannot be understated.

The student's behavior will generally have one or more functions, which basically explain why the student is doing this and why the student continues to do this. If the function is accurate, we'll know that, because the data afterwards should indicate that A, we were accurate, and B, that our behavior interventions work. And the target behavior decreases.

However, if the function is inaccurate, that will lead to behavior intervention planning that is not effective. And we would see behavior either continue or perhaps even escalate, which then leads to more time reinforcing the very behavior we're trying to treat.

(Tr. 6 at 609:17 through 610:10.)

297. Dr. Tucker opined that, for Student specifically, the function of behavior would be:

I would suggest the hypothesis is most likely to escape task demand. Also to escape any general request from an adult. There's a clear relationship between adults asking something of [him/her] and [his/her] saying no, or engaging in other behavior, refusal behavior.

There's also a factor of attention. In other words, [he/she] does get contingent attention from adults for the behaviors that [he/she] exhibits. So I do think that there is the potential for [him/her] to access attention. As well as every time [Student's] suspended, [he/she] gets to access home, which we would call a tangible, and all the things that go with home. I.e., attention from a parent or access to things that are calming and soothing for [Student].

(Tr. 6 at 611:4 through 18.)

298. When asked to opine on how she would have written the FBA, Dr. Tucker testified:

[In a situation where Student has] verbal aggression or -- something to that

degree. And then -- so if -- if we've got the antecedent and the challenging behavior, through a pattern of data collection, maybe what we find is [he/she] says something awful.

And then the team says, go sit. The -- the outcome is the team says, go sit in the thinking chair or whatever, something like that. And when we're studying, the ABCs of behavior, which is what this is, there are a lot of different staff reactions or things that happen. So maybe another reaction is [Student's] ignored, or [he/she] is physically prompted. That's not the same thing as a function. The function, then, is the pattern and what we see.

So if we consistently see that [Student's] told go sit in the hall, go to time-out, whatever -- whatever it is that happened, then we might say, well, based on the data, this is -- the function is escape. It's getting to escape the thing that [he/she] finds aversive to [him/her]. But that's how I would fill this out.

(Tr. 6 at 678:15 through 680:22.)

299. When asked about appropriate responses to Student's unwanted behaviors, Dr. Tucker opined that she would use antecedent-based interventions to prevent the unwanted behaviors from occurring. To accomplish this, she would change how the adults working with Student interacted with him/her and how they gave him/her verbal directions. (Tr. 6 at 612:8 through 21.) She further opined that she would then change the response to the behavior, which "might be not providing contingent reinforcement right away, or simply just allowing a minute to go by before interacting." (*Id.* at 612:22 through 613:1.) Furthermore, Dr. Tucker opined, if Student was able to de-escalate, he/she should not then be suspended because that is the appropriate time to reintegrate Student into the educational setting and reinforce the re-regulation. (*Id.* at 613:5 through 17.) She opined that, "what [Student] needs to learn, [is] that, yes, you can feel difficult feelings. And when you start to re-regulate, that's the time for adults to support you in your learning, and to help you to reintegrate back into class. It's not possible when [he/she] is at home to do that." (*Id.* at 613:18 through 23.)

300. When discussing edits the District made to the BSP during the 2024/2025 school year, Dr. Turner opined that: The function of the behavior(s) was missing, which is a critical piece of the BSP, since "the functions drive the interventions." (Tr. 6 at 615:3 through 5.) The strategies/interventions need to match the function of behavior. While there were several sensory-based intervention changes, they were not directly connected to escaping task demand. To determine what interventions were best, Dr. Turner would have used several different assessments to find Student's triggers at school. The BSP lacked teaching strategies to help Student find better ways to escape when things got hard, such as asking for a break. Dr. Turner noted that some of the strategies, such as giving Student snacks or art, could reinforce his/her escalating behavior. While these strategies may abate Student's behavior in the moment, they will not work long-term. Some strategies that may work when Student is dysregulated included teaching him/her to ask for a break or ask to do only part of the work. Performing a Zones of Regulation check-in when Student is dysregulated is problematic because you typically cannot rationalize with a dysregulated student. (*Id.* at 615:12 through 618:16.)

301. When discussing Dr. Tucker's recommendations for Student moving forward, Dr. Tucker cautioned that "there's plenty of literature to support the fact that a one-to-one paraprofessional can actually be detrimental [and so,] perhaps you have two who rotate to support [Student], who are trained and supervised consistently by that support team." (Tr. 6 at 636:23 through 637:2.)

CONCLUSIONS OF LAW

1a) The District violated IDEA and denied Student a FAPE from January 28, 2025 to May 12, 2025, by failing to deliver all of Student's minutes of SDI while he/she was suspended from school. However, the District did not violate the IDEA or deny Student a FAPE from August 2024 to May 12, 2025, by failing to deliver all of Student's minutes of SDI while he/she was at school.

1b) The District did not violate the IDEA or deny Student a FAPE from August 2024 to December 2, 2024 by failing to implement the behavior interventions in the BSP with fidelity. The issue of whether the District violated the IDEA and/or denied Student a FAPE from December 2, 2024 through May 12, 2025, is moot because Student's BSP was inappropriate and did not provide Student a FAPE starting on December 2, 2024.

2) When developing the May 2024 IEP, the October 2024 Amended IEP, the March 2025 Amended IEP, and the April 2025 Amended IEP, the District did not violate the IDEA or deny Student a FAPE by:

- a. Failing to incorporate sufficient amounts of SDI for Student to make progress in the areas of behavior and social/emotional;
- b. Failing to develop measurable and reasonably ambitious goals;
- c. Failing to provide appropriate supplementary aids and services in the form of trained, dedicated 1:1 support; or
- d. Failing to provide appropriate behavior services such as an RBT, a BCBA to consult on the BSP and oversee implementation, and training for staff members working with Student.

3) The District violated the IDEA and denied Student a FAPE in March 2025 when it changed Student's placement to a therapeutic day school instead of considering additional supports and services to maintain Student in his/her least restrictive environment.

4) The District violated the IDEA and denied Student a FAPE from January 28, 2025, to May 12, 2025, by improperly changing Student's educational placement when it imposed more than 10 cumulative school days of disciplinary removals in violation of OAR 581-015-2415.

5) The District violated the IDEA and denied Student a FAPE from December 2, 2024 to May 12, 2025 by failing to either conduct a functional behavior assessment or review the behavior support plan and modify as necessary to address Student's unwanted behavior subsequent to MDRs in violation of OAR 581-015-2415(4)(b).

6a) The District did not predetermine Student's placement at a therapeutic day school in March 2025 and therefore did not violate the IDEA by denying Parent meaningful parental participation.

6b) The District's refusal to allow an observation of Student's educational program by Parents' private BCBA Dr. Gilmour did not violate the IDEA or deny Parent meaningful parental participation.

6c) The District did not fail to provide the Parent with sufficient information about behavior incidents at school and behaviors that caused Student to be suspended and therefore did not violate the IDEA or deny Parent meaningful parental participation.

6d) The District did not fail to provide the Parents with documentation of suspensions therefore did not violate the IDEA or deny Parent meaningful parental participation.

7) The District did not violate the IDEA or deny Student a FAPE from August 2024 to May 12, 2025, by failing to conduct an appropriate FBA which included the function of behavior, appropriate assessments, observation reports, and behavior data.

8) Parent is entitled to relief as outlined in this order.

OPINION

In administrative hearings, a party who bears the burden must establish each fact or position by a preponderance of the evidence. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (in administrative actions, the standard of proof that generally applies in agency proceedings, including license-related proceedings, is the preponderance standard.); see also *Cook v. Employment Division*, 47 Or App 437 (1980) (in absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is convinced that the facts asserted are more likely true than false. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

In due process proceedings alleging violations of the IDEA³⁰, 20 U.S.C § 1400 *et seq.*, the party seeking relief has the burden of proof. *Schaffer v. Weast*, 546 U.S. 49 (2005). In this matter, Parent filed an Amended Complaint alleging violations of the IDEA, resulting in a denial of a FAPE to Student during the period in issue. Parent seeks the following remedies: a finding

³⁰ Congress amended the IDEA with the Individuals with Disabilities Education Improvement Act (IDEIA) of 2004. The ease of reading and reference, this order refers to the commonly accepted acronym of the original act, *to wit* IDEA.

that the District violated the IDEA and denied Student a FAPE; compensatory special education and related services for Student to allow him/her to obtain the educational benefit that he/she would have received but for the District's violations of the IDEA and denial of FAPE; an Order that the District develop an IEP going forward that is appropriate and reasonably calculated to meet Student's unique needs; and any additional relief the Court may find just and equitable. Contrary to Parent's argument in her closing brief that the District bears the burden of proof in this matter, the burden rests on Parent to prove by a preponderance of the evidence the violations alleged in the Amended Complaint and the appropriateness of the remedies sought.

The IDEA was enacted to require state educational agencies (SEA) receiving federal funds to provide special education services for students with qualifying disabilities. *See* 20 U.S.C. § 1400(d)(1)(A). To meet its substantive obligation under the IDEA, a school district must offer an "individualized education program" reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. v. Douglas County School District*, 580 U.S. 386, 399 (2017). Under the IDEA, all children deemed eligible for special education have a right to receive a FAPE. 20 U.S.C. § 1412(1). The IDEA defines FAPE as special education and related services that: (a) have been provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the state educational agency; (c) include an appropriate preschool, elementary, or secondary school education in the state involved; and (d) are provided in conformity with the IEP required under § 1414(a)(5) of the IDEA. 20 U.S.C. § 1401(a)(18); *Amanda J. v. Clark County School Dist.*, 267 F3d 877, 890 (9th Cir. 2001).

Determining whether a school district provided a student with a FAPE is a twofold inquiry: (1) whether the district complied with the procedures set forth in the IDEA; and (2) whether the IEP developed through those procedures was reasonably calculated to enable the child to receive educational benefits. *Board of Educ. of Hendrick Hudson School District v. Rowley*, 458 U.S. 176 (1982). Further, the United States Supreme Court has determined that, for an IEP to be deemed sufficient to meet the stated goals, it must be appropriately ambitious in light of the child's unique needs and circumstances. *Endrew F.*, 580 U.S. at 402.

In this matter, Parents allege violations surrounding the development and implementation of Student's IEPs and BSPs, placement changes, and parental participation. To promote clarity and readability, this order addresses the issues from Parent's Amended Complaint in an order different than they are laid out in the Issues and Conclusions of Law sections.³¹

Development of Student's IEPs

Parent alleges that the District violated the IDEA and denied Student a FAPE from May of 2024 through the date of the Amended Complaint (May 12, 2025) by failing to develop appropriate IEPs. Specifically, Parent alleges that the District: failed to develop measurable and reasonably ambitious goals (Issue (2)(b)); failed to incorporate sufficient amounts of SDI time into the IEPs to allow Student to make progress in the areas of behavior and social/emotional (Issue (2)(a)); failed to provide appropriate supplementary aids and services in the form of

³¹ The issues have been identified by issue number within each section of the opinion to aid the reader.

trained, dedicated 1:1 adult support (Issue (2)(c)); and failed to provided “appropriate behavior services,” including an RBT and BCBA to consult on the BSP and oversee implementation, and training for staff members working with Student (Issue (2)(d)).

Student’s initial IEP was developed on May 30, 2024, and was then amended three times, on October 23, 2024, March 13, 2025, and April 11, 2025.³² Parent challenges the sufficiency of each IEP. Accordingly, a general overview of the legal requirements for IEP content and implementation is appropriate before addressing Parent’s specific allegations for each IEP.

OAR 581-015-2200 sets forth the requirements for the minimum content of a disabled student’s IEP and provides, in part:

- (1) The individualized education program (IEP) must include:
 - (a) A statement of the child’s present levels of academic achievement and functional performance, including how the child’s disability affects the child’s involvement and progress in the general education curriculum.
 - (b) A statement of measurable annual goals, including academic and functional goals (and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives) designed to:
 - (A) Meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (B) Meet each of the child’s other educational needs that result from the child’s disability.
 - (c) A description of how the child’s progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
 - (d) A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

³² Student’s annual IEP was developed on May 27, 2025. However, because this IEP was developed after the date of the Amended Complaint, it is outside the period at issue and will not be addressed in this order. Portions of the IEP were included in the Findings of Fact, above, to help paint a complete picture of the 2024/2025 academic year.

- (A) To advance appropriately toward attaining the annual goals;
- (B) To be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
- (C) To be educated and participate with other children with disabilities and children without disabilities,
- (e) The projected dates for initiation of services and modifications and the anticipated frequency, amount, location and duration of the services and modifications described in subsection (1)(d) of this rule.
- (f) An explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and activities described in subsection (1)(d) of this rule.
- (g) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments of student achievement that are needed for the child to participate in the assessment:
- (A) A child may not be exempt from participation in State or district-wide assessment, including extended and juried assessments, because of a disability, unless the parent has requested an exemption under OAR 581-022-0612.
- (B) If the IEP team determines that the child must take the alternate assessment instead of the regular Statewide or a district-wide assessment, a statement of why the child cannot participate in the regular assessment, and why the alternate assessment is appropriate for the child.

OAR 581-015-2205 provides team considerations and special factors to be used in developing a disabled student's IEP and provides:

- (1) In developing, reviewing and revising the child's IEP, the IEP team must consider:
 - (a) The strengths of the child;
 - (b) The concerns of the parents for enhancing the education of their child;
 - (c) The results of the initial or most recent evaluation of the child; and
 - (d) The academic, developmental, and functional needs of the child.

(2) In developing, reviewing and revising the child's IEP, the IEP team must consider the following special factors:

(a) The communication needs of the child; and

(b) Whether the child needs assistive technology devices and services.

(3) In developing, reviewing and revising the IEP of children described below, the IEP team must consider the following additional special factors:

(a) For a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies to address that behavior[.]

* * * * *

(4) If, in considering these special factors, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) for the child to receive free appropriate public education, the IEP team must include a statement to that effect in the child's IEP.

(5) Nothing in OAR 581-015-2200 or this rule may be construed to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

Finally, OAR 581-015-2225 establishes requirements for the periodic review and revision of a disabled student's IEP and provides, in pertinent part:

(1) Annual review: Each school district must ensure that the IEP Team reviews the child's IEP periodically, but at least once every 365 days, to:

(a) Determine whether the annual goals for the child are being achieved; and

(b) Revise the IEP, as appropriate, to address:

(A) Any lack of expected progress toward the annual goals described in OAR 581-015-2200 and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under OAR 581-015-2105;

(C) Information about the child provided to, or by, the parents;

(D) The child's anticipated needs; or

(E) Other matters.

(2) Agreement to amend or modify IEP

(a) In making changes to a child's IEP between annual IEP Team meetings, the parent of a child with a disability and the school district may agree not to hold an IEP Team meeting to make these changes, and instead may develop a written document to amend or modify the child's current IEP.

(b) If changes are made to the child's IEP in accordance with subsection (1), the district must ensure that the child's IEP team is informed of these changes.

(3) Amendments to IEP

(a) Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in subsection (2) by amending the IEP rather than by redrafting the entire IEP.

(b) Upon request, the parent must be provided with a revised copy of the IEP with the amendments incorporated.

The IEP, tailored to the unique needs of each disabled student, is the mechanism by which a school district delivers the IDEA's guarantee of a FAPE to a disabled student. *See, Rowley*, 458 U.S. at 180. The Supreme Court, in *Endrew F.*, further clarified the importance and requirements of the IEP in a disabled student's education. 580 U.S. at 399-400. The student in *Endrew F.* was diagnosed with autism at age two. He attended school in the Douglas County School District from preschool through fourth grade. However, by the end of fourth grade, his progress had stalled. The student exhibited behaviors which impeded his ability access general education – screaming in class, climbing over furniture and peers, and eloping. He had severe fears of routine things, such as flies, spills, and public restrooms. *Id.* at 395. The student made little to no progress towards his IEP goals, which were recycled year-to-year. When the school district presented an IEP for the student's fifth grade year that was substantially similar to all prior IEPs, the student's parents moved him to a private placement at a school specializing in children with autism. *Id.* The private school developed a behavior intervention plan for the student which identified his most problematic behaviors, along with strategies for addressing those behaviors. *Id.* at 395-396. Within a few months, the student's behavior "improved significantly," and he was able to make academic progress – something that he had not done in public school. *Id.* at 396. When the student's parents met with the public school approximately six months after he started attending the private school, the school district presented a new IEP which parents considered as inadequate as the previously offered IEPs. The plan for addressing the student's behaviors in the proposed IEP did not differ meaningfully from the prior IEPs, despite the student's progress at private school that showed he would benefit from different behavioral supports. *Id.*

When discussing what constitutes an appropriate IEP, the Court adopted the following standard:

The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. This absence of a bright-line rule, however, should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review.

Id. at 1001 (quoting *Rowley*, 458 U.S. at 206) (internal quotes omitted). The Court explained that an IEP must strive to enable the child to make progress; “[a]fter all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Id.* The Court went on to state that an “IEP need not aim for grade-level advancement. But [the IEP] must be appropriately ambitious in light of [the child’s] circumstances. * * * The goals may differ, but every child should have the chance to meet challenging objectives.” *Id.* at 1000.

With this in mind, each of Student’s IEPs are addressed below.

A. May 30, 2024 IEP

Parent argues that when developing the May 2024 IEP, the District “significantly reduced [Student’s] services, ignored [his/her] known behavioral needs, and recycled goals [he/she] had already mastered.” Parent’s Closing Brief at 2. Subsequently, Student entered kindergarten “without a transition plan and with inadequate support.” *Id.* As a result, Parent argues, Student’s behavior “quickly escalated,” resulting in the District’s ultimate decision to change Student’s placement to a therapeutic day school. *Id.*

a. Failure to develop measurable and reasonably ambitious goals

Parent’s first argument regarding the May 2024 IEP is that it failed to develop measurable and reasonably ambitious goals. Parent summarizes her argument as follows:

[The] May 30, 2024, IEP included only two goals, one in social/emotional behavior and one in self-management, both of which were vague, unambitious, and lacked measurable performance criteria. The social/emotional goal required [Student] to identify emotions using a visual cue, but failed to define what constituted mastery or independence. Similarly, the self-management goal required [Student] to transition between activities within one minute, a skill [he/she] had already mastered during preschool. These goals were recycled from earlier IFSPs and failed to reflect [Student’s] evolving needs or capacity for growth.

Parent Closing Brief at 41. (Internal citations omitted.) Accordingly, Parent continues, the IEP “misrepresented [Student’s] present levels [and] deprived [him/her] of the chance to work on new skills.” *Id.* at 5. To support these contentions, Parent points to Dr. Tucker’s testimony:

Dr. Tucker testified that these goals lacked ambition and were not grounded in baseline data, rendering them meaningless for tracking progress or informing instruction. The goals did not specify data collection methods, mastery

thresholds, or expected rates of improvement, making it impossible for the team to evaluate whether [Student] was benefiting from [his/her] education.

Parent Closing Brief at 42-43. (Internal citations omitted.)

Whether the goals in Student's IEP were measurable and reasonably ambitious are two separate determinations. Each is addressed below.

i. Reasonably ambitious goals

Student's IFSP was drafted on March 8, 2024, less than three months before the May 2024 IEP was drafted. The March 2024 IFSP contained three goals, including a cognitive goal ("[Student] will attend to activities across classroom environment"), an adaptive goal ("[Student] will independently transition between activities and participate in classroom routines"), and a social/emotional goal ("During a conflict [Student] will resolve [his/her] differences with [his/her] peers"). Exhibit D6 at 8. Each goal had several short-term objectives, set out in detail in Findings of Fact #9-11, above.

Student's May 2024 IEP contained two goals, a social/emotional/behavior goal ("Given a social scenario and an emotion visual, [Student] will identify a possible feeling of the individual in the scenario and a possible self-regulation activity they could implement with 80% accuracy in 3 out of 4 opportunities by spring 2025") and a self-management goal ("Given verbal, tactile and/or visual cues during a transition time, [Student] will transition to the next activity within 1 minute of the given direction in 3 out of 4 opportunities by spring term of the following school year"). Exhibit D10 at 8-9. These goals did not contain any short-term objectives.

As discussed above, an IEP must take into account the unique circumstances of each individual child and the goals must be appropriately ambitious in light of the child's unique needs and circumstances. In *Los Angeles Unified School District v. A.O. by & through Owens*, 92 F.4th 1159 (9th Cir. 2024), the Ninth Circuit Court of Appeals reiterated that an IEP must aim for more than minimal progress and that a program offering only de minimis progress is insufficient under the IDEA. *Id.* at 1172.

In *Capistrano Unified Sch. Dist. v. S.W.*, 21 F.4th 1125 (9th Cir. 2021), the Ninth Circuit Court of Appeals addressed a claim by parents that the goals in the IEP offered by the school district were inadequate because they failed to take into account the student's unique needs. The court found that the IEP goals were targeted to the student's needs, citing:

"[A]n IEP is not required to contain every goal from which a student might benefit." *R.F. by & through E.F. v. Cecil Cnty. Pub. Schs.*, 919 F.3d 237, 251 (4th Cir. 2019) (citation omitted); *see also E. R. by E. R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 768 (5th Cir. 2018) (per curiam) (not requiring "excessive goals").

Capistrano at 1133.

Moreover, the Ninth Circuit Court of Appeals has also routinely held that:

The appropriateness of a student’s eligibility should be assessed in terms of its appropriateness at the time of the child’s evaluation and not from the perspective of a later time with the benefit of hindsight. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). * * * We employ what is termed the “snapshot” rule that instructs the court to judge the appropriateness of the determination on the basis of the information reasonably available to the parties at the time of the IEP meeting. *Id.* **“An IEP must take into account what was and was not, objectively reasonable when the snapshot was taken.”** *Id.* (citation omitted). We judge the eligibility decision on the basis of whether it took the relevant information into account, not on whether or not it worked. *Id.*

L.J. by & through Hudson v. Pittsburg Unified Sch. Dist., 850 F.3d 996, 1004 (9th Cir 2017). Emphasis in original.

The goals in Student’s May 2024 IEP are clearly less detailed than the goals found in Student’s IFSP. However, the persuasive evidence is that the goals in May 2024 IEP were tailored to Student’s unique needs – targeting Student’s struggles of transitioning between activities and working on self-regulation strategies. Additionally, it is important to take into account the differences between preschool and kindergarten – particularly the shift from a play-based method of learning to a structured formal academic setting requiring sustained focus. These differences could make transitions and self-regulation particularly challenging for Student. As Ms. Peterson testified, the District used the IFSP goals as ideas for goals in the IEP, but “wrote them in a way that would be most appropriate for a school-aged student and a year’s growth[.]” Transcript 4 at 28:13-16.

While Parent argues that Student had already mastered these goals in preschool, she provided no evidence to support such a finding. Additionally, there is no persuasive evidence in the record that Parent objected to the goals as inadequate or suggested changes to the goals at the time of the May 30, 2024 IEP meeting or thereafter.³³ Finally, notes in the March 8, 2024 IFSP specifically provide that a potential next goal for Student could include “identify feelings, and choose a calming strategy with adult support.” Exhibit D6 at 6.

Considering the information reasonably available to the IEP team at the time of the IEP meeting, the persuasive evidence shows that the goals set out in Student’s May 2024 IEP were objectively and reasonably ambitious for Student, given his/her unique circumstances.

ii. *Measurable goals*

³³ At the hearing, Parent testified that she had “voiced concerns over the things that were getting written” about the goals in the May 2024 IEP. (Tr. 6 at 700:19 through 22.) However, on cross examination when asked if she told the IEP team that the content of the IEP goals was inappropriate for Student, Parent responded that “I don’t recall that conversation.” (*Id.* at 787:1 through 8.)

Under OAR 581-015-2200(1)(b), the IEP must include “measurable annual goals.” In *Capistrano*, the Ninth Circuit Court of Appeals discussed what constituted a measurable goal. In that case, parents argued that the IEP goals were insufficient because they were not measurable. The Court reviewed what was required by the IDEA:

An IEP must include “a statement of measurable annual goals.” 20 U.S.C. § 1414(d)(1)(A)(i)(II); *see also* 34 C.F.R. § 300.320(a)(2). And an IEP must also describe “how the child’s progress toward meeting the annual goals ... will be measured.” *Id.* § 1414(d)(1)(A)(i)(III); *see also* 34 C.F.R. § 300.320(a)(3). But there is no specific form of measurement required by statute or caselaw. *Cf. R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1122 (9th Cir. 2011) (goal measurement can be “based on teachers’ subjective observations”). Thus, goals could be measured ordinally (*e.g.*, no improvement/some improvement/ significant improvement), quantitatively, or in some other way.

Id. at 1134. The Court found that the student’s IEP goals were measurable:

Here, ample evidence in the record supports that the first grade IEP proposed measurable goals. For example, one goal stated that [the student] “will attend to the teacher ... for 20 minutes, with no more than 2 prompts, in 4/5 given opportunities, over 2 consecutive weeks.” The goals noted the evaluation methods, persons responsible for measuring the goals, and benchmarks for progress. The goals also noted that regular progress reports would be provided to [the student’s] parents.

Id. at 1135.

Like the goal cited in *Capistrano*, the goals found in Student’s IEP were likewise measurable. The goals indicated that progress would be measured by teacher observation, with progress reported during normal grading cycles. The goals indicated the evaluation methods (observation), the person responsible for measuring the goals (teacher), and the benchmarks for progress (*i.e.*, identify a possible feeling and self-regulation activity with 80% accuracy in 3 out of 4 opportunities). Additionally, District witnesses testified that the goals were written in a manner which would allow them to track progress over time. Therefore, the goals in Student’s May 2024 IEP were adequately measurable and reasonably ambitious for Student, given his/her unique circumstances.

b. Failure to incorporate sufficient amounts of SDI time to allow Student to make progress in the areas of behavior and social/emotional

Parent next argues that the amount of SDI time in the May 2024 IEP was inadequate to allow Student to make progress in the areas of behavior - social/emotional. The May 2024 IEP provided for 30 minutes of SDI per week for the behavior (social/emotional) goal and 30 minutes of SDI per week for the self-management goal. Parent argues that the amount of SDI provided in

the IEP was “[b]latantly inadequate given [Student’s] intensive needs * * * in the areas of social-emotional learning, self-regulation, academics, and behavior.” Parent’s Closing Brief at 5, 29.

As a preliminary matter, the evidence in the record does not support Parent’s argument that Student had “intensive needs” in academics at the time the May 2024 IEP was implemented. The District provided persuasive evidence that Student entered the 2024/2025 year at a similar academic level as his/her peers. While Student’s academic progress did not progress throughout the year, there is no evidence that Student required any SDI in the area of academics at the time of the May 2024 IEP.

Further, the May 2024 IEP actually increased Student’s SDI minutes in the area of cognitive, adaptive, and social skills from Student’s IFSP of 0.81 hours per week (approximately 49 minutes per week), to 60 minutes per week of SDI (30 minutes for behavior and 30 minutes for self-management). There is no evidence that Parent raised any concerns about the number of SDI minutes Student was to receive with respect to the May 2024 IEP.³⁴ Considering the information reasonably available to the IEP team at the time of the IEP meeting, the persuasive evidence shows that the SDI time set out in Student’s May 2024 IEP was objectively and reasonably sufficient to confer meaningful benefit on Student, given his/her unique circumstances.

Parent also argues that, during the October 2024 IEP team meeting, “the District increased [Student’s] specialized instruction time from one hour per week to three hours per week – reflecting that the original IEP’s service levels were too low.” Parent Closing Brief at 13. Considering the principals of the “snapshot” rule (*see, L.J. by & through Hudson v. Pittsburgh Unified Sch. Dist., supra*), the fact that the IEP team determined in October of 2024 that Student required three hours of SDI does not show that the amount of SDI time in the May 2024 IEP was objectively unreasonable at the time the May 2024 IEP was created.

c. Failure to provide appropriate supplementary aids and services in the form of a trained, dedicated 1:1 adult support

Parent argues that in preschool, Student was supported by “two highly trained individuals, Ozzy and Robin, who provided dedicated one-on-one support throughout [Student’s] preschool day.” Parent’s Closing Brief at 4. This support, Parent claims, was “a key factor” in Student’s success and ability to make meaningful progress on his/her IFSP goals. *Id.* As set forth above, the evidence at hearing is not persuasive that Student had a full-time dedicated 1:1 aide while attending preschool. While Student may have received significant adult support at preschool, particularly from the provider “Ozzy,” there is no evidence that this support was provided on a 1:1 basis throughout Student’s entire day. Student’s IFSP did not provide for any adult support, let alone 1:1 dedicated adult support. The May 2024 IEP, in contrast, provided, as a supplementary aid/service, adult assistance available for “safety (eloping), transitions, self-

³⁴ Again, Parent testified that she expressed that she thought Student required more SDI time for the goals in the May 2024 IEP. (Tr. 6 at 700:23 through 701:4.) However, when asked on cross examination whether she told the IEP team during the development of the May 30 IEP whether the amount of SDI listed was sufficient for Student, Parent responded “I don’t recall that conversation now.” (*Id.* at 786:6 through 25.)

regulation, [and] toileting.” Exhibit D10 at 10. There is no persuasive evidence in the record that Parent notified the District that Student required a 1:1 dedicated adult support during his/her day, or that she requested such a support be added to Student’s May 2024 IEP. Considering the information reasonably available to the IEP team at the time of the IEP meeting, the persuasive evidence shows that not including a trained, dedicated 1:1 adult support in Student’s May 2024 IEP was objectively reasonable. Parent has not met her burden to show that the District failed to provide appropriate supplementary aids and services in the form of a trained, dedicated 1:1 adult support aid for Student in the May 2024 IEP.

d. Failure to provide behavior services, including an RBT and BCBA to consult on the BSP and oversee implementation, and training for staff members working with Student

Parent’s next argument is that the District failed to provide appropriate behavior services in Student’s May 2024 IEP. Specifically, Parent argues that the District should have sought out expert behavior support for the creation and implementation of Student’s BSP from a consultant BCBA, implemented a 1:1 aide for Student, and trained staff in ABA. Parent argues that the District should have engaged a BCBA to consult on Student’s BSP and to provide training to staff. According to Parent, this was necessary for Student to make any progress in a general education setting.

Parent’s argument that the District should have implemented a 1:1 aide for Student is addressed above and will not be repeated here. Additionally, at the time of the May 2024 IEP, Student did not have a BSP and the evidence did not show that one was necessary. It therefore would have been unnecessary for the District to contract with a BCBA to support the District on a BSP at that time.

Parent’s final argument is that District staff working with Student required behavioral support training. To support this argument, Parent argues that “[s]taff reports and emails document their inability to manage [Student’s] behavior or collect meaningful behavior data.” Parent Closing Brief at 47-48. To support this contention, Parent cites to Exhibits S24 at page 1 and S25 at page 2. However, Exhibit S24 at page 1 is a handwritten letter from Mrs. Norvald stating that Student had a great week in her class and that she was proud of Student. Exhibit S25 only has one page, so page 2 does not exist. Page one is a copy of a behavior data tracking sheet from April 14, 2025, but does not include any information about staff being unable to manage Student’s behavior or collect meaningful data. Thus, Parent’s first argument as to why District staff required training at the time of the May 2024 IEP is without merit.

Furthermore, the record supports a finding that most District staff working with Student were MANDT trained. Those that were not MANDT trained were scheduled for the training shortly after being engaged to work with Student. Moreover, the evidence also shows that all paraeducators working with Student received ongoing support and training on Student’s IEP and BSP from Ms. Zeis.

Parent also appears to argue that District staff required specific training in ABA. The IDEA does not mandate that Districts use specific methodologies, such as ABA, in IEPs. Rather,

as discussed above, the IDEA requires that the IEP be tailored to meet the unique needs of the student in order to provide a FAPE. While the District certainly could have elected to use ABA services and train their staff accordingly, Parent has not shown that the District was required to do so, or that other behavioral methodologies available at the time the May 2024 IEP was created, were insufficient.

For the foregoing reasons, Parent did not show that the District failed to provide appropriate behavior services for Student in the May 2024 IEP by not seeking out expert behavior support from a consultant, implementing a 1:1 aide for Student, or training staff in ABA.

B. October 23, 2024 Amended IEP

The IEP Team met in October of 2024 and amended Student's IEP due to Student's struggles with unwanted behaviors. The team added a third goal regarding transitions ("given a 5 minute warning before a transition and a warning of what is coming next, [Student] will safely complete the transition in 3 out of 4 transitions back to the classroom by spring 2025"). Ex. D19 at 10. The IEP also increased Student's SDI to 60 minutes per week for behavior and 60 minutes per week for self-management, and added 60 minutes per week for transition. The team added adult support throughout Student's entire day to support safety, transitions, and self-regulation as a supplementary aid/service. The IEP was also amended to allow Student to show his/her knowledge in varied ways to support engagement, to utilize Student's BSP to support behaviors, and to include a school-to-home communication on behavior and time spent in the general education classroom. The team changed Student's placement from general education with push-in and/or pull-out support (SECC 30) to general education with program level of support outside of general education classroom (SECC 33), where Student would spend less than 40% of his/her day in a general education classroom.

a. Failure to develop measurable and reasonably ambitious goals

Parent argues that despite the District's inclusion of an additional goal and increase in SDI time, "the same vague behavior and self-management goals were retained, without any added precision or measurable benchmarks." Parent Closing Brief at 43.

For the same reasons discussed above, the behavior and self-management goals in the October 2024 Amended IEP were both measurable and reasonably ambitious. Considering the behaviors and difficulties District staff observed of Student in the first several weeks of school, the addition of the transition goal was reasonable and reasonably ambitious for Student. Likewise, the transition goal, like the other two goals retained from the May 2024 IEP, was measurable. The goal indicated the evaluation methods (observation), the person responsible for measuring the goals (teacher), and the benchmarks for progress (*i.e.*, safely complete transition back to classroom in 3 out of 4 situations). Therefore, the goals in Student's October 2024 Amended IEP were adequately measurable and reasonably ambitious for Student, given his/her unique circumstances.

b. Failure to incorporate sufficient amounts of SDI time to allow Student to make progress in the areas of behavior and social/emotional

Parent argues that “the calculation of the three [SDI] hours per week was unclear, as it may have included time spent in a social skills group or the learning center, leading to confusion about the actual service hours provided.” Parent Closing Brief at 13. To support this argument, Parent cites to Exhibit D19, pages 12-13, which is two pages of supplementary aids/services; accommodations from Student’s October 2024 Amended IEP. However, nothing in Exhibit D19 at pages 12-13 discusses time spent in social skills group or the learning center. What confusion Parent is pointing to is unclear. Furthermore, there is no evidence that Parent raised any concerns about the number of SDI minutes Student was to receive with respect to the October 2024 Amended IEP. Parent has failed to show that the SDI minutes in the October 2024 Amended IEP were insufficient to confer meaningful benefit to Student.

c. Failure to provide appropriate supplementary aids and services in the form of a trained, dedicated 1:1 adult support

In the October 2024 Amended IEP, the District added 1:1 adult support to the supplementary aid/services for Student throughout his/her entire day. Parent argues that, despite the inclusion of the 1:1 adult support in the IEP, the District “failed to ensure consistent, trained 1:1 support. Instead, [Student] continued to be supported by a rotating cast of untrained staff, with no evidence of dedicated or qualified personnel implementing the IEP’s 1:1 aide requirement.” Parent Closing Brief at 45. (Internal citations omitted.) Parent continues, “the failure to include and implement trained 1:1 adult support as a supplementary aid denied [Student] access to the general education environment, impeded [his/her] receipt of SDI, and exacerbated [his/her] behavioral challenges.” *Id.* at 46.

As a preliminary matter, Parent has failed to show that a *dedicated* 1:1 adult support for Student was a necessary supplementary aid or service that would benefit Student. Both the District and Parent’s own witness provided persuasive testimony that having a single adult working with a student at all times can cause over-reliance on that adult and have a detrimental impact on the student. While the District determined that Student required 1:1 adult support throughout his/her school day, the evidence does not support a finding that a single dedicated aide was required to support Student.

Finally, Parent’s argument as to the “trained” portion of this issue is unclear. To the extent that Parent argues that training the dedicated 1:1 adult support personnel should have been written into the IEP, Parent has failed to show what training was or should have been required. If Parent is arguing that the adult supports assigned to Student were not adequately trained, that argument speaks to the implementation rather than to the development of Student’s October 2024 IEP and was not raised in the Amended Complaint.³⁵

³⁵ Parent did raise an issue as to the training for staff in the development of Student’s BSP (Issue 2d), which is addressed below.

- d. Failure to provide behavior services, including an RBT and BCBA to consult on the BSP and oversee implementation, and training for staff members working with Student*

In the October 2024 Amended IEP, the IEP team included a BSP as a supplementary aid/service that District staff were to utilize. As discussed in more detail below, at that time, Ms. Williams had conducted an FBA in mid-to-late September, and the IEP team had developed a BSP, based on that FBA, on September 24, 2024. The evidence does not support a finding that, as of the October 2024 Amended IEP, the District was yet aware or should have been aware that Student's BSP was ineffective to address Student's unwanted behaviors. As such, I am not persuaded that the District's failure to seek out expert behavior support from a BCBA in October 2024 resulted in a violation of the IDEA or a denial of FAPE to Student. Additionally, for the same reasons listed above, Parent failed to show that the District did not provide appropriate behavior services for Student in the October 2024 Amended IEP by not training staff in ABA.

C. March 13, 2025 Amended IEP

During the March 13, 2025 IEP meeting, the IEP team determined that Student had mastered the IEP goal regarding identifying a possible feeling of an individual in a scenario. The District provided information that, when given a problem Student could identify the emotion of the individual involved and provide a possible self-regulation strategy that he/she could implement with 90% accuracy. The team determined that Student needed work practicing the skills with peers when problems arose. Accordingly, the team wrote a new social/emotional behavior goal of: "When given two or more self-regulation strategy options, during a moment of frustration [Student] will choose a self-regulation strategy and implement that strategy when prompted verbally and/or visually in 3 out of 4 opportunities by winter 2025." Exhibit D46 at 10.

- a. Failure to develop measurable and reasonably ambitious goals*

Parent makes no specific argument in her closing brief regarding the goals found in the March 2025 Amended IEP, focusing instead on the change in placement to a therapeutic day school. To the extent Parent disputes that the retained IEP goals and added IEP goal in the March 2025 Amended IEP lacked ambition and were not reasonably measurable, Parent has failed to meet her burden. As discussed above, the IEP team determined that Student had met the social/emotional behavior goal and that a new goal was appropriate in the March 2025 Amended IEP. The team, using data collected by District staff, found that Student had met the prior goal with 90% accuracy. The team also determined that this goal was the logical next step, given Student's need to practice the skill when problems arose with peers. The new goal had Student choose a self-regulation strategy and implement the strategy during a moment of frustration with a peer. Despite the team knowing that Student's BSP was not effective, the evidence is that this goal was reasonably ambitious for Student given his/her unique circumstances and behavior challenges faced during the school year. The goal was also adequately measurable in the same manner as the other goals found in Student's previous IEPs.

- b. Failure to incorporate sufficient amounts of SDI time to allow Student to make progress in the areas of behavior and social/emotional*

Again, Parent makes no specific argument in her closing brief regarding the amount of SDI time in the March 2025 Amended IEP. To the extent that Parent disputes that the March 2025 Amended IEP failed to incorporate sufficient amounts of SDI time to allow Student to make meaningful progress, she has failed to meet her burden. There is no evidence in the record that the amount of SDI time included in the March 2025 Amended IEP was insufficient to meet Student's needs. Furthermore, there is no evidence that Parent raised any concerns about the number of SDI minutes Student was to receive with respect to the March 2025 Amended IEP. While it is clear that Student needed different behavior supports than those offered by the District as of March 2025, Parent did not provide evidence showing that additional SDI time would have helped Student.

c. Failure to provide appropriate supplementary aids and services in the form of a trained, dedicated 1:1 adult support

Parent maintains her argument that the District's failure to provide Student with dedicated 1:1 adult support denied Student a FAPE. Specifically, Parent argues that "[t]he lack of a consistent 1:1 staff member meant there was no adult available to teach, reinforce, or monitor replacement behaviors." Parent Closing Brief at 46. Similar to Student's October 2024 Amended IEP, discussed in detail in Section B.c. above, the record in this matter fails to show that Student required a trained, dedicated 1:1 adult support as of the March 2025 Amended IEP. Rather, the preponderant weight of the evidence demonstrates that use of a single adult support for Student would likely have compounded his/her behavior issues. Thus, Parent failed to meet their burden to prove, by a preponderance of the evidence, that a *dedicated* 1:1 support was necessary for Student to receive a FAPE.

d. Failure to provide behavior services, including an RBT and BCBA to consult on the BSP and oversee implementation, and training for staff members working with Student

In her closing brief, Parent makes no specific arguments regarding the District's failure to provide an RBT and BCBA to consult on the BSP, oversee implementation of the BSP, and train staff members in the March 2025 Amended IEP. To the extent that Parent asserts that the exclusion of these specific behavior services in the March 2025 Amended IEP resulted in a violation of the IDEA or a denial of FAPE, her argument is without merit. As discussed in more detail below, by this time, the District should have been aware that Student's BSP was ineffective to address his/her unwanted behaviors and should have taken steps to modify Student's BSP to provide additional behavioral supports to Student. However, the evidence does not support a finding that the specific behavioral interventions proposed by Parent – an RBT and/or BCBA to consult on the BSP, oversee implementation of the BSP, and provide training for staff – were a required component of Student's March 2025 Amended IEP or that the failure to provide these specific interventions resulted in a violation of the IDEA or a denial of FAPE. The District was not required to hire an RBT and/or BCBA to consult on the BSP, oversee implementation, or provide training for staff working with Student. While the District certainly could have pursued these options to provide additional behavioral support to Student, Parent has not met her burden to show that these supports were a necessary component of Student's IEP in

order for him/her to receive a FAPE. While the District should have taken steps to find new interventions for Student's unwanted behaviors, the District's failure to hire an RBT and/or BCBA to consult on the BSP, oversee implementation of the BSP, and provide training for staff did not result in a denial of FAPE or violate the IDEA.

D. April 11, 2025 Amended IEP

On April 11, 2025, the IEP team met and amended Student's IEP for a third time. The primary amendment was to include a decision regarding ESY eligibility. No new goals or SDI time were added or removed from the IEP.

a. Failure to develop measurable and reasonably ambitious goals

Parent makes no specific argument in her closing brief regarding the goals found in the April 2025 Amended IEP. To the extent Parent disputes that the retained goals in the April 2025 Amended IEP lacked ambition and were not reasonably measurable, Parent has failed to meet her burden. For the same reasons discussed above, the three goals found in Student's April 2025 Amended IEP were measurable and were reasonably ambitious for Student given his/her unique circumstances and behavior challenges faced during the school year.

b. Failure to incorporate sufficient amounts of SDI time to allow Student to make progress in the areas of behavior and social/emotional

Again, Parent makes no specific argument in her closing brief regarding the amount of SDI time in the April 2025 Amended IEP. To the extent that Parent disputes that the April 2025 Amended IEP failed to incorporate sufficient amounts of SDI time to allow Student to make meaningful progress, she has failed to meet her burden. There is no evidence in the record that the amount of SDI time included in the April 2025 Amended IEP, which was unchanged from the March 2025 Amended IEP, was insufficient to meet Student's needs. Furthermore, there is no evidence that Parent raised any concerns about the number of SDI minutes Student was to receive with respect to the April 2025 Amended IEP. While it is clear that Student needed different behavior supports than those offered by the District as of April 2025, Parent did not provide evidence showing that additional SDI time would have helped Student.

c. Failure to provide appropriate supplementary aids and services in the form of a trained, dedicated 1:1 adult support

Parent maintains her argument that the District's failure to provide Student with dedicated 1:1 adult support denied Student a FAPE. Specifically, Parent argues that "[t]he lack of a consistent 1:1 staff member meant there was no adult available to teach, reinforce, or monitor replacement behaviors." Parent Closing Brief at 46. Similar to Student's October 2024 Amended IEP, discussed in detail in Section B.c. above, the record in this matter fails to show that Student required a trained, dedicated 1:1 adult support as of the April 2025 Amended IEP. Rather, the preponderant weight of the evidence demonstrates that use of a single adult support for Student would likely have exacerbate Student's challenging behaviors. Thus, Parent failed to meet their burden to prove, by a preponderance of the evidence, that a *dedicated* 1:1 support was necessary for Student to receive a FAPE.

d. Failure to provide behavior services, including an RBT and BCBA to consult on the BSP and oversee implementation, and training for staff members working with Student

In her closing brief, Parent makes no specific arguments regarding the District's failure to provide an RBT and BCBA to consult on the BSP, oversee implementation of the BSP, and train staff members in the April 2025 Amended IEP. To the extent that Parent argues that the exclusion of these specific behavior services in the April 2025 Amended IEP resulted in a violation of the IDEA or a denial of FAPE, her argument is without merit. For the same reasons discussed in Section C.d., above, Parent has not met her burden to show that these supports were a necessary component of Student's IEP. While the District should have taken steps to find new interventions for Student's unwanted behaviors, the District's failure to provide the specific interventions of hiring an RBT and/or BCBA to consult on the BSP, oversee implementation of the BSP, and provide training for staff did not result in a denial of FAPE or violate the IDEA.

IEP Implementation

Parent's next argument is that the District violated the IDEA and denied Student a FAPE from August of 2024 through the date of the Amended Complaint by failing to materially implement Student's IEPs. According to Parent, the District failed to deliver all of Student's SDI minutes while he/she was at school and/or suspended (Issue (1)(a)).

It is clear that Student spent much of the 2024/2025 school year refusing to join the general education classroom and refusing to do any academic work. However, on this record Parent failed to show that the District did not provide Student all or substantially all of the required SDI time during the dates he/she was attending school. While Parent argues in her closing brief that the District acknowledged that Student frequently refused services, that it did not have a system in place to track or make up missed SDI minutes, and that when Student refused SDI there was no attempt to reschedule it or otherwise make it up, the evidence in the record does not support such a conclusion. While staff acknowledged that Student frequently refused to perform academics, particularly in the general education classroom, multiple District staff, including Ms. Zeis, who was personally responsible for designing and implementing

Student's SDI as Student's case manager, testified at hearing that they had no reason to believe that Student did not receive the SDI time outlined in his/her IEP. Multiple staff testified about seeing SDI provided to Student, or to personally delivering SDI to Student. The hearing record contains no testimony or other evidence that the District failed to provide any SDI to Student during dates and times that he/she was at school.

Nonetheless, Parent correctly points out that when Student was removed from class or sent home early, including when he/she was suspended, Student did not receive some of all of the prescribed SDI. Parent argues that "[t]his failure to deliver SDI directly contributed to a destructive cycle where [Student's] behavior escalated due to inadequate support, leading to increased removals from the classroom, which in turn reduced [his/her] access to instruction and exacerbated [his/her] behavioral challenges." Parent Closing Brief at 31. Parent continues, "[t]he harm to [Student] was significant and observable[.] * * * [Student] continued to engage in dysregulated behaviors, including eloping, throwing objects, and physical aggression towards staff." *Id.* at 40.

The record establishes that Student did not receive all SDI required by his/her IEP when the District removed Student from the educational setting. Thus, Parent has established that the District failed to implement Student's IEP on those instances. That, however, is not the end of the inquiry. "[W]hen a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *M.D. v. Hawaii, Dept. of Educ.*, 864 F.Supp.2d 993, 1011 (2012), citing *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 815 (9th Cir. 2007).

Considering the aggregate number of suspensions the District imposed on Student, a kindergartener, along with the District's failure to implement proper behavior interventions, the District's failure to provide SDI to Student when he/she was suspended resulted in more than a minor discrepancy between the SDI provided and that required by Student's IEP. Therefore, the District violated the IDEA when it failed to provide SDI to Student when he/she was removed from the educational setting for disciplinary reasons, starting on January 28, 2025³⁶. Thus, the District failed to implement Student's IEP as written each time he/she was removed from the educational setting on and after that date. That violation denied Student access to a FAPE.

FBA and BSP Development and Implementation

The majority of Parent's arguments center around the inappropriate behavior support Student received during the 2024/2025 school year. From conducting the FBA to the development, revision, and implementation of the BSP.

Parent first argues that the District violated the IDEA and denied Student a FAPE from August 2024 through the date of the Amended Complaint by failing to conduct an appropriate

³⁶ January 28, 2025 was Student's eleventh day of cumulative suspensions. Under OAR 581-015-2405(2), the District was not required to perform an MDR or provide SDI or educational services to Student during the first 10 days of cumulative suspensions.

FBA which included a hypothesis about the function of Student's behavior, appropriate assessments, observation reports, and behavior data (Issue (7)).

Parent next argues that the District violated the IDEA and denied Student a FAPE from August 2024 through the date of the Amended Complaint by failing to either conduct an FBA or review Student's BSP and modify it as necessary to address unwanted behaviors following MDRs (Issue (5)).

Finally, Parent argues that the District violated the IDEA and denied Student a FAPE from August 2024 through the date of the Amended Complaint by failing to materially implement Student's BSP. Specifically, Parent argues that the District failed to implement the behavior interventions in the BSP with fidelity (Issue (1)(b)).

A. Failure to conduct an appropriate FBA

Parent argues that the FBA conducted by Ms. Williams was "grossly insufficient" because it took her only seven days to complete, "an insufficient duration to collect meaningful data or establish reliable hypotheses." Parent Closing Brief at 8, 56. Furthermore, Parent argues that:

[The] FBA failed to identify the function(s) of [Student's] behavior, which is a fundamental purpose of conducting an FBA. Additionally, there was a lack of observational data and limited baseline averages of target behaviors, and the FBA did not include indirect assessments, which are crucial components of a well-formulated FBA. Critically, Ms. Williams did not conduct any direct observations of [Student] across different settings and over time, nor did she seek input from [Student's] parents during the assessment process. The FBA also lacked the rigor needed to analyze complex behaviors like [Student's], including a clear summary statement that recognizes setting events, such as [Student's] difficulties with transitions and peer interactions, along with hypothesized functions.

Id. at 9. (Internal citations omitted.)

OAR 581-015-2181 discusses FBAs and provides, in relevant part:

(1) As used in this rule:

* * * * *

(c) "Functional behavioral assessment" means an individualized assessment of a student that results in a hypothesis about the function of a student's behavior and, as appropriate, recommendations for a behavior intervention plan.

(d) "Qualified person" means an individual with training and/or experience in conducting functional behavioral assessments.

(e) “Serious bodily injury” has the meaning given that term in ORS 339.285.

(f) “Service provider” includes school personnel who:

(A) Are or will be providing services related to the implementation of an individualized education program * * * to the student; and

(B) Do not hold a teaching license or an administrative license.

(2)(a) A school district must conduct a functional behavioral assessment and develop, review or revise a behavior intervention plan within 45 school days of receiving parental consent to conduct the assessment for every student who has:

(A) An individualized education program * * *; and

(B) Placed the student, other students or staff at imminent risk of serious bodily injury as a result of the student’s behavior.

(b) For purposes of this subsection, if a functional behavioral assessment has been previously completed, the school district must review and/or revise the existing functional behavior assessment.

On September 13, 2024, the District received a signed consent from Student’s father to conduct an FBA. Between September 16 and 24, 2024, Ms. Williams conducted an FBA by observing Student in multiple setting over several hours and obtaining information from Student’s teachers, paraeducators, Student, and Parent. Ms. Williams also reviewed collateral data, like Student’s IFSP, IEP, academic records, attendance records, and incident reports. Ms. Williams also had Student’s special education teacher and general education teacher complete a CPS-APT assessment.

Based on that information, Ms. Williams noted that Student’s challenging behaviors included inappropriate language, physical behaviors, and elopement. She noted that the antecedents to Student’s challenging behaviors included being asked to be part of a group, placing a demand on Student, requests to clean up to go home, and the end-of-the-day announcement. Ms. Williams hypothesized that the outcome of the challenging behavior was to avoid the work/demand or possibly to seek sensory input. As functions of the behavior, Ms. Williams noted lagging skills in managing irritability/emotions, thinking before acting, and understanding how behavior affects others.

At hearing, Dr. Tucker opined that the FBA conducted by Ms. Williams was deficient because it failed to identify a clear function or target of Student’s behavior(s) and lacked rigor. She further opined that the FBA should have included additional struggles Student faced (transitions and peer interactions), a summary statement, hypothesized functions, and an analysis and determination regarding how Student’s behaviors resulted in a response that required

intensive interventions by staff. Dr. Gilmour similarly opined that the FBA was inadequate, arguing that it was done over too short of a period of time to be adequate.

Under OAR 581-015-2181(1)(c), an FBA is an individualized assessment resulting in a hypothesis about the function of a student's behavior. Here, Ms. Williams conducted an individualized assessment of Student and his/her behaviors. Ms. Williams identified situations Student struggled with, how Student responded to these situations, and ultimately hypothesized that the function of Student's unwanted behaviors was to avoid work or a demand or to seek sensory input. While Ms. Williams' observations and conclusions may have been written down on the FBA in an erroneous manner (*i.e.* placing functions of behavior in the outcome of challenging behavior column and putting lagging skills in the function of behavior column), she did perform the essential function of an FBA, which is to form a hypothesis about the function of Student's behavior: work/demand avoidance and/or sensory input seeking. Ms. Williams observed Student in different settings over the course of several days. She tracked Student's behavior and recorded data about it. She had Student's teachers conduct assessments. She consulted available documentation about Student. While the FBA certainly could have included more information and observations, and while a different professional may have made different hypotheses, the record fails to establish that the FBA conducted by Ms. Williams was deficient. It provided the IEP team with information about Student's behaviors, and it included hypotheses about the function of Student's behaviors, sufficient to allow the IEP team to draft a BSP. Therefore, Parent failed to show that the FBA conducted by Ms. Williams was deficient, violated the IDEA, or denied Student a FAPE.

B. Failure to conduct new FBA or amend BSP following MDRs

Next, Parent argues that the District failed to conduct a new FBA or amend Student's BSP following MDRs. Parent points out that the IEP team conducted an MDR on December 2, 2024, where they determined that Student's behavior on November 6, 2024, was a manifestation of his/her disability. According to Parent, "[t]his determination should have prompted the District to refocus on adjusting [Student's] educational program rather than pursuing punitive measures." Parent Closing Brief at 14. Parent continues, pointing out that further MDRs were held on March 3, March 13, April 22, May 19, and May 30, 2025, and during each meeting, the team determined that Student's behavior was a manifestation of his/her disability. "When it was clear the BSP was ineffective, the District continued to fail to update it to include proactive strategies, clear definitions of staff roles, and implementation accountability." *Id.* at 56. "The consequences of these failures were significant. Without an accurate understanding of why [Student] was engaging in challenging behavior, the District could not design effective interventions. As a result, [Student's] behaviors escalated, leading to frequent exclusions, loss of instructional time, missed SDI minutes, and regression on IEP goals." *Id.* at 70. (Internal citations omitted.)

34 CFR §300.530(f) addresses how an IEP team must address instances where a child's unwanted behaviors are determined to be a manifestation of the child's disability and provides, in part:

If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must—

(1) Either—

(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g)³⁷ of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

OAR 581-015-2420 addresses manifestation determinations and provides:

(1) In determining whether the child's behavior is a manifestation of the child's disability, the school district, the parent, and relevant members of the IEP team (as determined by the parent and the district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(a) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

³⁷ 34 CFR §300.530(g) reads:

Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child—

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(b) If the conduct in question was the direct result of the school district's failure to implement the IEP.

(2) If the school district, the parent, and relevant members of the IEP team determine that either subsection (1)(a) or (b) is applicable for the child, the conduct must be determined to be a manifestation of the child's disability.

(3) If the basis for the team's determination is that the school district did not implement the child's IEP, the school district must take immediate steps to remedy those deficiencies.

Read together, the above provisions make clear that – where unwanted or inappropriate behavior is determined to be a manifestation of a student's disability – the IDEA requires the District conduct an FBA and draft, or revise, a BSP to address the target behaviors. Once the BSP is drafted or revised as necessary to address the behavior, the student is to be returned to the placement from which he or she was removed. 34 CFR §300.530(f)(2). The IDEA does not provide for continued removal of the child from the placement set forth in his/her IEP, except for under circumstances not applicable to this matter.

The evidence in this matter shows that Student began exhibiting unwanted behaviors shortly after school started for the 2024/2025 year. In September, the District began tracking Student's unwanted behaviors and, at the request of Parent, started the process to conduct an FBA and develop a BSP. Ms. Williams conducted the FBA and, together with the IEP team, created a BSP for Student on September 24, 2024. The BSP included direction for staff to: incorporate art and building things into classwork; provide Student with access to food; use universal language and visuals; redirect inappropriate conversations/comments; use sensory supports; place stop signs at exterior doors; teach replacement words; teach Zones of Regulation; provide alternate location for breaks and work; and provide transition support. When Student was escalated, the BSP indicated that staff should escort him/her to LC1 and provide snacks, art, and a Zones check-in, clear the room if unsafe, and use Student's siblings as resources to calm Student if needed.

By the time the BSP was developed in late September of 2024, Student had already been suspended four times (two-and-a-half cumulative days of suspensions). Between September 30, 2024 and October 16, 2024, Student was suspended another four times (three-and-a-half cumulative days of suspensions). On October 23, 2024, Student's IEP was updated to include direction to staff to follow Student's BSP. On October 29, 2024, Student was suspended for one day and on November 6, 2024, Student was again suspended for a half-day.

I agree with Parent. By the time the District convened the first MDR on December 2, 2024, it should have been abundantly clear that the BSP, if implemented with fidelity as District staff claim, was ineffective. Student's behaviors since development and implementation of the BSP continued nearly unabated. Student was exhibiting unwanted behaviors on a daily basis (including physically attacking staff and peers, verbally threatening staff and peers, and eloping) and Student was accessing virtually no time in his/her general education classroom. By this time, the BSP had been in place for over two months, but Student's behavior was, at best, unchanged.

During the December 2, 2024 MDR, the District determined that Student's behavior constituted a pattern of behavior that was a manifestation of Student's disability, and that the District had followed Student's IEP (and therefore Student's BSP since it was integrated into Student's IEP). This determination, coupled with the knowledge that Student continued to engage in unwanted behavior that was a manifestation of his/her disability, should have alerted the District that the BSP was ineffective. The District was required by 34 CFR §300.530(f)(1)(ii) to modify Student's BSP as necessary to include different interventions that would address Student's unwanted behaviors. If the District was unable to determine what additional interventions would be helpful for Student, it may have needed to have another individual conduct a second FBA, or otherwise sought outside support to modify Student's BSP. However, continuing to rely on an ineffective BSP to address Student's behaviors, and continuing to practice exclusionary discipline as a means to address Student's work/demand avoidance, was wholly inappropriate and violated Student's rights under the IDEA. The District's failure prevented Student from accessing his/her education and denied Student a FAPE.

Following the December 2, 2024 MDR, Student continued to exhibit unwanted behaviors and accumulated another five suspensions in December and January (three-and-a-half cumulative days of suspensions). And by the time Student was suspended on January 24, 2025, he/she had a cumulative total of ten days of suspensions. Despite this, the District conducted no further MDRs until March.

Two months after the first MDR, on February 7, 2025, the District amended Student's BSP to include some additional strategies for staff to use with Student including: incorporating physical movement/games into academic tasks; reviewing Student's visual schedule with him/her each day and pre-warn Student of any changes; providing two to three options for Student to choose from (not open-ended questions); providing structured recess activities; and providing Student with warnings and a view of his/her visual schedule before transitions. While this amendment showed the District realized that the BSP was ineffective as written, it was too little, too late. Student's unwanted behaviors continued, as did the District's response of exclusionary discipline.

On March 5, 2025, the BSP was again updated to include a strategy that staff check Student's backpack before Student entered school to ensure items not needed for school were not brought into the school. Student was suspended three times in March of 2025, with one suspension lasting three-and-a-half days. The District held two MDRs in March, but failed to modify the BSP beyond adding a backpack check.

In April of 2025, Student was suspended once, for a total of five days. An MDR on April 22, 2025 resulted in no amendments to Student's BSP. On May 8, 2025, Student was suspended again for two total days (the last suspension during the period at issue in this order). By the time Student served that suspension, he/she had accumulated a total of 23 days of suspensions. An MDR on May 19, 2025 similarly garnered no modification of Student's BSP.

While the District argued at hearing that much of Student's failure to access the general education classroom and engage with peers was attributable to Student's choices, this argument

is without merit. The preponderant weight of the evidence reveals that Student's failure to access the general education classroom or spend time with peers was directly attributable to Student's behavior, which was clearly a manifestation of his/her disability. Student's isolation and academic refusal is further demonstration that the District was not taking adequate steps to ensure that Student's behavior did not interfere with his/her access to education.

The District's failure to create appropriate responses to Student's behavior once it was aware that Student's BSP was ineffective, had a profound impact on Student's education. Despite starting his/her kindergarten year at the same level academically as his/her peers, Student made no meaningful academic progress. As the Supreme Court pointed out in *Endrew F.*:

When all is said and done, a student offered an educational program providing "merely more than *de minimis*" progress from year to year can hardly be said to have been offered an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to "sitting idly ... awaiting the time when they were old enough to 'drop out.'" " *Rowley*, 458 U.S., at 179, 102 S.Ct. 3034 (some internal quotation marks omitted). The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

580 U.S. at 402-403. Much like the situation contemplated by the Court in *Endrew F.*, Student spent the majority of his/her kindergarten year making little more than *de minimis* progress. When the District realized, or reasonably should have realized, that Student's BSP was not addressing Student's unwanted behaviors and therefore was impeding his/her progress and access to an education, the District should have taken steps to revise the behavior supports available to Student. The District's failure to do so resulted in a failure to provide Student with a FAPE.

C. Failing to Implement the BSP With Fidelity

Parent argues next that the District failed to implement Student's BSP with fidelity, which constituted a material failure to implement Student's IEP and therefore a denial of FAPE. In *Owens*, the Ninth Circuit Court of Appeals reiterated that "[o]nly 'material' failures to implement an individualized education program violate the [IDEA]." 92 F.4th at 1170, citing *Van Duyn ex rel. Van Duyn v. Baker School Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007); *accord*, *Sumter County School Dist. 17 v. Heffernan*, 642 F.3d 478, 484 (4th Cir. 2011); *Houston Independent School Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000); *L.J. by N.N.J. v. School Bd. of Broward County*, 927 F.3d 1203, 1213 (11th Cir. 2019).

As discussed above, the evidence shows that Ms. Williams conducted an adequate FBA in September of 2024. Subsequently, the IEP team drafted and implemented a BSP for Student which, at the time, appeared reasonably calculated to provide meaningful benefit to Student by addressing inappropriate behaviors that impeded his/her ability to access general education, SDI, and related services. The evidence does not show that the District was not implementing the strategies found in the FBA up through at least December 2, 2024. However, as discussed above,

once that BSP had been in place for a period of time, it should have become apparent to the District that the BSP was not adequate to address Student's behaviors and needed revision.

Specifically, on December 2, 2024, when the District initiated its first MDR to review Student's behavior and review whether District staff implemented the BSP as written, it should have become apparent to the District that the BSP needed to be modified. As such, starting at that time, it is irrelevant whether the District materially implemented Student's BSP, as materially implementing an ineffective support tool would not, and did not, have a meaningful impact on Student's behavior. Because the District violated the IDEA and denied Student a FAPE by failing to modify his/her BSP after December 2, 2024, it is not necessary to determine whether the District implemented Student's BSP with fidelity after that date. Put another way, this issue is moot after December 2, 2024, based on the finding that Student's BSP was no longer adequate.

Placement change

Parent argues that the District violated the IDEA and denied Student a FAPE by imposing more than 10 cumulative school days of disciplinary removals, thereby improperly changing Student's educational placement (Issue (4)). Parent also argues that the District violated the IDEA and denied Student a FAPE in March 2025 when it changed Student's placement to a therapeutic day school. Parent argues that the therapeutic day school was not the least restrict environment for Student and that the District should have considered additional supports and services for Student (Issue (3)).

A. Change in Placement Resulting from Over 10 Days of Disciplinary Removals

Parent argues that during the 2024/2025 school year, the District removed Student repeatedly for disciplinary reasons, totaling "at least 27 full-day removals and multiple half-day and early dismissal exclusions." Parent Closing Brief at 53-54. Parent argues that these removals violated OAR 581-015-2415, resulted in a change of placement for Student, and that the District did not follow proper procedures when changing Student's placement. This, Parent argues, denied Student a FAPE and violated the IDEA.

a. Number of Days Student Suspended

As a preliminary determination, it is necessary to determine the exact number of days Student was suspended during the 2024/2025 school year, and when Student reached the 10-day suspension threshold.

OAR 581-015-2400 sets out several definitions related to disciplinary removals:

For the purposes of OAR 581-015-2400 through 581-015-2445, the following definitions apply:

* * * * *

(3) “Disciplinary removal” means suspension, expulsion, or other removal from school for disciplinary reasons, including removals for mental health examinations for students who threaten violence or harm in public schools under ORS 339.250(4)(b)(C). It does not include:

(a) Removals by other agencies;

(b) Removals for public health reasons (e.g. head lice, immunizations, communicable diseases, etc.);

(c) In-school suspensions if the child continues to have access to the general curriculum and to special education and related services as described in the child’s IEP, and continues to participate with children without disabilities to the extent they would in their current placement; or

(d) Bus suspensions, unless the student’s IEP includes transportation as a related service, the district makes no alternative transportation arrangements for the student, and the student does not attend school as a result of the bus suspension.

* * * * *

(5) “Suspension” means any disciplinary removal other than expulsion.

Thus, under OAR 581-015-2400, any form of disciplinary removal that is not expulsion is a suspension. For the most part, Parent and the District agree on the dates and lengths of Student’s suspensions. However, there are few discrepancies which are necessary to address here. On September 6, 2024, Parent argues that Student was sent home early. The District argues that Student was not sent home early, rather Student spent approximately one hour in the office for disciplinary reasons before the school closed at noon due to the heat. Either way, Student was subject to a disciplinary removal because Student would not have had access to the general curriculum, services in his/her IEP, or continued participation with children without disabilities while in the office or when sent home. As such, Student was subject to half a day suspension on September 6, 2024.

On September 13, 2024, Parent argued that Student was sent home early. However, September 13, 2024 was a Friday and a district REID day. The record shows Student did not attend REID days and there is no evidence that Student attended school that day or that he/she was sent home early. Thus, there is no evidence of a suspension on September 13, 2024.

On September 17, 2024, much like September 6, 2024, Student was sent to the school’s office for approximately one hour for disciplinary reasons. Student did not have had access to the general curriculum, services in his/her IEP, or continued participation with children without disabilities while in the office or when sent home. As such, Student was subject to half a day suspension on September 17, 2024.

On January 24, 2025, around 9:18 a.m., the District contacted Student's parents and notified them that Student was being suspended for disciplinary reasons that day. Student was picked up at 11:12 a.m. and therefore the District counted the suspension as only half a day because Student was in attendance at school until after 11:00 a.m. However, during the two hours between when Student's parents were contacted and the time Student was picked up, Student was not allowed to participate in the general education curriculum with his/her peers. While it's possible that Student would not have elected to participate with peers during that time anyway, because Student would not have been permitted to participate, the suspension began at 9:18 a.m. Therefore, the suspension on January 24, 2025 should have been counted as a full day suspension.

With this in mind, the District enforced disciplinary removals (suspensions) on Student on the following dates and for the following lengths:

Date	Suspension Length (Days)	Suspension Total (Days)
9/6/24	0.5	0.5
9/12/24	0.5	1
9/16/24	1	2
9/17/24	0.5	2.5
9/30/24	1	3.5
10/1/24	1	4.5
10/15/24	0.5	5
10/16/24	1	6
10/29/24	1	7
11/6/24	0.5	7.5
12/17/24	0.5	8
1/8/25	0.5	8.5
1/14/25	0.5	9
1/24/25	1	10
1/28/25	1	11
3/3/25	0.5	11.5
3/5/25	1	12.5
3/12/25	3.5	16
4/15/25	5	21
5/8/25	2	23
5/29/25 ³⁸	1.5	24.5
TOTAL		24.5

b. Placement Change Resulting from Suspensions

Parent's argument is as follows: The IDEA requires that when a student with a disability is subject to a pattern of disciplinary removals totaling more than ten days, the District must

³⁸ This suspension occurred after the date the Amended Complaint was filed in this matter. It is included in this chart for clarity, but will not be addressed herein.

convene an IEP team meeting and make changes to the FBA or BSP if the student's behavior is a manifestation of their disability. When Student's disciplinary removals exceeded the 10-day threshold the District failed to treat the exclusions as a change in placement. The District did not conduct a new FBA, update the BSP, or return Student to his/her placement. Additionally, the District did not provide Student with required educational services during the disciplinary removals, including SDI and academic services. "The *per se* change of placement had a devastating impact for [Student]. [His/her] IEP goals were not implemented, and the lack of consistency and access to services contributed to school avoidance, regression, and escalating behaviors." Parent Closing Brief at 55.

OAR 581-015-2405 discusses disciplinary removals of children with disabilities for up to 10 school days:

(1) School districts may remove a child with a disability who violates a code of student conduct from the child's current educational placement to an appropriate interim alternative educational setting, another setting, or 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. These removals are not considered a change in placement.

(2) During disciplinary removals described in section (1) of this rule:

(a) School districts are not required to provide access to special education and the general curriculum unless students without disabilities are provided access during this time.

(b) School districts are not required to determine whether the child's behavior resulting in disciplinary removal is a manifestation of the child's disability.

(3) For the purpose of counting days of suspensions under OAR 581-015-2405 through 581-015-2445:

(a) Suspensions of half a day or less are counted as half a day; and

(b) Suspensions of more than a half-day are counted as a whole day.

* * * * *

OAR 581-015-2410 discusses additional removals of children with disabilities for disciplinary removals when the student's behavior is not found to be a pattern:

(1) School districts may remove a child with a disability who violates a code of student conduct from the child's current educational placement to an appropriate interim alternative educational setting, another setting, or suspension for additional periods of up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities,

if the removals do not constitute a pattern under section (2) of this rule. These removals are not considered a change in placement.

(2) School personnel must determine, on a case-by-case basis, whether the series of removals constitute a pattern:

(a) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(b) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of removals to one another.

(3) Services. During removals described in section (1) of this rule:

(a) School districts must provide services that are necessary to enable the child:

(A) To continue to participate in the general education curriculum, although in another setting; and

(B) To progress toward meeting the goals in the child's IEP.

(b) School personnel, in consultation with at least one of the child's teachers, determine the extent to which the services described in subsection (3)(a) of this rule are needed, and the location for delivery of those services.

(c) School districts are not required to determine whether the behavior resulting in removal is a manifestation of the child's disability.

(4) The determination in subsection (2) is subject to review under OAR 581-015-2445.

However, if the series of removals constitutes a pattern, OAR 581-015-2415 discusses disciplinary removals of more than 10 school days:

(1) A disciplinary removal is considered a change in educational placement and the school district must follow special education due process procedures if:

(a) The removal will be for more than 10 consecutive school days (e.g. expulsion); or

(b) The child will be removed for more than 10 cumulative school days from their current educational placement in a school year, and those removals constitute a pattern under OAR 581-015-2410(2).

(2) School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a disciplinary removal under subsection (1) for a child with a disability who violates a code of conduct.

(3) Manifestation determination. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district must determine whether the child's behavior is a manifestation of the student's disability in accordance with OAR 581-015-2420.

(4) Manifestation. If the determination under subsection (3) is that the child's behavior is a manifestation of the child's disability, the school district must:

(a) Return the child to the placement from which the child was removed, unless:

(A) The parent and school district agree to a change of placement as part of the modification of the behavioral intervention plan under subsection (4)(b);

(B) The school district removes the child to an interim alternative educational setting under OAR 581-015-2425 for a weapons or drug violation or for infliction of serious bodily injury; or

(C) The school district obtains an order from an administrative law judge under OAR 581-015-2430 allowing a change in placement to an interim alternative educational setting for injurious behavior; and

(b) Either:

(A) Conduct a functional behavioral assessment, unless the school district conducted a functional behavioral assessment before the behavior occurred that prompted the disciplinary action, and implement a behavior intervention plan; or

(B) If the student already has a behavior plan, review the behavioral intervention plan and modify it, as necessary, to address the behavior.

(5) No manifestation. If the determination under subsection (3) is that the child's behavior is not a manifestation of the child's disability:

(a) The school district may proceed with disciplinary action applicable to children without disabilities under section (1) of this rule, in the same manner and for the same duration in which the procedures would be applied to children without disabilities.

(b) If the school district takes such action applicable to all children, the school district must:

(A) On the date on which the decision is made to remove the student under subsection (5), notify the parents of that decision and provide the parents with notice of procedural safeguards under OAR 581-015-2315.

(B) Provide services to the student in an interim alternative educational setting, determined by the IEP team, in accordance with OAR 581-015-2435; and

(C) Provide, as appropriate, a functional behavioral assessment, and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.

(6) Placement pending due process hearing. If a parent requests a due process hearing because of a disagreement with the manifestation determination or any decision about placement related to the disciplinary removal in section (1) of this rule, the child remains in the interim alternative educational setting pending the decision of the administrative law judge under OAR 581-015-2445, or until the end of the disciplinary removal under subsection (1), whichever occurs first, unless the parent and school district agree otherwise.

OAR 581-015-2420 discusses manifestation determination meetings and is set out above. Finally, OAR 581-015-2400 provides some definitions relevant to the above-referenced rules:

For the purposes of OAR 581-015-2400 through 581-015-2445, the following definitions apply:

(1) “Behavioral intervention plan” means an individualized plan, including positive interventions, designed to assist a student to decrease inappropriate behavior and increase or teach an alternative appropriate behavior.

(2) “Current educational placement” means the type of educational placement of the child as described in the child’s “annual determination of placement” document at the time of the disciplinary removal. It does not mean the specific location or school but the type of placement on the continuum of placement options (e.g. regular classroom with support; regular classroom with resource room support; special class; special school; home instruction, etc.).

* * * * *

(4) “Functional behavioral assessment” means an individualized assessment of the student that results in a hypothesis about the function of a student’s behavior and, as appropriate, recommendations for a behavior intervention plan[.]

As shown in the chart above, Student's tenth day of disciplinary removal occurred on January 24, 2025. Thus, when Student was again suspended on January 28, 2025, the District was required to determine whether the removals constituted a pattern. In making that determination, the District had to consider whether Student's behavior was substantially similar to behavior in prior incidents that resulted in removal, the length of each removal, the total amount of time Student had been removed, and the proximity of the removals to one another. OAR 581-015-2410(2). In every MDR the District held on behalf of Student, it determined that Student's behavior demonstrated a pattern. As such, the District was obligated to comply with OAR 581-015-2415, starting with the disciplinary removal of Student on January 28, 2025.

Under OAR 581-015-2415, once Student was removed from his/her educational placement via disciplinary removal for more than 10 cumulative school days, and because those removals constituted a pattern, the disciplinary removals constituted a change in educational placement for Student. *See, e.g. Honig v. Doe*, 484 U.S. 305, (1987); *Parents of Student W. v. Puyallup School Dist., No. 3*, 31 F.3d 1489, 1495-1496 (1994). The District was required to hold an MDR within 10 school days of each subsequent removal, to determine whether Student's behavior was a manifestation of his/her disability. If the District found that Student's behavior was a manifestation of his/her disability, it was required to: (1) return Student to the placement from which he/she was removed (the placement in Student's current IEP) and (2) review Student's behavior intervention plan and modify it, as necessary, to address Student's behavior.

In every MDR the District conducted, it found that Student's behavior was a manifestation of his/her disability. Thus, once the District held the MDR, the District was obligated to return Student to his/her placement from which he/she was removed (the placement in the IEP in effect at the time of the MDR) and review Student's behavior intervention plan and modify it as necessary to address Student's behavior. The District did not do so.

As discussed above, the District suspended Student six times between January 28 and May 8, 2025. The District held four MDRs, but modified Student's BSP only twice. These modifications were unsuccessful in addressing Student's ongoing behaviors. By January 28, 2025, the District was aware that Student had ongoing behavioral issues which impeded his/her ability to engage with his/her education. Student was not engaging with peers or accessing the instruction of his/her general education teacher. Student spent the majority of his/her days in LC1 or eloping around the school building or grounds. Student exhibited the same verbal and physical behaviors on a daily or nearly daily basis. In response, the District continued to use a BSP that had proven ineffective. Additionally, the District continued to suspend Student as a form of discipline, despite Ms. William's FBA hypothesizing that the function of Student's behavior was work/demand avoidance.

The District's continued use of suspensions and failure to meaningfully modify Student's BSP after Student accumulated 10 days of suspensions resulted in a change of placement for Student. The District failed to follow the steps required by the IDEA when unilaterally initiating a change of placement for a Student. Furthermore, the change of placement for Student would not meet the requirements of the least restrictive environment – as being at home and excluded from all educational and SDI services, or at school accessing essentially no academics would not

be the LRE for Student. The District changed Student's placement in a manner which violated the IDEA and denied Student access to a FAPE starting on January 28, 2025.

B. March 13, 2025 Placement Change to Therapeutic Day School

Parent argues that the District violate the IDEA and denied Student a FAPE when it changed Student's placement to a therapeutic day school in March 2025. Parent argues that the District should have considered additional supports and services to maintain Student in his/her least restrict environment, such as a full-time 1:1 aid or sought consultation from a BCBA. Moreover, Parent argues, the District failed to collect or rely on behavior data to justify the change in placement, that no FBA or BSP was modified (or new one conducted) following behavior events preceding the placement change, and that the evaluation initiated in February of 2025 was not complete and thus Student's placement could not be changed. Parent argues that the District violated OAR 581-015-2250 which, according to Parent, "mandates that any change in placement must be supported by comprehensive evaluative data to ensure that the educational needs of the child are being met appropriately." Parent Closing Brief at 52.

OAR 581-015-2250, titled "Placement of the Child," provides:

School districts must ensure that:

(1) The educational placement of a child with a disability:

(a) 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;

(b) Is made in conformity with the Least Restrictive Environment (LRE) provisions of OAR 581-015-2240³⁹ to 581-015-2255.

(c) Is based on the child's current IEP;

(d) Is determined at least once every 365 days; and

³⁹ OAR 581-015-2240 sets out the requires for the least restrict environment:

School districts must ensure that:

(1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who do not have a disability and

(2) Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs 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.

- (e) Is as close as possible to the child's home;
- (2) The alternative placements under OAR 581-015-2245 are available to the extent necessary to implement the IEP for each child with a disability;
- (3) Unless the child's IEP requires some other arrangement, the child is educated in the school that he or she would attend if not disabled;
- (4) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs; and
- (5) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

Under the IDEA, a school district provides FAPE to a student if the offered program, including placement, "(1) addresses the child's unique needs, (2) provides adequate support services so the child can take advantage of the educational opportunities, and (3) is in accord with the [IEP]." *Capistrano*, 59 F.3d at 893, citing *Rowley*, 458 U.S. at 188-189. The Ninth Circuit Court of Appeals has adopted a four-factor balancing test to determine whether a school district's placement of a disabled student meets the requirements of the IDEA; the court must consider: "(1) the educational benefits of placement full-time in a regular class; (2) the non-academic benefits of such placement; (3) the effect [the disabled student may have] on the teacher and children in the regular class; and (4) the costs of mainstreaming [the disabled student]." *Sacramento City Unified School Dist., Bd. of Educ. v. Rachel H. by and through Holland*, 14 F.3d 1398, 1404 (9th Cir. 1994).

Thus, in collaboration with the parents, a school district must make a threshold determination as to what special education and related services a disabled student needs and then must determine whether those needs can be met in a general education classroom setting with the provision of supplementary aids and services. *Oberti v. Bd. of Educ.*, 801 F. Supp. 1392, 1401 (D.N.J. 1992), *aff'd*, 995 F.2d 1204 (3d Cir. 1993). Accordingly, courts have stated, "[t]he preference or presumption in favor of inclusion will not be rebutted unless the school district shows either that the child's disabilities are so severe that he or she will receive little or no benefit from inclusion; that he or she is 'so disruptive as to significantly impair the education of other children' in the class; or that the cost of providing an inclusive education 'will significantly affect other children in the district.'" *Oberti*, 801 F.Supp. at 1402, citing, *Board of Education, Sacramento City Unified School District v. Holland*, 786 F.Supp. at 874 (E.D.Cal. 1992). Thus, at hearing, school districts carry the burden of justifying challenged placements. 801 F.Supp at 1402, citing, *Davis v. District of Columbia Board of Education*, 530 F.Supp. 1209, 1211-12 (D.D.C.1982); and *Lascari v. Board of Education of the Ramapo Indian Hills Regional High School District*, 116 N.J. 30, 44, 560 A.2d 1180, 1188 (1989). Accordingly, in order to overcome the presumption in favor of inclusion of Student in the general education setting to the greatest extent possible, the District bears the burden of justifying its decision to change Student's placement to a therapeutic day school.

As discussed above, the District conducted an FBA and then, in collaboration with the IEP team, including Parent, created a BSP for Student. However, the BSP was ineffective to address Student's unwanted behaviors, and his/her behavior continued throughout the entire 2024/2025 school year. While Student's inappropriate and unwanted behaviors waxed and waned throughout the year, the behaviors continued nonetheless. As the year progressed, Student spent less and less time accessing the general education classroom and his/her academic progress stalled and even regressed. Student essentially spent his/her entire Kindergarten year having made no academic progress and having significant unwanted behaviors which the District was unable or unwilling to meaningfully address. Despite these continuing behaviors, the District made few changes to its response to Student's behaviors. It did not enlist the help of an outside specialist or otherwise reevaluate its response to Student's behaviors. Rather, the District continued to allow Student to avoid all or nearly all academic work in a futile attempt to decrease Student's unwanted behaviors, and then resorted to exclusionary discipline in an attempt to correct Student's behavior, likely further reinforcing Student's unwanted behaviors.

The record demonstrates that the District is unable, with the current staff and BSP/IEP in place, to address Student's unwanted behavior. However, the evidence does not show that Student cannot be adequately served in his/her neighborhood school. Rather, the District needs to develop a plan to address Student's unwanted behaviors that is grounded in adequate data regarding the antecedents and functions of Student's unwanted behaviors, and scientifically backed responses to that behavior. Only after implementing a proper BSP for a sustained period of time will the District have adequate data to assess whether Student requires the specialized, and restrictive, therapeutic day school setting to access his/her education. For the foregoing reasons, the District's proposal in March of 2025 to change Student's placement to a therapeutic day school was not the least restrictive environment for Student and was therefore not appropriate.

Parental Participation

Parent next argues that the District denied her meaningful parental participation in violation of the IDEA. Specifically, Parent argues that the District: predetermined Student's placement at a therapeutic day school in March of 2025 (Issue (6)(a)); refused to allow an in-school observation of Student's educational program by Parent's private BCBA, Dr. Gilmour (Issue (6)(b)); failed to provide Parent with sufficient information regarding behavioral incidents that led to suspensions (Issue (6)(c)); and failed to provide required documentation of Student's suspensions to Parents (Issue (6)(d)).

A. Failure to Provide Parents with Sufficient Information Regarding Behavioral Incidents that Led to Suspensions

Parent argues that throughout the school year, she was "frequently left unaware of behavior incidents until after consequences had already been imposed." Parent Closing Brief at 65. Parent continues, "[o]n several occasions, the District failed to provide written notification or documentation detailing the antecedents, context, or staff responses associated with [Student's] behaviors. This deprived Parent of the information necessary to assess whether the suspensions

were appropriate or whether changes to [Student's] supports or services were warranted." *Id.* (Internal citations omitted.)

Parent has provided only minimal evidence regarding her attempts to gather further information about behavior incidents from the District.⁴⁰ Mr. Syring testified that whenever Student was suspended or sent home early, he would call Parents first to relay what happened and to notify them of the suspension. Then, on occasion, he may follow up with an email. If Parents did not answer his call, he would leave a voicemail with details about the incident and that Student was suspended. Mr. Syring also testified credibly that had Parents wanted additional information about a specific incident, he would have been willing to talk about it with them. Additionally, with the exception of one MDR in May 2025 (outside the period at issue in this case), Parent participated in all MDRs. During those, Parent had the opportunity to ask questions about each incident and what occurred, including any antecedents, context, or staff responses.

Parent has failed to meet her burden to show that the District failed to provide Parent with sufficient information regarding behavioral incidents that led to suspensions. As such, Parent failed to establish, by a preponderance of the evidence, that the District's actions violated the IDEA or constituted a denial of meaningful parental participation.

B. Failure to Provide Parents with Required Documentation of Student's Suspensions

In her closing brief, Parent argues that the District "failed to consistently document and communicate [Student's] suspension throughout the 2024-2025 school year, violating procedural safeguards and impeding the Parent's ability to participate in [Student's] education." Parent Closing Brief at 67. Parent argues that Student had received more than ten cumulative suspensions by October but that the District failed to notify the Parent of these or convene a MDR as required by the IDEA. Parent then alleges that she "repeatedly requested access to [Student's] disciplinary records and incident reports to understand the nature and frequency of the behaviors leading to suspension, but this information was not provided in a timely or comprehensive manner." *Id.* at 67-68. This failure, Parent continues, made her unable to identify patterns in Student's behavior or effectively advocate for Student, resulting, ultimately, in a denial of a FAPE for Student. Parent then returns to her original argument, that the IDEA "guarantees parents the right to participate in decisions regarding their child's education and receive timely notices of disciplinary actions that may result in a change of placement." *Id.* at 68. "The District's persistent failure to provide documentation of suspensions constituted a clear violation of these procedural protections and materially impeded the Parent's ability to ensure [Student] received appropriate services and support." *Id.*

Parent appears to be arguing that the District failed to provide (1) Student's disciplinary records and incident reports following her request for those documents, and (2) a notice of disciplinary actions any time there was a disciplinary removal that may result in a change of

⁴⁰ While Parent indicated in her affidavit that she requested information on November 7 and November 11, 2024, the alleged email (labeled as "Exhibit F") is so blurry as to be nearly unreadable. As best as can be deciphered, the November 7 email appears to request "any and all documents related to [Student]." Exhibit S6 at 54. The November 11 email appears to be a follow up request to "receive and inspect all of the previously requested records." *Id.* at 55.

placement. To the extent that Parent is arguing that the District failed to respond to her repeated requests to access Student's disciplinary records and incident reports, Parent has failed to provide evidence of when those requests were made, what documents were requested, how the requests were made, and under what laws or rules she was entitled to receive the requested documents. As such, Parent has failed to meet her burden to show that she was entitled to receive the requested documents and that the District violated the IDEA by failing to provide the documents.

Parent has also failed to cite any specific provision of the IDEA requiring the District to provide specific documentation following a suspension. At hearing, Parent focused extensively on the problems with the District's online system sending suspension notices. However, Parent has not shown which suspensions she did not receive a written notice of suspension. Furthermore, Parent has not shown that those written notices of suspension were required. The District provided persuasive testimony from District staff that Parents were contacted by phone each time a suspension occurred, and that these were, at times, followed up by an email or a written notice of suspension from the District's online system. These calls, along with Mr. Syring's availability to discuss the issues further with Parents, provided sufficient access to information about Student's suspensions. While there were issues with the District's online system not sending written notices of suspension throughout the 2024/2025 school year, Parent has not shown that she is entitled to such notices under the IDEA.

To the extent that Parent is arguing that she was entitled to prior written notice of a placement change under OAR 581-015-2310(2)(a)⁴¹, that issue was not pled in the Amended Complaint. In the Amended Complaint, Parent argued only that "[t]he District admitted that it repeatedly failed to properly document or provide the Parents notice of suspensions." Amended Complaint at 3. As such, it will not be addressed in this order.

⁴¹ OAR 581-015-2310(2) and (3) provides:

- (2) Prior written notice must be given to the parent of a child, and to the adult student after rights have transferred, within a reasonable period of time before a school district.
 - (a) Proposes to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; or
 - (b) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- (3) The content of the prior written notice must include:
 - (a) A description of the action proposed or refused by the school district;
 - (b) An explanation of why the district proposes or refuses to take the action;
 - (c) A description of each evaluation procedure, assessment, test, record, or report the school district used as a basis for the proposed or refused action;
 - (d) 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;
 - (e) Sources for parents to contact to obtain assistance in understanding their procedural safeguards.
 - (f) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
 - (g) A description of other factors that are relevant to the agency's proposal or refusal.

C. Predetermination of Student's Placement in a Therapeutic Day School

Parent argues next that the District predetermined Student's placement at a therapeutic day school in March of 2025. Predetermination occurs and a school district violates the IDEA when the school district determines placement for a student before the IEP is developed, or steers the IEP team to a predetermined placement decision. *K.D. ex rel. C.L. v. Dept. of Educ., Hawaii*, 665 F3d 1110, 1123 (9th Cir 2011).

To support her argument that the District predetermined Student's placement at a therapeutic day school, Parent cites to Exhibit S20 at page 1, and transcript pages 1019-1023. However, neither of these citations support Parent's argument. Parent's brief fails to provide any roadmap for how she cites to transcripts, beyond using "prior hearing" to denote the transcripts from the expedited hearing. The transcripts from the non-expedited hearing were, as explained in footnote nos. 15 and 16, above, provided in four separate volumes, with no single volume exceeding 811 pages of testimony. The transcripts from the expedited hearing go up to page 858. Therefore, transcript pages 1019 through 1023 do not appear to exist. Additionally, Exhibit S20 at page 1 is the first page of the March 13, 2025 IEP team meeting notes. It includes the date of the meeting, a list of the meeting participants, an overview of the purpose of the meeting (including revisiting the placement discussion), and the beginning portion of an email sent by Parent to the District that same day. Nothing on that page shows that the District predetermined Student's placement at a therapeutic day school.

Parent's brief goes on to argue that prior to the March 13, 2025 IEP meeting, the District had "already initiated steps to place [Student] at Heron Creek, including contacting the program and submitting intake paperwork." Parent Closing Brief at 61. To support this argument, Parent cites to Exhibits D91 and D92, and transcript pages 705-706. Exhibit D91 is a copy of the May 2025 IEP and Exhibit D92 is a copy of the May 27, 2025 IEP Team Meeting notes. Neither exhibit shows that anyone at the District contacted Heron Creek or submitted intake paperwork prior to the March 13, 2025 meeting. Furthermore, the meeting notes and the IEP both demonstrate the District's attempts to discuss Student's placement at the IEP team meetings and to consider a range of placement options for Student. While Parent believes that these discussions were done merely for show, there is nothing in the evidence beyond Parent's speculation, to support that assertion.

The transcript from the non-expedited hearing at pages 705 to 706 is from testimony on June 12, 2025, labeled at "Tr. 6" in this order. At pages 705 to 706, Parent testified as follows:

Q. Okay. I'm going to talk about the December 2nd MDR IEP meeting. What do you remember about this meeting?

A. I remember that meeting was originally supposed to be held on November 14th. Katherine had called me on November 7th, asking -- telling me that the district wanted to hold an MDR meeting. So we had that on -- it was originally scheduled November 14th. [Student] got hurt. So we ended up having that meeting on December 2nd. And that entire meeting was -- that entire meeting

was geared towards them presenting data that would support them moving [Student].

Q. Okay. And what was your response? And by moving, do you mean to an outside placement?

A. Yes. Because it had already been brought up in the October 23rd meeting.

Q. Had Heron Creek specifically been brought up at that time?

A. Yeah.

Q. Okay. And what do you recall about them raising the idea of Heron Creek in November and December?

A. I -- I had told them that I didn't think that it was enough time. I had disagreed with their decision. I had asked that -- I had asked Jill Bennett directly if she felt like -- because between the time we implemented the BSP and the time they requested the MDR, it had only been -- 19 school days had gone by. And I had asked her if she felt like 19 days was appropriate enough to collect data and implement [Student's] BSP with -- with Fidelity. Was it a reasonable amount of time before they made the decision to move [Student].

Q. Okay.

A. And that's also when Abby had told me that they had still collected data, even on the days that [he/she] was sent home early.

Q. Okay. So you say 19 days. What's that number coming from?

A. That was 19 full school days that [Student] was in attendance minus all of the suspensions, and, you know, [Student] being out for being sick or just * *
* being absent.

Q. Okay. So after 19 days, they were suggesting a therapeutic school?

A. Yeah.

Transcript 6 at 704:23 through 706:20. While this evidence shows that District staff raised the topic of a therapeutic day school in December of 2024, it is not conclusive or persuasive evidence that the District predetermined Student's placement at a therapeutic day school. In fact, it shows that the District was adhering to its responsibility to consider a range of placement options for Student and to discuss these options with Parent.

Parent goes on to argue that "the District's own documents and staff communications show that the decision to refer [Student] to Heron Creek had been made well in advance of the

March 13 IEP meeting.” Parent Closing Brief at 61-62. Parent cites to Parent’s testimony, above, to support this conclusion, as well as testimony from Ms. Williams (Transcript 4 at page 129) and Ms. Zeis (Transcript 4 at pages 196-197) about when there was first a discussion regarding placement for Student at a therapeutic day school. Both Ms. Williams and Ms. Zeis both testified, like Parent, that the subject of a therapeutic day school had been raised prior to the March 13, 2025 IEP meeting. However, they both also confirmed that no decision regarding placement was made prior to the March 13, 2025 IEP meeting.

Parent has failed to meet her burden to prove, by a preponderance of the evidence, that the District predetermined Student’s placement at a therapeutic day school prior to reaching the placement decision during the March 13, 2025 IEP team meeting.⁴² As such, there is no evidence that the District denied parental participation in violation of the IDEA or denied Student a FAPE by predetermining Student’s placement at a therapeutic day school.

D. Refusal to Allow In-School Observation of Student by Dr. Gilmour

Parent made multiple requests to allow Dr. Gilmour to observe Student at school. The District declined to allow Dr. Gilmour into the school to observe Student. Parent argues that this denial violated Parent’s right under the IDEA to access necessary information (specifically Dr. Gilmour’s opinions from observing Student in the educational setting) needed to meaningfully participate in the development of Student’s educational program, in violation of 34 CFR § 300.501(b), 34 CFR § 300.502, OAR 581-015-2190(1) and (2), and OAR 581-015-2195(1)(c)⁴³. This violation, Parent argues, denied Student a FAPE. Additionally, Parent argues that, not only should the ALJ presume that Dr. Gilmour’s opinions regarding programming and placement are valid, the ALJ should permit a negative inference that Student’s education program is inadequate.

OAR 581-015-2190, titled “Parent Participation – General,” provides, in relevant part:

(1) School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.

(2) Meeting Notice:

(a) School districts must provide parents with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend.

⁴² While concerning, Parent’s argument that she was not notified that Student’s placement at a therapeutic day school was an agenda item for the March 13, 2025 meeting, and her argument that the District refused to pause the meeting until a facilitator could attend do not support a finding that the District predetermined Student’s placement at a therapeutic day school. Furthermore, failure to provide proper notice of the March 13, 2025 meeting is not an issue properly raised in Parent’s Amended Complaint.

⁴³ There is no subsection (1)(c) in OAR 581-015-2195. All of subsection (1) is set out, below.

(b) The written notice must:

(A) State the purpose, time and place of the meeting and who will attend;

(B) Inform the parent that they may invite other individuals whom they believe have knowledge or special expertise regarding the child;

(C) Inform the parent that the team may proceed with the meeting even if the parent is not in attendance; and

(D) Inform the parent of whom to contact before the meeting to provide information if they are unable to attend.

OAR 581-015-2195(1), in the rule titled “Additional Parent Participation Requirements for IEP and Placement Meetings,” provides:

Parent Participation: School districts must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP or placement meeting or are afforded the opportunity to participate, including:

(a) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(b) Scheduling the meeting at a mutually agreed on time and place.

34 CFR § 300.501(b), in the rule titled “Opportunity to examine records; parent participation in meetings,” provides:

(b) Parent participation in meetings.

(1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to-

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child.

(2) Each public agency must provide notice consistent with § 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

(3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A

meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

Parent has, again, failed to cite any specific law or rule which specifically requires a school district to allow an outside evaluator, such as Dr. Gilmour, access to observe a student in the public school setting. The rules cited by Parent discuss *parental* rights to attend and participate in IEP meetings, but do not specifically require that a school district provide parents or their experts with unfettered access to school facilities to observe a student. The District has not denied Parent the right to attend IEP meetings or to consult with an expert. In her closing brief, Parent erroneously attempts to shift the burden to the District, arguing that “[t]he District failed to propose alternatives to accommodate the observation, such as limiting its scope, timing, or location.” Parent Closing Brief at 63. Parent has failed to show that she attempted to obtain the desired information from the District through alternative means. Dr. Gilmour provided no testimony or evidence showing that the *only* way she could provide any meaningful opinion regarding Student and his/her behaviors was through personal, direct observation of Student in the school setting.

While Parent is certainly entitled to information regarding Student and his/her behaviors in the school setting, Parent did not meet her burden to show that the District’s refusal to allow Dr. Gilmour access to Student in the educational setting denied her ability to meaningfully participate in decisions regarding Student’s education. Parent has not shown that this information could not be gathered or accessed by Dr. Gilmour in other ways. Accordingly, Parent has not shown that the District violated the IDEA, nor has Parent shown that the District’s actions resulted in a denial of FAPE to Student.

Similarly, Parent has failed to cite any applicable statutes, regulations, administrative rules, or caselaw that would permit the ALJ to make a negative inference regarding the District’s failure to allow Dr. Gilmour to observe Student in the educational setting. The Oregon Rules of Evidence are not applicable in administrative proceedings such as this one. Thus, the ALJ declines the invitation to make a negative inference. The District’s decision to not permit Dr. Gilmour to observe Student in the education setting does not necessitate a finding that Student’s educational program is inadequate or that Dr. Gilmour’s opinions regarding Student’s programming and placement are valid. Rather, Dr. Gilmour’s opinions have been considered and evaluated like all other expert’s opinions and were given the weight and persuasiveness they deserved.

Remedies

As set forth throughout this order, the District engaged in ongoing errors that denied Student a FAPE from at least January 28, 2025 through May 12, 2025 (the date of the Amended Complaint). As remedies for the alleged violations of the IDEA, Parent requested the following remedies: (1) a finding that the District violated the IDEA and denied Student a FAPE; (2) compensatory special education and related services for Student to allow him/her to obtain the educational benefit that he/she would have received but for the District’s violations of the IDEA and denial of FAPE, consistent with 20 U.S.C. § 1415(i)(2)(c)(iii); (3) an Order that the District

develop an IEP going forward that is appropriate and reasonably calculated to meet Student's unique needs; and (4) whatever additional relief the Court may find just and equitable.

As a result of the District's failure to comply with the requirements of the IDEA, Student has been denied educational opportunities and has been deprived of educational benefit for which he/she is entitled to compensation as addressed below.

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. 20 U.S.C. § 1415(i)(1)(C)(iii); *see School Committee of the Town of Burlington, Massachusetts v. Dept. of Education*, 471 U.S. 359, 369 (1985). Hearing officers/administrative law judges in special education cases have similar broad equitable powers. *Forest Grove School Dist. v. T.A.*, 557 U.S. 230 (2009). In determining the equitable remedy, the hearing officer or ALJ may consider the school district's failure to update student's IEP, placements, and other documents, and their refusal to cooperate. *See Anchorage Sch. Dist. v. M.P.*, 689 F.3d 1047, 1059-1060 (9th Cir. 2012) Under the IDEA, the court or ALJ shall "grant such relief as [it] determines is appropriate" if a public agency has denied a FAPE to the student. 20 U.S.C. § 1415(i)(2)(B)(iii); *Hacienda La Puente Unified School Dist. of Los Angeles v. Honig*, 976 F.2d 487, 492 (1992). Equitable considerations are relevant in fashioning relief. *Sch. Comm. of the Town of Burlington v. Dept. of Educ.*, 471 U.S. 359, 374 (1985). The conduct of both parties must be reviewed to determine whether relief is appropriate. *See W.B. v. Board of Trustees of Target Range Sch.*, 960 F.2d 1479, 1486 (9th Cir. 1992).

In this case, Parent appears to have been forthcoming with information and participated in Student's IEP process to the greatest extent possible. Parent attended every IEP team meeting and MDR the District held during the period at issue. Parent was persistent and diligent in expressing concerns and suggestions regarding Student's behaviors. The record does not reflect that Parent concealed any information requested by the District. Nor has Parent refused special education or related services for Student during the period in issue.

As a result of the District's failure to comply with the requirements of the IDEA, Student has been denied educational opportunities and has been deprived of educational benefit for which he/she is entitled compensation as addressed below.

A. Finding that the District Violated the IDEA and Denied Student a FAPE

The findings of this order are set out in the "Conclusions of Law" section, above. It is unnecessary to set them out again here.

B. Compensatory Special Education

Parent argues that Student is entitled to 200 hours of compensatory education. Parent justifies this number as follows:

[Student] was excluded from instruction for the equivalent of many weeks (27 early dismissals and 4 full-day suspensions, roughly 31 school days or 186 hours of lost instruction) and lost countless additional hours when [he/she]

was dysregulated or sent home without SDI. * * * In light of these extensive service gaps, and the District's own admission that [Student] requires make-up instruction, the Parent requests 200 hours of compensatory education. This award, to be used for academic tutoring and behavior supports, conservatively reflects at least 31 days × 6 hours/day of missed services plus additional make-up time for the untracked absences and downtime.

Parent closing brief at 73-74.

Under the IDEA's equitable relief provision, compensatory education services can be awarded as appropriate to remedy a denial of FAPE by a school district. 20 U.S.C. § 1415(i)(2)(C)(iii) (the court shall grant such relief as the court determines appropriate based on a preponderance of the evidence). Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA. *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F3d 1489, 1496-97 (9th Cir.1994); *see also Park, ex rel. Park v. Anaheim Union High School Dist.*, 464 F3d 1025 (9th Cir. 2006). The Ninth Circuit Court of Appeals indicated, in *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F3d 1117 (9th Cir 2011), that:

Compensatory education is an equitable remedy that seeks to make up for "educational services the child should have received in the first place," and "aim[s] to place disabled children in the same position they would have occupied but for the school district's violations of IDEA." *Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C.Cir.2005); *see* 20 U.S.C. § 1415(i)(2)(C)(iii).

Id. at 631 F3d at 1125.

As set forth throughout this order, to be appropriately educated within the meaning of the IDEA, a school district must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's unique circumstances. *Endrew F.*, 580 U.S. at 399. Where a school district "knows or should know that a child has an inappropriate IEP or is not receiving more than a *de minimis* educational benefit [it] must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem." *M.C. v. Central Regional Sch. Dist.*, 81 F.3d 389, 397 (3rd Cir.), *cert. denied*, 519 U.S. 866 (1996). Here, District staff knew or reasonably should have known that Student's BSP (and by extension his/her IEP) were insufficient to meet his/her behavioral needs as of the first MDR held on December 2, 2024. As a result, Student was unable to access his/her education, especially when frequently suspended for behaviors that were a direct result of his/her disability. Accordingly, the District is required to provide compensatory education for the period of December 2, 2024 through May 12, 2025 (the date of the Amended Complaint).

In this case, Student was denied a FAPE from December 2, 2024 through May 12, 2025. Based on deficient BSP and IEPs, Student was denied appropriate SDI and related services tailored to his/her unique needs and in light of his/her circumstances. Additionally, Student was denied access to the general education curriculum as a result of the District's failure to provide

appropriate behavior services. The District denied Student a FAPE and must provide compensatory education to place Student in the same position he/she would have occupied, but for the District's violations.

The record demonstrates that the District provided SDI and behavior services to Student throughout the period at issue when he/she was at school, and even provided make-up SDI for Student for times he/she was suspended. However, SDI and behavior services that were inadequate to meet Student's behavioral needs proved to be of no benefit, and arguably even caused detriment to Student. It provided Student no educational benefit, as demonstrated by his/her lack of progress and regression in academics.

Student is entitled to compensatory education to make up for the denial of FAPE during the period of December 2, 2024 through May 12, 2025. Accounting for non-instruction days (weekends, holidays, winter and spring breaks, and REID days), this order assumes 79 instruction days, or 20 school weeks during that period.

Student was deprived a total of 60 hours of SDI (20 weeks x 3 hours per week of SDI in the IEPs) during the period of December 2, 2024 through May 12, 2025. It is nearly impossible to quantify the number of hours Student was denied access to the general education curriculum based on the District's failure to modify and implement an appropriate BSP. However, Parent's request for a total of 200 hours of compensatory education appears to be conservative. And I decline to find that Student is entitled to more compensatory education than that requested by Parent in her closing brief. Thus, Parent's request for 200 total hours of compensatory education would provide for approximately 140 hours (200 total hours - 60 hours of SDI compensatory education) for the denial of access to the general education curriculum over the 20 weeks that Student was denied a FAPE, or a total of 7 hours per week. Considering that the amount of general education Student was denied access to during the period at issue likely far exceeds seven hours per week⁴⁴, I find this number reasonable. Therefore, Student is entitled to a total of 200 hours of compensatory education, 60 hours of which must include SDI and related services.

The District is responsible for delivering the above compensatory education during the 2025/2026 school year.⁴⁵ Compensatory education must be delivered before the start of the 2026/2027 school year. Compensatory education shall not start until after a new IEP is developed at the facilitated IEP meeting, ordered below. The District shall distribute the compensatory education appropriately across all calendar months, which can include the summer months between those two school years. This schedule may be extended for a reasonable period to accommodate Student's tolerance so long as Parent is in agreement with the proposed

⁴⁴ During the period at issue, there were 79 instructional days, with each lasting from 7:45 a.m. to 2:35 p.m. (Tr. 7 at 101:4 through 9.) Assuming that a typical kindergartener does not receive instruction for that entire time, an estimate of approximately five hours of instruction per day would be reasonable. That would total 395 hours (5 hours per day x 79 days) of general education instruction during the period at issue.

⁴⁵ The services the District provided to Student (between April 23 and May 21, 2025) in an attempt to compensate for the failure to provide services during suspensions, are not to be counted towards Student's compensatory education hours ordered herein.

extension. The distribution of Student's compensatory education should be addressed as part of the facilitated IEP meeting ordered below.

C. Comprehensive FBA, Development of an Appropriate BSP, and a Facilitated IEP

Parent argues that the District should be ordered to conduct a new, comprehensive FBA, then develop a new BSP, under the guidance of an independent BCBA. Specifically, Parent requests that the court order that the District employ either Dr. Tucker or Dr. Gilmour to conduct the FBA and help develop the new BSP, and that Dr. Howard not be allowed to conduct them. Parent also argues that the District should be required to retain the independent BCBA for an additional 12 weeks of oversight and staff training to "ensure the BSP is implemented with fidelity." Parent Closing Brief at 75.

While I agree that a new, comprehensive FBA must be conducted and, subsequently, a new BSP that includes appropriate behavior interventions should be developed, I am not persuaded that it must be conducted by a specific person with a specific BCBA credential. I decline to order the District hire Drs. Tucker or Gilmour to perform the FBA, and I also decline to require that the behavior specialist be specifically credentialed as a BCBA. As discussed above, the District is not required to follow any specific methodology regarding behavioral interventions. The District certainly can, but is not required, to employ an independent BCBA to conduct the FBA.

During the period in issue, Student's BSP has not been appropriate for Student under the IDEA and the FAPE standards set forth by the Court in *Andrew F.* During the period of December 2, 2024 through May 12, 2025, the District failed to develop a BSP that was reasonably calculated to enable Student to make progress appropriate in light of his/her circumstances.

As addressed above, the District failed to modify Student's BSP once it was aware or reasonably should have been aware that the BSP was ineffective in addressing Student's unwanted and inappropriate behaviors. The District has failed to provide appropriate SDI, general education curriculum, and related services to allow Student to obtain educational benefit. Further, the District failed to provide behavioral services necessary to create an IEP appropriate for Student's unique needs.

The District is hereby ordered to hire an independent behavioral specialist with experience conducting FBAs for students in a school-setting. The independent behavioral specialist should be allowed ample time to observe Student in his/her elementary school setting when conducting the FBA. The independent behavioral specialist shall be one acceptable to both parties and shall be paid for by the District. Should the parties be unable to agree on an independent behavioral specialist to complete the FBA, each party shall retain their preferred facilitator, at District expense, to meet solely for the purposes of selecting a neutral third-party behavioral specialist.

Additionally, the District is hereby ordered to convene an independently facilitated IEP meeting, within 30 days of completing the FBA, to draft an appropriate FBA and IEP, with SDI

and related services, for Student in all areas appropriate for Student's needs, unless Parent agrees in writing to extend the IEP and BSP meeting to a later date. The independent behavioral specialist shall be retained and present at the facilitated IEP meeting to assist the IEP team in creating a new, appropriate BSP.

The IEP facilitator shall be one acceptable to both parties and shall be paid for by the District. Should the parties be unable to agree on a facilitator for the IEP meeting, each party shall retain their preferred facilitator, at District expense, to meet solely for the purposes of selecting a neutral third-party facilitator.

D. Appropriate Placement and LRE

Student's March 2025 Amended IEP and May 2025 IEP both changed Student's placement to a therapeutic day school. The IEP team must determine Student's placement at the facilitated IEP meeting ordered above, and consider Student's placement in light of the factors set forth in this order and determine the maximum extent to which Student can be educated in the general education setting with appropriate supports and services. Anything less constitutes an inappropriate placement.

ORDER

The District denied Student a FAPE during the period of December 2, 2024 through May 12, 2025, and is hereby ordered to conduct a new FBA, develop a new BSP, convene a facilitated IEP, determine Student's placement, and provide compensatory education as required by this order.

Kate Triana

Senior Administrative Law Judge
Office of Administrative Hearings

APPEAL PROCEDURE

NOTICE TO ALL PARTIES: If you are dissatisfied with this Order you may, within 90 days after the mailing date on this Order, commence a nonjury civil action in any state court of competent jurisdiction, ORS 343.175, or in the United States District Court, 20 U.S.C. § 1415(i)(2). Failure to request review within the time allowed will result in **LOSS OF YOUR RIGHT TO APPEAL FROM THIS ORDER.**

SERVICEMEMBERS' CIVIL RELIEF ACT

Unless otherwise stated in this Order, the Office of Administrative Hearings (OAH) has no reason to believe that a party to this proceeding is subject to the Servicemembers' Civil Relief Act (SCRA). If a servicemember is a party to this proceeding and did not appear for a hearing that convened during the servicemember's period of service or within 90 days after their termination of

service, the servicemember should immediately contact the agency to address any rights they may have under the SCRA.

CERTIFICATE OF MAILING

On August 15, 2025, I mailed the foregoing FINAL ORDER in OAH Case No. 2025-ABC-06997 to the following parties.

By: Certified and Electronic Mail

Parent(s) of Student

[REDACTED]

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Public Comment re IAES Rulemaking under ORS 183.390 & OAR 581-015-2430(2) / OAR 581-015-2360(5)(a)(D)

From Lara Hruska <lara@cedarlawpllc.com>

Date Fri 10/17/2025 4:43 PM

To ODE RuleTestimony <ODE.RuleTestimony@ode.oregon.gov>

Cc Stephanie Schuler <slschuler22@yahoo.com>; Whitney Hill <whitney@cedarlawpllc.com>; Sydney Bay <sydney@cedarlawpllc.com>; Alex Hagel <alex@cedarlawpllc.com>; Ariana Hussing <ariana@cedarlawpllc.com>

 2 attachments (2 MB)

2025.05.23 Final Order_Redacted.pdf; 2025.08.15 Final Order_Redacted.pdf;

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I am a former special education teacher and social worker turned civil rights attorney who has been practicing special education law in Washington since 2013 and in Oregon since 2023. Our firm Cedar Law PLLC recently handled an IAES matter in a special education administrative due process hearing against Estacada School District (IAES order and Final Order attached) represented by Hungerford Law.

In short, my partner Whitney Hill and I were appalled during this process at how the District and its attorneys from Hungerford thought they could weaponize IAES against a pro se low-income mother who had initiated due process and invoked "stay put" when the District attempted to unilaterally remove her autistic six-year-old child from the District to an out-of-district placement that the child's providers deemed inappropriate. The District had predetermined that removal within months of this child's arrival in Kindergarten and without performing an appropriate FBA developing an appropriate BSP, without implementing consistent behavioral interventions, and without properly training staff. The mother properly filed due process and invoked stay put but the District invoked IAES to undermine her statutory rights.

It was our observation that the District and counsel misuse of the IAES process was enabled by the Oregon rules as currently drafted ORS 183.390 & OAR 581-015-2430(2) / OAR 581-015-2360(5)(a)(D). The federal statutory purpose of IAES under IDEA is as a very narrow safety exception to "stay put" - an otherwise fundamental protection for students and families against unilateral district actions pending the outcome of litigation. The rules as currently written conflict with federal legislative intent by allowing districts to subjectively invoke fear of future misconduct in an overbroad and unsubstantiated end-run around "stay put".

Thankfully we prevailed over this misuse of IAES, but it took several months, two due process hearings, and we incurred over \$90k in attorneys fees for which the District is now liable - we won on both the wrongful IAES issue and FAPE denial more broadly. The judge ordered the District to perform the FBA and develop the BSP that we had requested all along - before any attorneys fees had been incurred. The school district has since hired an outside provider to complete an FBA but only offered us a portion of our fees, so now we have filed a federal fee petition (for which we are incurring more attorneys fees) in order to enforce our "prevailing party status" and recoup our rightful attorneys fees.

I can tell you that we would have preferred the District had simply done the right thing from the start - an FBA & a BSP for this six year old child - so that this student and the staff who teach him could have had a less acrimonious school year and the district could have used the \$90k+ for training its people to follow the law.

We strongly encourage the ODE to amend its IAES rules so that school districts and their attorneys properly understand and follow IAES and do not weaponize this narrow safety exception against parents and students who just need appropriate behavioral supports in order to attend their neighborhood schools.

Kind Regards,

Lara Hruska JD MSW/MSEd

Managing Partner, Cedar Law PLLC

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Public Comment on OAR 581-015-2430

From Shelly Simonyi <ssimonyi@msd.k12.or.us>

Date Fri 10/17/2025 10:06 PM

To ODE RuleTestimony <ODE.RuleTestimony@ode.oregon.gov>

You don't often get email from ssimonyi@msd.k12.or.us. [Learn why this is important](#)

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Dear ODE,

Please do not make any amendments to OAR 581-015-2430. As educators, we work hard to keep kids safe and in school. Unfortunately, some students need a different placement to get their needs met. What I have observed in the past two decades is that IAE Placements don't happen easily and that decision isn't made lightly. Please keep the OAR the way that it is.

Thanks.

--

Shelly Simonyi, NCSP
Director of Student Services
503-565-4053

October 28, 2025

VIA EMAIL ONLY

Dr. Charlene Williams
Oregon Department of Education
225 Capitol Street NE
Salem, OR 97310

Re: DRO's support for amendments to OAR 581-015-2430(2) and OAR 581-015-2360(5)(a)(D) to ensure their compliance with federal law which governs and strictly limits the use of placement in an Interim Alternative Educational Setting (IAES)

Dear Dr. Williams:

Disability Rights Oregon is the designated Protection and Advocacy agency for Oregon. In that capacity, DRO protects the legal rights of individuals of individuals with disabilities in our state.

As part of that work, DRO has frequently represented and advocated for students with disabilities who have been needlessly, unlawfully, and inappropriately excluded from school. These exclusions occur frequently when students with disabilities experience behavioral dysregulation caused by their disabilities while at school. In many such instances, districts employ practices which improperly and unilaterally change a student's lawfully determined placement to a 45-day Interim Alternative Educational Setting (IAES.)

For that reason, we support OLC's 8/22/25 request for rule making and amendments to OAR 581-015-2430 and OAR 581-015-2360(5)(a)(D). We believe that those proposed amendments are needed to protect students with disabilities from improper and unnecessary removals of students with disabilities to 45-day IAES placements by more accurately reflecting the requirements and protective purposes of relevant federal statutes and rules.

IDEA provides a framework of rights and procedures that are designed to ensure that students with disabilities are not isolated from their non-disabled peers or excluded from school absent rare and extreme circumstances.

The right of students with disabilities to attend public school and be educated with non-disabled peers whenever possible is robustly supported by multiple federal statutes including the Individuals with Disabilities Education Act. In broad strokes, IDEA provides a consistent protective legal framework which is constructed to ensure that students with disabilities are not easily or unnecessarily returned to the sort of exclusion from school that was the norm until IDEA's passage decades ago.

IDEA includes strict procedural protections to ensure that students with disabilities are not disciplined or excluded from school for behaviors that are the result of their disabilities or district failures to provide effective behavioral supports and services.

IDEA and its implementing regulations recognize that a very small number of students with disabilities may not be able to safely participate in public education with non-disabled peers at times. However, IDEA also guards against the overidentification of that small group of students by specifying a limited number of circumstances that allow such exclusions for limited periods of time during which the excluded students are still entitled to a Free and Appropriate Public Education.¹

More specifically, IDEA's federal implementing regulations establish numerous requirements to ensure that students are not disciplined or removed from their classrooms because of disruptive behavior for more than short periods that they may need to regain behavioral regulation and even then only when their disruptive behavior is 1) the direct result of their disabilities, or 2) the result of a district's failure to provide all of the services and supports needed for them to successfully learn with their non-disabled classmates.

In addition, IDEA requires a significant review and/or revision of behavioral supports whenever a student with disabilities is suspended for more than 10 days in a school year or repeatedly suspended for a known pattern of behavior.

¹ Under IDEA, even when students with disabilities are removed from their current educational placements for strictly proscribed periods of time due to disruptive behavior, their entitlement to all services and supports needed for them to access the general education curriculum and make meaningful progress toward measurable, ambitious, and appropriate educational goals continues. Those services and supports are enumerated in an Individualized Educational Plan, a document that is collaboratively created by an IEP team that includes parents in a process that contains many procedural protections.

Removal to a 45-day IAES is limited to three Special Circumstances that are listed in CFR § 300.532.

Because of these and other IDEA requirements, the circumstances under which districts are allowed to remove students with disabilities from their classrooms for more than a short period are strictly defined and limited to instances in which the behavior of a student with a disability causes serious physical injury or disruption that makes it impossible to safely educate them with other students. Even then, those required circumstances are strictly limited by CFR § 300.532 which separately lists three Special Circumstances, any one of which must be present to authorize a unilateral change of a student's placement to a 45-day IAES.

Oregon's current rule accurately reproduces the first two of those three special circumstances and is therefore compliant with the federal rule.

However, Oregon's current rule significantly and harmfully departs from the federal rule's very clear requirement that removal to an IAES pursuant to special circumstance three must be based on a factual determination that a student **"Has inflicted serious bodily injury** upon a another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA." (emphasis added)

In contrast, Oregon's current rule allows districts to circumvent the requirements of the federal statute by effectively creating a fourth special circumstance in which an ALJ "orders a change in placement to an appropriate Interim Alternative Educational Setting for up to 45 school days **due to the substantial likelihood of injurious behavior.**" (emphasis added)

We share OLC's concern about how the current rule effectively creates an additional and significantly speculative basis that a district can cite to justify excluding a student with disabilities from school for 25% of the typical Oregon school year.² We are additionally concerned that the current state rule is stripped of the well-defined and highly restrictive federal standard (actual "serious bodily injury") in favor of a much more lax standard (risk of "injurious behavior") which allows districts to remove students to a 45-day IAES for much less harmful behavior than is contemplated in the federal rule.

One hidden consequence of these removals is that some students may lose the protective function of the manifestation determination review (MDR) process that they are

² The Department and Governor Kotek have recognized the harms associated with absence from school and have initiated a systemic response entitled Every Day Matters which is described at <https://www.oregon.gov/ode/students-and-family/attendance/Pages/default.aspx>.

entitled to under the IDEA. The MDR is a critical safeguard because it protects students with disabilities from being unfairly disciplined for disability-related needs that were not appropriately supported by the district. Eliminating the requirement of an MDR whenever a student with disabilities might be subjected to discipline that would remove them from their classroom is no trivial matter. It eliminates the involvement of the IEP team which is uniquely positioned and capable of evaluating the behavior in the context of the disability and discuss adjusting student supports.

Therefore, Oregon's overly broad IAES regulations deprive students of FAPE by removing them from their least restrictive educational environment without first allowing the IEP team the opportunity to review the behavior, identify supports, and adjust services to meet the students' needs. This undermines the collaborative intent of the IDEA which centers on educational problem solving to keep students in school. Moreover, bypassing the MDR process places parents in the difficult position of defending their child's rights before a judge rather than working with educators around an IEP table. This imposes significant financial and emotional burdens on parents who frequently have little ability to navigate the complexities of special education law without legal assistance.

Oregon's current regulation is based on repealed federal language which misunderstood the holding of *Honig v. Doe*, 484 U.S. 305 (1988).

OLC's proposed amendments merely accomplish the long overdue task of aligning Oregon's regulations with their federal counterparts because the current IAES regulation improperly relies on language that the U.S. Department of Education eliminated nearly twenty years ago. That change was necessary because administrative law judges (ALJs) previously had the power to move students to an IAES in the first instance based on possible "injurious behavior" under 34 C.F.R. 300.531 (1999). However, 34 C.F.R. 300.531 was repealed in 2006. Since 2006, federal rules only permit ALJs to order IAES removals in the course of appeals from disciplinary administrative proceedings. See 34 C.F.R. § 500.532.

OLC's proposed amendments do not leave school districts helpless to address behavior that poses a risk of injury. Districts can still pursue injunctions in federal district court. *Honig v. Doe*, 484 U.S. 305 (1988.) *Honig* established the possibility of a change of placement based on a "substantial likelihood of injurious behavior," but only if be ordered by a court. By mirroring the federal rules, OLC's proposed amendments prevent districts from bypassing all IDEA disciplinary procedures and protections and beelining to an expedited due process hearing based on mere risk. Oregon's current rule therefore undermines the procedural safeguards that *Honig* and IDEA require.

DRO's experience does not support the assumption that districts do not remove students with disabilities from school because of behavior without the protective eye and approval of an ALJ.

We acknowledge that the above offending language is included in a provision which might be assumed to lessen concerns about fast and loose district interpretations of what is necessary to find a substantial likelihood of injurious behavior because such an order must be issued by an ALJ. However and regardless of whether any reassurance provided by the involvement of an ALJ is sufficient to dispel the more central concern about the level of speculation inherent in a conclusion about future harm, it is DRO's experience that some districts declare the substantial likelihood of injurious behavior rationale for an IAES without actually initiating a due process hearing. This has happened in a number of ways, but one common scenario occurs when districts confront parents with a slate of impossible choices by demanding that they (the parents) must choose between unpalatable and likely unlawful alternatives such as a drastically shortened school day, on-line learning, 5 hours of one-to-one instruction per week, or a 45-day removal from school that may or may not be identified as an IAES. These sorts of "Hobson's Choice" scenarios have many variations. In many instances, parents avoid the severity and duration of an IAES by forgoing their rights to reject or contest other school exclusions that frequently can and do persist for months or years. In instances where districts do accurately explain that the initiation of a 45-day IAES requires a due process hearing, parents are faced with the prospect of participating in what they reasonably view as a sort of trial regardless of whether they can afford an attorney to help them object to an IAES effectively.

Significant harms occur when students with disabilities are removed from school for significant periods of time regardless of whether those removals are the result of an IAES or other less formal parent "choices."

When considering the impact forcing a parent to make such "choices," it is important to remember the experience of many young children with ASD, ID and other developmental disabilities that made it impossible for many of them to learn or even engage with online learning or hugely reduced teaching during the isolation of the recent COVID emergency.³ Even in cases where such choices are offered with the required notices and procedures, it is our experience that many parents are ill equipped to understand their rights to contest such ultimatums let alone represent themselves in a district initiated due process hearing.

³ That multi-year school exclusion from school also disparately and disastrously impacted the families of children who required near constant arm's length supervision.

In theory, parents of children with disabilities have the right to contest an unnecessary and unlawful IEAS or other long-term exclusion from school in a number of ways which include filing an administrative complaint, requesting due process, and invoking stay put⁴ to preserve the current placement. In practice, however, it is DRO's experience that most parents who contact DRO or family support agencies such as FACT Oregon are unable to use these processes effectively. This again highlights the unfair burden placed on families of students to un-do a practice that would not have been allowed had Oregon timely updated its rules.

For the above reasons, DRO strongly urges the Oregon Department of Education to adopt OLC's proposed amendments to OAR 581-015-2430 and OAR 581-015-2360(5)(a)(D) as written. Updating these rules is essential to bring Oregon's regulations into full alignment with the IDEA, its implementing regulations and the U.S. Supreme Court's holding in *Honig v. Doe, supra.*

These amendments will close a longstanding gap between state and federal law that currently exposes students with disabilities to unlawful removals from school and denies them the procedural protections that Congress intended. Aligning Oregon's rules with the relevant federal framework will strengthen the integrity of special education in Oregon by safeguarding students' right to FAPE and ensuring that disciplinary procedures do not unnecessarily reduce the educational rights of students with disabilities. Without these changes, students with disabilities in Oregon will not receive the full complement of protections that are required by IDEA.

DRO appreciates the Department's attention to this issue and its continued commitment to protecting the rights of Oregon students with disabilities and urges its adoption of the rule changes proposed by OLC.

Sincerely,

A handwritten signature in cursive script, appearing to read "Suzanne Gall".

Suzanne Gall, Esq. on behalf of
Disability Rights Oregon
Special Education COPAA Fellow

⁴ DRO also supports OLC's stated concerns about the potential end-run around stay put that is now possible under the current IAES rules if an ALJ continues to order successive IAES placements, but again notes that some districts simply declare the necessity of an IAES knowing that many parents will not be able to effectively contest their right to do so.

Date: October 28, 2025

To: ODE Rules Coordinator - Haedon Brunelle

From: Morgan Allen, COSA

Subject: Petition to amend OAR 581-015-2430 and 581-015-2360

On behalf of the Coalition of Oregon School Administrators (COSA) and our 3,000 members statewide, we want to share our opposition to the petition to amend two administrative rules: OAR 581-015-2430 (Removal to an Interim Alternative Educational Setting by Administrative Law Judge (Injurious Behavior)) and OAR 581-015-2360 (Pre-Hearing Conference, Notice of Hearing, and Hearing Rights).

While COSA has concerns with the specific rule amendment proposals delivered to ODE, we would support ODE convening interested parties for a broader discussion of the issue. Instead of accepting the petition and beginning the process to promulgate rulemaking, we strongly urge ODE to informally convene the proponents of the proposed changes and organizations that represent school districts, school boards, teachers, and classified staff to engage in a discussion where the issues brought forth can be discussed in-depth. We believe bringing all of the parties and K-12 partners together would allow everyone to share their perspective, ask questions, and lead to better outcomes for all involved, most importantly for our students.

Concerns with the OAR Petition

Under 20 U.S.C. § 1415(k)(3), either the parent OR the district may request a hearing when the district believes maintaining current placement is substantially likely to result in injury. The federal statute reads:

"The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing."

Ccncern #1: OAR 581-015-2360(5)(a) - Deletion of ALJ Authority

The proposal removes the following provision from the stay-put exceptions:

"[(D) The administrative law judge orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to the substantial likelihood of injurious behavior; or]"

Impact: This eliminates the ALJ's authority to override stay-put when there is substantial likelihood of injury, removing the only preventive safety mechanism available when there are objections to placement changes.

Change 2: OAR 581-015-2430(1) - Addition of a Procedural Restriction

The proposal adds a new restriction:

"(1) This section applies only when a school district is appealing a manifestation determination, OAR 581-015-2415(4)(a)(C), or appealing the end of the removal period, OAR 581-015-2425(2)."

Impact: This new language severely limits when districts can even request an ALJ hearing for injurious behavior. Under this restriction, districts could only use this provision when:

- Appealing a manifestation determination, OR
- Appealing the end of a removal period

This eliminates the proactive use of this safety provision, restricting it only to reactive appeals of decisions already made.

Request for partner engagement, not Rulemaking

The current OARS, which include ALJ authority to order placement changes when it is substantially likely to result in injury, appropriately balances student rights to stay-put protections with parental rights, meets the requirements of federal law, and recognizes the safety needs of students, staff, and school communities.

We urge ODE to reject the petition and not to initiate rulemaking. We reiterate our willingness to meet with proponents and other K-12 system partners to discuss the concerns and look for ways to collaboratively work to improve outcomes for students.

Jared Hayes
Clackamas Education Service District
13455 SE 97th Avenue,
Clackamas, OR 97015
jhayes@clackesd.org

Oct. 28, 2025

Dear Oregon Department of Education Rules Coordinator,

We write to express our strong opposition to any proposed amendments to OAR 581-015-2430 and 581-015-2360.

These rules are essential safeguards, providing a necessary and legally sound mechanism for school districts to proactively address seriously injurious behavior when a child's current educational placement presents a substantial likelihood of injury to themselves or others.

The existing rules ensure that any decision to change a student's placement to an Interim Alternative Educational Setting (IAES) is a temporary emergency safety measure that balances the student's rights with the critical need for safety in the school community.

Weakening the ability of districts to seek temporary removal for substantially likely injurious behavior would force schools to knowingly increase the risk of serious physical harm to students, teachers, and staff.

Maintaining the rules as currently written is absolutely essential for ensuring the safety and welfare of the entire public school community. We urge you to reject any and all proposed amendments that would dilute the effectiveness of this vital school safety process.

Thank you for considering this critical matter of student and staff safety.

Sincerely,

Jared Hayes
Director of Special
Programs, Clackamas
Education Service
District

McKenzie Meline
Director of Student
Supports, Gladstone
School District

Jill Bennett
Director of Student
Services, Estacada
School District

Annemarie
Polignano
Director of Student
Services, Canby
School District

Melissa Berg
Director of Student
Services, Oregon City
School District





To: Oregon Department of Education; Oregon State Board of Education; Oregon Legislature

Submitted by: Oregon Coalition of Community Charter Schools (ORC3S)

Date: November 3, 2025

RE: SB 141 and Guiding Principles for Charter School Inclusion in Oregon's K–12 Accountability System

The Oregon Coalition of Community Charter Schools (ORC3S) appreciates the Oregon Legislature and the Department of Education's (ODE) commitment to updating the statewide K–12 accountability framework, through Senate Bill 141 (2025) to better support school improvement, transparency, and student success. As ODE considers how public charter schools will be included in the accountability framework and, specifically, the development of local metric and performance target-setting process we want to strongly suggest the following guiding principles to inform decision-making.

ORC3S recognizes that ODE is likely to consider multiple approaches for charter school inclusion. However, any framework must prioritize retaining meaningful charter school autonomy. Autonomy is essential to allow charter schools to fulfill their mission-driven purposes, innovate in instructional design, and respond flexibly to the needs of their students. Approaches that diminish autonomy compromise the fundamental nature of charter schools and should be avoided.

1. Preserve Charter School Autonomy in Performance Target Setting

Charter schools operate with flexibility over curriculum, staffing, and instructional strategies. Any statewide accountability framework should allow charter schools to:

- Develop performance targets aligned with their unique missions and instructional models.

- Select interim assessments and local metrics that reflect both state requirements and the charter school's educational program.
- Take into account autonomous differences in charter school programs and practices including differing schedules, calendars, and other resources.

Collaboration with authorizers, such as school districts or the state board of education, can provide oversight and support while respecting the school's independent goal-setting authority. This ensures that performance targets are both meaningful to the school and consistent with statewide accountability expectations.

2. Collaboration Models and State Engagement

Charter schools may work with local authorizers to define performance targets that feed into statewide reporting, ensuring alignment with state indicators while retaining local discretion. Alternatively, schools may engage directly with the state education agency to select appropriate metrics and goals. In either case:

- The framework should balance school autonomy with accountability, enabling authorizers and the state to monitor performance effectively without imposing undue administrative burden.
- The system should be transparent and provide clear expectations for reporting timelines, data submission, and alignment with statewide metrics.
- Collaboration should allow for tailored approaches that respect mission-specific or alternative instructional models, including virtual or specialized programs.

3. Reporting and Oversight

Charter schools typically report performance both to their authorizers and to the state education agency. Effective reporting frameworks:

- Ensure that statewide report cards and dashboards include charter schools in a way that allows comparability across all public schools.

- Require authorizers to aggregate and submit portfolio-level oversight reports to the state, where appropriate.
- Maintain consistency in core academic indicators while allowing schools flexibility to report on mission-specific measures.

This layered accountability model—authorizer oversight combined with statewide reporting—supports transparency, comparability, and school-level innovation.

4. Ensure Transparency and Comparability Across Schools

Regardless of the specific structure implemented, the framework should:

- Include charter schools in statewide reporting so families and policymakers can understand performance in context.
- Use common statewide metrics for core academic achievement while permitting locally selected indicators that reflect school-specific goals.
- Provide clarity for authorizers, schools, and the state regarding expectations, reporting processes, and accountability consequences.

5. Summary Recommendation

ORC3S strongly recommends a model in which authorizers collaborate with charter schools to establish local metrics and performance targets that are consistent with statewide accountability indicators. This approach preserves:

- **Autonomy:** Charter schools retain mission-aligned decision-making authority.
- **Accountability:** Authorizers and the state can monitor performance effectively.
- **Statewide Comparability:** The state receives consistent, high-quality data for public reporting and policy planning.

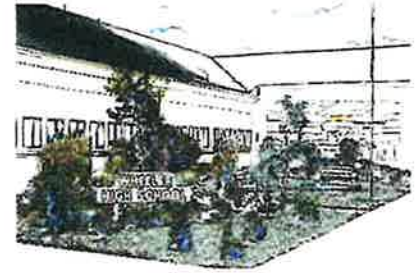
Collaboration with the state education agency is acceptable if local authorizer engagement is not feasible, but any approach that diminishes school autonomy is strongly discouraged.



Fossil Elementary

Fossil School District 21J Fossil Charter School

PO Box 206 Fossil, OR 97830-0206
541-763-4303
Jon McMurray, Superintendent



Wheeler High School

Fossil School District 21J
404 Main Street, Fossil OR 97830
jmcsmurray@fossil.k12.or.us
10-23-2025

Oregon State Board of Education
255 Capitol Street NE
Salem, OR 97310-0203

Subject: Urgent Request for Delay: PBAM 2027 Rule Update

Dear Members of Oregon State Board of Education:

I am writing to you from a small, rural school district with an urgent appeal to delay the implementation of the PBAM 2027 rule update. This change, as currently planned, threatens to crush the business manager workforce that is vital to the operation of small districts like ours.

I wholeheartedly agree with the concerns raised by many of my colleagues. In a small district, our business manager is the most important person in the organization. Their departure would have devastating consequences. When asked what I would do if my business manager were to leave, my prompt and truthful answer was, "Quit too." There is simply no way I can do this job without them.

This rule update could become the "tipping point" for these experienced professionals, pushing them toward retirement or resignation. My own business manager is burning out quickly, burdened by the existing workload and the stress of working with auditors.

Furthermore, many small districts rely on part-time business managers who utilize less complex accounting systems like QuickBooks. My business manager, for instance, serves our district and our charter school. The PBAM changes would add a significant amount of work with insufficient time and resources to prepare.

We are also aware of the concerns from our ESD, who estimate a substantial cost for this transition, a burden that could be passed down to districts like ours. The ripple effect of this unfunded mandate will be felt acutely in the rural school districts that can least afford it.

The timeline for implementation needs to be re-evaluated to provide our small districts with the necessary support and resources. Please consider this request seriously. Delaying this change is the best course of action to protect the stability of our business offices and ensure our ability to provide quality education for Oregon's students.

Thank you for your time and consideration.

Sincerely,


Jon McMurray
Superintendent
Fossil School District 21J

From: [Karen Patton](#)
To: [ODE RuleTestimony](#); [StateBoard Public Email](#); [WETHERELL Tenneal * ODE](#); [WILLIAMS Charlene * ODE](#)
Cc: [Lori Sattenspiel](#); [Kelle Hildebrandt](#); [Robert Waltenburg](#); [Penny Fender](#); [Landon Braden](#); [Lane Stratton](#); [mark.redmond@malesd.org](#); [criss.s@harneyesd.k12.or.us](#); [OEC](#); [morgan@cosa.k12.or.us](#); [parasa@cosa.k12.or.us](#); [smichaelson@osba.org](#); [LAIR Erin * ODE](#); [Tracy.Adevai@glide.k12.or.us](#)
Subject: URGENT: Request to Delay PBAM 2027 Rule Update to Prevent Rural School Financial Crisis
Date: Monday, November 3, 2025 12:10:49 PM
Attachments: [Drewsey SD13 PBAM LETTER 10.24.2025.pdf](#)
[Condon SD PBAM Letter 10.23.2025.pdf](#)
[Fossil SD 21J PBAM Letter 10.31.2025.pdf](#)
[DoubleO SD28 PBAM LETTER10.24.2025.pdf](#)
[Grant ESD Board PBAM Letter of Concern 2025 10.30.2025.pdf](#)
[Lake ESD PBAM Letter 10.27.2025.pdf](#)
[Harney ESD 2025 PBAM LETTER 10.24.2025.pdf](#)
[North Central ESD PBAM Letter 10.31.2025.pdf](#)
[Grant ESD PBAM Rule Change Letter to State Board 10.28.2025.pdf](#)
[Pine CK SD5 PBAM LETTER 10.24.2025.pdf](#)
[Prairie City School District Letter PBAM Rule Change - 10.28.2025.pdf](#)
[Wallowa ESD PBAM Change Letter 11.03.2025.pdf](#)
[Suntex SD10 PBAM LETTER 10.24.2025.pdf](#)

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Dear Members of the Oregon State Board of Education and ODE Leadership,

This communication is being sent on behalf of many of eastern Oregon's small, rural school districts and Education Service Districts (ESDs) to formally and urgently request a **delay in the implementation of the PBAM 2027 rule update.**

In addition to already submitted testimony, the documents attached are letters from multiple school district and ESD superintendents and governing boards that detail the existential threat this update—under the current unrealistic timeline—poses to the financial stability and operational continuity of our communities.

This rule change is widely viewed as the **"tipping point" that could cripple the business manager workforce** in our small, rural schools, leading to burnout and retirements. Regional fiscal offices report feeling "surprised and taken off guard" - this proposal did not include meaningful consultation with rural stakeholders

Key Concerns Summary

1. **Imminent Staffing Crisis:** Our business managers are irreplaceable veterans who are already at their limit.
 - One ESD business manager manages up to **six independent school district budgets** plus the ESD budget, attending seven board meetings per month.
 - As one superintendent noted, losing their business manager would force them to "quit also," demonstrating the absolute dependence on this single, critical professional.
 - **There is no replacement workforce.** When a rural business manager leaves, there is no hiring pool.
2. **Unrealistic Complexity for Small Districts:** The new chart of accounts is an untenable leap in complexity for districts that rely on simple accounting methods, like QuickBooks, and part-time staff.
3. **Regional Program Impossibility.** For ESDs managing regional programs across 40+ districts,

the tracking requirements are absurd. A professional development event with 500 participants would require proportional allocation tracking across dozens of districts and schools - creating massive administrative burden with zero educational benefit.

4. **Lack of State Coordination:** The confusion appears to extend to other state agencies (e.g., DELC), whose fiscal staff were largely unaware of this major change. ESDs managing programs from multiple agencies cannot run separate charts of accounts within the same budget. If state agency partners don't know about this initiative, how can districts be expected to implement it?

Moving forward with the current deadline is a recipe for a financial and human resources meltdown due to inadequate time for training limited staff. Districts are already straining to manage software conversions (delays & costs doubled), budget reductions, and auditor inconsistencies in addition to daily duties of running a district.

What We are Requesting:

- **Delay the PBAM 2027 rule update.** Use the delay to implement a pilot phase where volunteer districts can test the new rules and help create a clear, standardized path forward that is accessible to all districts, regardless of size.
- **Consult** with micro districts, part-time business managers, and ESDs running regional programs
- **Coordinate across all state agencies** (ODE, DELC, EAC) for unified requirements
- **Provide resources** from state, including software support, training, and technical assistance

The Bottom Line:

We are not averse to change, but we are averse to failure. This policy is actively driving experienced fiscal professionals out of rural education. When a business manager serving seven entities leaves, those seven entities lose their fiscal infrastructure simultaneously - and there is no one to replace her.

Please help us to protect our critical business office personnel, and ensure our students continue to receive the resources they need. Please pause, consult with the right stakeholders, and create an implementation plan that rural Oregon can actually execute. The alternative is watching fiscal management infrastructure crumble across rural districts.

Thank you for your time and serious consideration of this critical matter.

Respectfully and urgently submitted,

Karen Patton

Legislative Advocate

Grant, Harney, Lake, Malheur, North Central, Wallowa ESDs

Have feedback on our performance at WCESD? [Answer our 7-question survey.](#)

LAKE COUNTY EDUCATION SERVICE DISTRICT

357 North L Street

Lakeview, OR 97630

Lane Stratton, Superintendent

Phone: 541.947.3371 / 800.997.2361

Fax: 541.947.3373

www.lakeesd.k12.or.us



Date: October 27, 2025

From: Lane Stratton, Superintendent
Lake County ESD
357 North L St.
Lakeview, OR 97630
lstratton@lakeesd.k12.or.us

To: Oregon State Board of Education
255 Capitol Street NE
Salem, OR 97310-0203

Re: Request to delay changes to Administrative Rule (2027 PBAM Changes)

Dear Members of the Oregon State Board of Education,

I am writing on behalf of **Lake County ESD and Adel School District #21** to formally request a delay in the implementation of the PBAM 2027 rule update. This appeal reflects not only my personal concerns but also the widespread and urgent feedback from many business office staff and superintendents, particularly those in small, rural districts and Educational Service Districts (ESDs). We understand the intent behind the update but believe the current timeline poses a significant risk to the financial stability and continuity of our educational institutions.

The primary concerns we have are centered on the immense strain this change will place on our already overburdened business managers. As voiced by others in the field, this update could be the "tipping point" for many professionals.

We see several critical, interconnected issues:

- **Recruitment and Retention Crisis:** There is already a significant and worsening challenge in securing and retaining quality financial staff and auditors, especially in rural areas. The increased complexity introduced by this rule will require a high level of support for these employees; without a longer timeline of

implementation, this process will likely be highly frustrating and lack quality support, possibly leading to higher turnover. A small district superintendent recently noted that finding a qualified replacement for their business manager is virtually impossible.

- **Auditor Inconsistency:** I have heard from my colleagues that they have experienced significant stress due to inconsistent demands from different auditors. Each new auditor—and they have worked with many in the last few years—requires something different, which creates a cycle of constantly shifting procedures. Layering the PBAM changes on top of this without a smooth, well-supported transition will compound the problem.
- **Significant Financial Burden for ESDs:** For many ESDs, like ours, the transition to the new system will require significant investment. Requiring a short transition will result in extra hours paid out to staff for the added workload, additional training costs, and paying software vendors for an expedited process. This represents a substantial financial burden for an organization already operating with constrained resources and funding reductions on the horizon. Additionally, as an ESD, we are required to spend 90% of our state and local funding on services to schools; we are not allowed to reduce services to schools or otherwise find efficiencies in that side of our budget to offset the cost of this rapid implementation. Our remaining budget to cover overhead and administrative costs is already pretty lean, leaving little to no room for this expense.
- **Inadequate Transition Time and Support:** During a recent OAESD Program Cabinet meeting with ODE Staff, the timeline was discussed at length. As noted in other feedback, the consensus suggests that more time and dedicated support are needed for a successful transition. This is particularly true for small districts with part-time business managers who rely on less complex programs like QuickBooks. The sheer scale of the change has caused considerable alarm among seasoned professionals, many of whom have expressed shock and dismay.

A delay in the implementation is necessary to prevent a financial and human resources crisis in Oregon's rural schools. A postponed rollout would allow for a more structured, realistic transition period, including:

- Providing additional time for our limited staff to properly train and adjust.
- Developing and implementing standardized, clear guidance that is accessible for all district types, not just large urban ones.
- Providing time for our financial software companies to update and roll out the new chart of accounts structure within their systems. Despite what the software marketing team is saying, past experience with our vendor tells us this update is unlikely to happen quickly.
- Allowing time for ESDs and districts to secure funding and resources needed for the transition without crippling budgets.

We urge you to consider these serious concerns. The health of our school system, particularly in our most vulnerable rural areas, depends on a stable and supported business office workforce. Moving forward with the current timeline will have dire, unintended consequences.

Thank you for your time and consideration of this critical matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lane Stratton".

Lane Stratton
Superintendent
Lake County ESD
Adel School District #21

Dear Members of the Oregon State Board of Education,

On behalf of **Paisley School District #11**, one of Oregon’s smallest and most rural districts, I am writing to express deep concern regarding the proposed **PBAM 2027 rule update**, which would require districts to submit **detailed, itemized budget line-items** to the Oregon Department of Education.

While we understand and support the intent to increase fiscal transparency and alignment, the **administrative impact on small districts** like ours would be significant. Paisley operates a **K–12 brick-and-mortar school**, a **statewide distance learning program**, and a **boarding program** for high school students — all managed by **one business manager**. Mollie, our Business Manager, already carries a workload far beyond what most large districts would assign to a team of professionals. Her duties include budgeting, payroll, grant reporting, and compliance oversight across three programs under a single, unified district structure.

Despite her exceptional dedication, the complexity of our district’s multi-program operations already stretches capacity to its limit. The PBAM 2027 requirements would introduce a level of detail and frequency in financial reporting that is simply **untenable for small administrative teams**. In rural communities like Paisley, there is no viable pool of replacement candidates — the loss of a single business manager could effectively halt district operations.

Compounding this, small districts like ours have faced **inconsistent auditing expectations**. In the past six years, we have had **four different auditors**, each interpreting compliance requirements differently. Adding new, unfunded reporting mandates risks worsening this instability and eroding the trust and continuity needed to maintain sound fiscal practices.

Our **ESD partners** have also voiced strong concerns about the cost and scale of this transition. The implementation of new accounting software, additional audit preparation time, and increased state reporting demands will all require resources that small districts do not have. Without funding or staffing support, these mandates divert critical dollars away from the classroom.

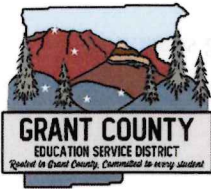
We respectfully request that the Board **delay the implementation of PBAM 2027** until the following steps are taken:

1. Develop a **phased implementation plan** that differentiates reporting requirements based on district size and administrative capacity.
2. Provide **targeted funding and technical support** to small districts and ESDs for software, training, and reporting infrastructure.
3. Establish a **rural district advisory panel** to ensure that implementation decisions reflect the realities of Oregon’s smallest communities.

Paisley School District supports transparency and accountability; however, this must be balanced with the capacity and sustainability of rural education systems. Without modification, PBAM 2027 may unintentionally destabilize small districts, leading to increased staff attrition and reduced educational quality for students.

Thank you for your consideration and for your ongoing support of Oregon's rural schools and communities.

Sincerely,
Mark Page-Botelho, Ph.D.
Superintendent/Principal
Paisley School District #11



Robert Waltenburg, Superintendent
Emma Winkelman, Chief Financial Officer
835A S. Canyon Blvd., John Day, OR 97845
541-575-1349 Office 541-575-3601 Fax

October 30, 2025

Oregon State Board of Education
255 Capitol Street NE
Salem, OR 97310-0203

Subject: URGENT Request for IMMEDIATE DELAY of Administrative Rule 2027 PBAM Changes to PREVENT Financial and Operational Collapse in Rural Districts

Dear Members of the Oregon State Board of Education,

210

We are writing to you today with a matter of **extreme urgency** that threatens the immediate **financial and human resources stability** of Oregon's small, rural districts and Educational Service Districts (ESDs). As the collective Board of Directors for the Grant County ESD, we **formally and emphatically request an immediate and mandatory one-year delay** in the implementation of the PBAM 2027 rule update.

This is not a matter of minor inconvenience; it is a **looming crisis**. Our appeal is galvanized by the widespread and **desperate** feedback from superintendents and business office staff across the state. While we respect the intent of the update, the current implementation timeline is a **guarantee of operational failure** and will precipitate a **mass exodus** of essential personnel.

The Critical and Immediate Threat: A Catastrophic Tipping Point

The primary concerns are centered on the **unsustainable and immediate strain** this mandate will place on our already overburdened financial professionals. This update is not merely an added task; it is the **"tipping point" that will shatter the capacity** of our current staff.

- **Imminent Business Manager Exodus:** Many of our highly experienced business managers are on the brink of retirement or severe burnout. In Grant ESD's case, our sole Business Manager supports **five districts and two charter schools** and serves as the clerk for all five districts. The addition of the PBAM complexity makes this **workload physically and professionally impossible**. Proceeding will guarantee a **mass resignation** of the most experienced personnel, leaving districts financially paralyzed.
- **Guaranteed Recruitment Failure:** We already face a **critical and worsening crisis** in securing and retaining qualified financial staff and auditors in rural areas. The radical increase in complexity and workload will make these positions **unfillable**. As one rural superintendent stated, finding a qualified replacement will become **literally impossible**, creating immediate financial management voids.
- **Unacceptable Financial Imposition and Audit Risk:** The new chart of accounts will **force a massive, unforeseen increase** in our annual audit costs, as auditors must spend significant time re-mapping their workbooks. For flat-funded institutions like the ESD, this transition requires **significant, unbudgeted investment** in software, personnel, and audit fees, which we **cannot absorb** without cutting essential student services.
- **Totally Inadequate Transition Time:** Discussions with ODE Staff confirm that the current timeline is **wholly unrealistic**. For small districts, where a single individual must execute this **monumental transition alone**, the

timeline is an **act of sabotage**. The sheer scale of change has caused **shock and dismay** among seasoned professionals, indicating the plan is fundamentally flawed.

A Necessary Delay to Avert Disaster

A delay is not a preference; it is a **necessary action** to prevent a **system-wide financial and human resources catastrophe** in Oregon's rural schools. A postponed rollout will allow for a **realistic and responsible** transition, including:

- **Mandating** time for our limited staff to receive proper, comprehensive training **before** implementation begins.
- **Developing and field-testing** standardized, clear guidance that is genuinely accessible and functional for **all district types**, especially small, rural ones.
- **Securing and budgeting** for the necessary funding and resources **without crippling** the current operational budgets of vulnerable districts.

Let us be clear: We are not change-averse; we are **planning-averse**. This change, as currently structured, is **poorly conceived, inadequately planned, and recklessly scheduled**. We **implore you to recognize the gravity of this situation**. The ability of our rural school system to operate effectively and transparently depends entirely on a stable, supported business office workforce. **Moving forward with the current timeline will have dire, immediate, and irreversible consequences.**

We require your action now.

211

Thank you for your immediate attention and critical consideration of this **life-or-death matter for our districts**.

Sincerely,



Megan Brandsma, Chair
Grant County ESD
brandsmam@grantesd.org



Becky Tatum, Vice-Chair
Grant County ESD
tatumb@grantesd.org



October 21, 2025

Oregon Department of Education
Public Review Committee – PBAM Revision
255 Capitol St. NE
Salem, OR 97310

Re: Feedback on Proposed Changes to the Public Budget and Accounting Manual (PBAM)

Dear Director Williams, Members of the Oregon Department of Education Board, and Members of the Public Review Committee,

I would like to begin by expressing my appreciation for the thoughtful work of the Office of Fiscal Transparency in drafting the proposed revisions to the Public Budget and Accounting Manual (PBAM). The intent to reduce redundancies, improve transparency, and provide a more consistent fiscal picture for education in Oregon is commendable and reflects a commitment to enhancing fiscal accountability across the state.

While I value and support these goals, I have significant concerns regarding the scope, timing, and practical implications of the proposed changes. I respectfully offer the following feedback for your consideration:

1. Implementation Timeline

The proposed implementation timeline is too compressed to accommodate the scale of changes outlined in the draft. School districts and charter schools begin their budget development processes in January or earlier, and transitioning to a substantially revised accounting structure within that timeframe presents a serious challenge. The system modifications, procedural updates, and staff training required cannot be reasonably achieved without risking disruption to critical fiscal operations.

2. Operational Burden and System Adjustments

The proposed revisions will require extensive reconfiguration of existing financial systems, many of which are deeply integrated into daily operations. Of particular concern is the increased complexity and length of accounting codes, which will significantly expand the daily workload for staff across all areas of the business office from budgeting and payroll to accounts payable and receivable. These additional demands could increase the risk of errors, especially in smaller offices where staff already manage multiple responsibilities.

3. Historical Data and Continuity

A transition of this magnitude raises concerns about the accessibility and integrity of historical financial data. The ability to reference and report historical information accurately is critical for compliance, audits, and decision-making. It is unclear how these changes would ensure continuity of data under the new structure.

4. Practical Understanding of Business Office Operations

It is important to acknowledge that the role of a school business manager is multifaceted encompassing risk management, facilities oversight, food service, safety, and more often with limited staffing. The proposed changes suggest a lack of direct insight into the realities of daily financial operations in K–12 settings. Without this practical understanding, the transition risks imposing unrealistic demands on already stretched teams.

5. GASB Compliance and Accounting Methods

The proposal references Governmental Accounting Standards Board (GASB) compliance as a driving factor. However, some Oregon entities operate on a cash basis of accounting, for which GASB standards apply differently. It is unclear whether this distinction was considered and how the proposed changes will accommodate these entities.

6. Impact on Charter Schools

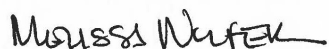
Several elements of the proposed guidance would require charter schools to report transactions differently. Many charters operate independently of their sponsoring districts and often utilize smaller, less customizable financial systems. It is essential to consider whether these systems can support the expanded account structures and how the proposed changes might affect both charters and their sponsoring districts operationally and financially.

Recommendation

Given the scope of the proposed changes and the potential for unintended consequences, I strongly recommend that ODE consider a phased approach. Rather than implementing all revisions at once, focus initially on the adjustments required by new legislation and introduce additional changes incrementally over time. This would allow districts and charter schools to adapt their systems, train staff, and ensure compliance without compromising the quality and accuracy of financial reporting.

Thank you for the opportunity to provide feedback.

Respectfully,



Melissa Wolfer

Business Manager

Frontier Charter Academy

mwolfer@frontiercharteracademy.org

Michelle Geer
Superintendent
Condon School District
210 East Bayard St.
Condon, OR 97823
877-250-6040
mgeer@condon.k12.or.us

October 23, 2025

Oregon State Board of Education
255 Capitol Street NE
Salem, OR 97310-0203

Attn: Tenneal Wetherell
Oregon Department of Education
255 Capitol Street NE
Salem, OR 97310-0203

214

Subject: Urgent Request for Delay: PBAM 2027 Rule Update

Dear Members of Oregon State Board of Education

I am writing on behalf of Condon School District, a small, rural district with an urgent appeal to delay the implementation of the PBAM 2027 rule update. This change, as currently planned, threatens to overwhelm the business manager workforce that is vital to the operation of small districts like ours.

I wholeheartedly agree with the concerns that have been raised by many of my colleagues. In a small district, our business manager is the most important person in the organization. Their departure would have devastating consequences. When asked what I would do if my business manager were to leave, my prompt and truthful answer was, "Quit also." There is simply little to no replacement for this type of position in our small, rural communities.

This rule update could become the "tipping point" for these experienced professionals, pushing them toward retirement or resignation. My own business manager is nearing the end of her career, and already facing burnout by the existing workload. The PBAM

changes would add a significant amount of work with insufficient time and resources to prepare.

We have concerns with the additional cost for this transition, which would place an undue financial burden on small districts like ours. The ripple effect of this unfunded mandate will be felt most acutely in the rural school districts that can least afford it.

The timeline for implementation needs to be re-evaluated to provide our small districts with the necessary support and resources. Please consider this request seriously. Delaying this change is the best course of action to protect the stability of our business offices and ensure our ability to provide quality education for Oregon's students.

215

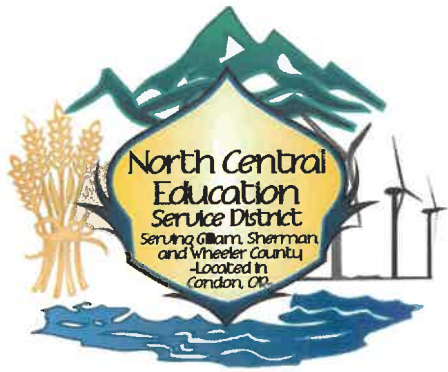
Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script, reading "Michelle Geer".

Michelle Geer

Condon School District Superintendent



Penny Fender, Superintendent

Board of Directors:

Jeff Schott, Chair

Amy Derby, Vice Chair

Jim Doherty

Sarah Rucker

Miesha Bennett

Kara Lanthorn

Becky Brandenburg

October 31, 2025

Oregon Department of Education, State Board of Education

255 Capitol Street NE

Salem, OR 97310-0203

Subject: Immediate and Mandatory One-Year Delay Required for PBAM 2027 Implementation to Avert Financial and Human Resources Catastrophe in Rural Oregon School Districts

I am writing to you today with a matter of extreme urgency that threatens the immediate financial and human resources stability of Oregon's small, rural districts and Educational Service Districts (ESDs). As the superintendent of North Central ESD I formally and emphatically request an immediate and mandatory **one-year delay** in the implementation of the PBAM 2027 rule update.

This is not a matter of minor inconvenience; it is a looming crisis. Our appeal is galvanized by the widespread and desperate feedback from superintendents and business office staff across the state. While we respect the intent of the update, the current implementation timeline is a guarantee of operational failure and will precipitate a mass exodus of essential personnel.

The Critical and Immediate Threat: A Catastrophic Tipping Point

The primary concerns are centered on the unsustainable and immediate strain this mandate will place on our already overburdened financial professionals. This update is not merely an added task; it is the **"tipping point"** that will shatter the capacity of our current staff.

- **Imminent Business Manager Exodus:** Our business manager workforce is vital to the operation of small districts like ours. Many of our highly experienced professionals are on the brink of retirement or severe burnout, already struggling with the existing workload. In a small district, the business manager is the single most important person in the organization; their departure would have devastating consequences. The addition of the PBAM complexity makes the current workload—which, in North Central ESD's case, includes supporting five districts and two charter schools—physically and professionally impossible. Proceeding will guarantee a mass resignation of the most experienced personnel, leaving districts financially paralyzed. As one rural superintendent stated, finding a qualified replacement will become literally **impossible**.

135 S. Main, Suite 207 - PO Box 637 - Condon, OR 97823-0637

Phone (800) 450-2732

Supt. e-mail address: pfender@ncesd.k12.or.us

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- **Unacceptable Financial Imposition and Audit Risk:** The new chart of accounts will force a massive, unforeseen increase in our annual audit costs, as auditors must spend significant time re-mapping their workbooks. This unfunded mandate places an undue financial burden on small districts, which we cannot absorb without cutting essential student services. The ripple effect will be felt most acutely in the rural school districts that can least afford it.
- **Totally Inadequate Transition Time:** Discussions with ODE Staff confirm that the current timeline is wholly unrealistic. For small districts, where a single individual must execute this monumental transition alone, the timeline is an act of sabotage. The sheer scale of change has caused shock and dismay among seasoned professionals, indicating the plan is fundamentally flawed and that we lack the necessary support and resources to prepare.

A Necessary Delay to Avert Disaster

A delay is not a preference; it is a necessary action to prevent a system-wide financial and human resources catastrophe in Oregon's rural schools. A postponed rollout will allow for a realistic and responsible transition, including:

1. Mandating time for our limited staff to receive **proper, comprehensive training** before implementation begins.
2. Developing and field-testing standardized, clear guidance that is genuinely accessible and functional for **all district types**, especially small, rural ones.
3. Securing and **budgeting for the necessary funding and resources** without crippling the current operational budgets of vulnerable districts.

Let me be clear: I am not change-averse; I am planning-averse. This change, as currently structured, is poorly conceived, inadequately planned, and recklessly scheduled. The ability of our rural school system to operate effectively and transparently depends entirely on a stable, supported business office workforce. Moving forward with the current timeline will have dire, immediate, and irreversible consequences.

I implore you to recognize the gravity of this situation. Delaying this change is the best course of action to protect the stability of our business offices and ensure our ability to provide quality education for Oregon's students.

We require your action now.

Thank you for your immediate attention and critical consideration of this life-or-death matter for our districts.

Sincerely,



**Penny Fender, Superintendent
North Central ESD**



Prairie City School District

P.O. Box 345 • 740 Overholt Street • Prairie City, Oregon 97869 • (844) 820-3314

Rhonda McCumber, Superintendent
Prairie City School District
740 Overholt Street
Prairie City, OR 97869
(541) 820-3314
mccumberr@prairiecitysd.org

October 28, 2025

218

Oregon State Board of Education
255 Capitol Street NE
Salem, OR 97310-0203

Subject: Request to Delay Changes to Administrative Rule re: 2027 PBAM Changes

Dear Members of the Oregon State Board of Education,

I am writing on behalf of Prairie City School District to formally request a delay in the implementation of the PBAM 2027 rule update. This request reflects not only my own concerns but also those shared by many colleagues across small, rural districts and Education Service Districts (ESDs) throughout the state. While we understand and appreciate the intent behind these updates, the current implementation timeline poses significant challenges that could impact both the financial stability and operational continuity of districts like ours.

Our primary concern centers on the additional strain this change will place on already overextended business managers and financial staff. Many of these professionals are balancing heavy workloads and are nearing retirement. In our case, our business manager serves multiple districts within Grant County, managing five separate board meetings each month in addition to day-to-day financial operations. The PBAM changes, while well-intentioned, add an unsustainable layer of complexity that risks accelerating burnout and turnover among some of Oregon's most experienced financial staff.

We see several interrelated issues that warrant consideration:

- **Business Manager Burnout:** The workload associated with PBAM changes could be the tipping point for many of our most skilled professionals, leading to retirements and resignations at a time when replacements are extremely difficult to find.

BOARD OF DIRECTORS

Chairperson Dwight Howard-Jenni Workman-Jared Horrell-Riccola Voigt
Mindy Stinnett-Mikeala Bradford-Megan Workman
We are an equal opportunity employer and provider.

- **Recruitment and Retention Crisis:** Rural districts like ours already face a limited pool of qualified candidates. Additional complexity in reporting requirements will make these positions even harder to fill and maintain.
- **Audit Challenges:** The required transition to a new chart of accounts will increase auditor workloads and costs as they re-map financial systems, creating an added financial strain for small districts.
- **Financial Burden:** As a small, flat-funded district, Prairie City simply does not have the extra resources to absorb the increased costs associated with training, software updates, and additional audit work required by this change.
- **Inadequate Transition Time and Support:** The current timeline does not provide sufficient time for small districts—where often a single person manages all fiscal operations—to learn, plan, and implement such significant changes effectively.

To further support a smooth transition, I would also like to propose a **pilot program** prior to full statewide implementation. This pilot could include a small, diverse group of districts and ESDs—representing a mix of sizes, regions, and software vendors—to test the updated PBAM system. Each participating district could work directly with a designated vendor to identify and resolve inevitable bugs, refine data conversion processes, and develop clear, field-tested implementation guidance.

This pilot approach would provide valuable insight for ODE and vendors, ensuring software compatibility and smoother training for business staff statewide. It would also allow time to address system challenges before they impact all districts. By gathering lessons learned through this collaborative process, Oregon could prevent widespread disruptions and ensure that the eventual rollout is both efficient and sustainable.

A delay in implementation, paired with this pilot phase, would allow time for thoughtful planning, proper training, and funding support. It would ensure that all districts—regardless of size or staffing—can transition successfully. Specifically, this approach would:

- Provide additional time for limited staff to receive comprehensive training and adjust procedures.
- Allow for the development of clear, standardized guidance accessible to all district types.
- Give districts and ESDs time to secure the necessary funding for the transition without undermining other critical services.

On behalf of Prairie City School District and other small, rural districts across Oregon, I urge the Board to consider this delay and pilot approach to prevent what could become a serious financial and human resource crisis. Our schools depend on stable and supported business office teams to ensure resources reach students and classrooms efficiently and accurately.

Thank you for your time, understanding, and consideration of this important matter.

Sincerely,



Rhonda McCumber
Superintendent
Prairie City School District

BOARD OF DIRECTORS

Chairperson Dwight Howard-Jenni Workman-Jared Horrell-Riccola Voigt
Mindy Stinnett-Mikeala Bradford-Megan Workman
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Robert Waltenburg, Superintendent
Emma Winkelman, Chief Financial Officer
835A S. Canyon Blvd., John Day, OR 97845
541-575-1349 Office 541-575-3601 Fax

October 28, 2025

Oregon State Board of Education
255 Capitol Street NE
Salem, OR 97310-0203

Subject: Request to delay changes to Administrative Rule 2027 PBAM Changes

Dear Members of the Oregon State Board of Education

We are writing on behalf of Grant County Education Service District to formally request a delay in the implementation of the PBAM 2027 rule update. This appeal reflects not only our personal concerns but also the widespread and urgent feedback from many business office staff and superintendents, particularly those in small, rural districts and Educational Service Districts (ESDs). We understand the intent behind the update but believe the current timeline poses a significant risk to the financial stability and continuity of our educational institutions.

The primary concerns we have are centered on the immense strain this change will place on our already overburdened business managers. As voiced by others in the field, this update could be the "tipping point" for many professionals.

We see several critical, interconnected issues:

- **Business Manager Burnout:** Many of our business managers are nearing retirement or are experiencing severe burnout. In our own case, Grant ESD's business manager is responsible for five districts and two virtual sponsored charter schools, and serves as a clerk for all five of those districts. This results in five board meetings per month, a workload that is simply not sustainable with added complexity. The PBAM changes will exacerbate this workload, leading to a potential mass exodus of highly experienced personnel.
- **Recruitment and Retention Crisis:** There is already a significant and worsening challenge in securing and retaining quality financial staff and auditors, especially in rural areas. The increased complexity introduced by this rule will make these positions even less attractive and may lead to higher turnover. A small district superintendent recently noted that finding a qualified replacement for their business manager is virtually impossible.
- **Audit Challenges:** We are one of few who have had consistent auditors for many years, however, the new chart of accounts will require more work of our current auditors to re-map their workbooks and in turn, will increase the cost of our annual audit.
- **Significant Financial Burden for ESDs:** For many ESDs, like ours, the transition to the new system will require significant investment. Our ESD expects this task to require significant additional expense in software, personnel, and audit fees, which is difficult to absorb as a flat-funded institution. This represents a substantial financial burden for an organization already operating with constrained resources.
- **Inadequate Transition Time and Support:** During a recent OAESD Program Cabinet meeting with ODE Staff, the timeline was discussed at length. As noted in other feedback, the consensus suggests that more time and

dedicated support are needed for a successful transition. This is particularly true for small districts with limited staff, where likely one person would be responsible for the entire transition. The sheer scale of the change has caused considerable alarm among seasoned professionals, many of whom have expressed shock and dismay.

A delay in the implementation is necessary to prevent a financial and human resources crisis in Oregon's rural schools. A postponed rollout would allow for a more structured, realistic transition period, including:

- Providing additional time for our limited staff to properly train and adjust.
- Developing and implementing standardized, clear guidance that is accessible for all district types, not just large urban ones.
- Allowing time for ESDs and districts to secure funding and resources needed for the transition without crippling budgets.

Some will say that we are averse to change – that we want everything to “stay the same”. Rest assured, we are not averse to change. Change, when thoroughly vetted and planned, that brings about positive results is always welcome. If the system is improved because of change, then we whole-heartedly accept the change. This change, however, is not well thought out and not well planned. We urge you to consider these serious concerns. The health of our school system, particularly in our most vulnerable rural areas, depends on a stable and supported business office workforce. Moving forward with the current timeline will have dire, unintended consequences. 221

Thank you for your time and consideration of this critical matter.

Sincerely,



Robert Waltenburg, Superintendent
Grant County ESD
waltenburgr@grantesd.org
541-575-4076



Emma Winkelman, Chief Business Officer
Grant County ESD
winkelmane@grantesd.org
541-575-4071



Wallowa County Education Service District

PO Box 222 | 107 SW First Street, Enterprise, Oregon 97828
Phone: 541-426-7600 | Fax: 541-426-3732 | www.r18esd.org

November 3, 2025

Oregon State Board of Education
255 Capitol Street NE
Salem, OR 97310-0203

Attn: Dr. Tenneal Wetherell, Chief of Staff
Oregon Department of Education
255 Capitol Street NE
Salem, OR 97310-0203

Subject: Request to Delay Implementation of PBAM 2027 Rule Changes

Dear Members of the Oregon State Board of Education,

I am writing on behalf of Wallowa County Education Service District (ESD), a small rural ESD in eastern Oregon, to express our significant concerns regarding the planned implementation of the 2027 Program Budgeting and Accounting Manual (PBAM) rule changes. We respectfully request that the State Board of Education delay the implementation timeline for these changes. As currently scheduled, this mandate threatens to overwhelm our limited business office capacity and those of the small school districts we serve.

Wallowa County ESD faces serious challenges in recruiting and retaining qualified financial personnel. Our staffing is extremely limited – our entire business office consists of just four individuals who handle all accounting, budgeting, and reporting duties for the ESD and assist our component school districts. In our remote rural area, finding replacements or additional qualified staff is nearly impossible. If I – as the Business Manager - were to leave, we would have no viable local candidate to step in. One of my fellow rural superintendents recently remarked that if his business manager quit, he would “quit also,” because there is simply no replacement available in our small communities. This stark sentiment underscores the risk of burnout and turnover we are facing.

The PBAM 2027 update, in its present form and timeline, could very well be the tipping point that pushes many of these experienced professionals into retirement or resignation. I am already stretched thin under the existing workload and stress of complying with current requirements. We have experienced frequent turnover in external auditors over the past several years – we have worked with four different auditors in six years – and each has imposed slightly different demands on our reporting. This inconsistency has forced our small team to constantly adjust procedures. Layering a complex new chart of accounts and monthly reporting requirements on top of this already fragile system, without substantial support, is likely to drive our remaining staff to burnout.

We would like to highlight several specific concerns that Wallowa County ESD and other rural districts and ESDs across Oregon have identified regarding the PBAM changes:

Overloaded Business Managers: In small districts and ESDs, a single business manager often wears multiple hats and may serve several entities. For example, I not only handle Wallowa ESD’s finances but also assists multiple local school districts with every aspect of financial operations and grant management. This workload is already at the limit of what one person can manage. The additional complexity and more frequent reporting introduced by the PBAM update will be unsustainable without relief, almost certainly leading to burnout or turnover.

Recruitment and Retention Challenges: Rural communities face a chronic challenge in hiring and retaining qualified school finance staff. There is a very limited pool of candidates willing and able to take on these roles in remote areas. The increased complexity and stress from the new PBAM requirements will make these positions even less attractive, exacerbating an existing recruitment and retention crisis. If we lose a knowledgeable accountant, replacing that expertise locally is virtually impossible.

Conflicting Auditor Demands: Small districts and ESDs have already been dealing with inconsistent directives from different auditors year to year. Adopting a sweeping new chart of accounts in the midst of this inconsistency – and before many auditors themselves are fully familiar with it – will compound confusion and the risk of errors. Our business office could end up caught between meeting new state reporting formats and satisfying auditors who might not yet align with these changes, increasing stress and workload.

Inadequate Systems and Cost Burden: Many rural districts (including those we support) rely on basic accounting software like QuickBooks or Infinite Visions. These tools are not designed for the complex, multi-dimensional coding structure that the updated PBAM mandates. Transitioning to the new system may require purchasing and learning new accounting software or extensively reconfiguring our current systems – both of which carry significant costs and technical challenges. For an under-resourced ESD like ours, which is already operating on a tight budget, this represents a substantial unfunded mandate. We anticipate considerable one-time expenses (for software, data conversion, and staff training) as well as ongoing labor costs to meet the new monthly reporting and

reconciliation demands. If our ESD is forced to absorb these costs, we might have to pass them down to the small school districts we serve, who can least afford additional financial burdens.

Contrary to the assertion that this change will “reduce the reporting burden” on districts over time, we foresee the opposite – at least in the near term. The updated PBAM framework will introduce new monthly state reporting obligations (where currently only annual reports or periodic submissions are required) and necessitate a comprehensive overhaul of our accounting systems. For a small operation like ours, this translates to a significant increase in administrative workload and the need for expertise that we do not have on hand. Any potential efficiency gains from a modernized chart of accounts will not materialize for us without years of difficult transition, and only if we can acquire the proper tools and training.

Given these concerns, we respectfully urge the State Board of Education to postpone the implementation of the PBAM 2027 rule changes. A delay in the timeline will grant ESDs and school districts much-needed time to prepare and adjust. We suggest establishing a more gradual rollout or pilot program for the new chart of accounts, allowing for practical feedback and mid-course corrections before full implementation. In the meantime, we also ask that the Oregon Department of Education provide greater support to ensure a successful transition. This support should include dedicated funding for upgrading or replacing accounting systems, comprehensive training opportunities specifically tailored to small and rural business offices, and readily available technical assistance to help with account mapping and process changes. With additional time and resources, we can work toward the goals of consistency and transparency without jeopardizing the stability of our local operations.

We want to emphasize that Wallowa County ESD and our peer organizations wholeheartedly support well-planned improvements in fiscal transparency and consistency. Our intent is not to resist progress, but to ensure that this change is implemented in a thoughtful, realistic way. As it stands, the current rollout plan appears under-resourced and is likely to destabilize the rural business office ecosystem. Moving forward on the present schedule, without addressing the gaps in support and capacity, could inadvertently undermine the very goals of the PBAM update by causing a breakdown in financial operations in Oregon’s smallest districts.

In closing, we ask that you seriously consider our request to delay and reevaluate the PBAM 2027 implementation. By collaborating with rural ESDs and districts to adjust the timeline and bolster support, the State Board and ODE can ensure this necessary modernization succeeds across all of Oregon – not just in the largest districts with greater capacity. Thank you for your time and consideration of these urgent concerns. We appreciate your

leadership and your commitment to serving the needs of all Oregon schools, both large and small.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Pace', with a stylized flourish at the end.

Ryan Pace

Director of Business Services, Wallowa County ESD

CC: Dr. Charlene Williams, Director, Oregon Department of Education;
Dr. Tenneal Wetherell, Chief of Staff, Oregon Department of Education

October 24, 2025

Double O School District #28

60077 Double O Road

Hines, OR 97738

Oregon State Board of Education

255 Capitol Street NE

Salem, OR 97310-0203

Attn: Dr. Charlene Williams, Director, Tenneal Wetherell, Deputy Director of Operations

Subject: Urgent Request for Delay: PBAM 2027 Rule Update

Dear Members of Oregon State Board of Education,

I am writing to you from a small, rural school district with an urgent appeal to delay the implementation of the PBAM 2027 rule update. This change, as currently planned, threatens to crush the business manager workforce that is vital to the operation of small districts like ours.

I wholeheartedly agree with the concerns that have been raised by many of my colleagues. We contract with Harney Education Service District (HESD) for clerk services, which includes business services. Without these services we would fail to be able to meet the stringent requirements placed upon us. Please remember that we have ONE teacher, an educational assistant and a part time maintenance person. That's it. And yet, we meet the needs of our community and provide high quality educational opportunities for all of our students. HESD is a necessary partner and if they were to lose their business manager they would not be able to provide the services we require. The HESD business manager does an amazing job managing 6 independent school district budgets as well as the ESD budget.

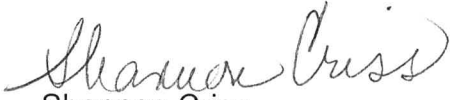
This rule update could become the "tipping point" for this extraordinary professional business manager. She is already overwhelmed and is burning out quickly, burdened by the existing workload and the stress of working with auditors. We have had four auditors in the past six years, and each "demanded" something different from us - this only adds to the constant daily pressure of the work. She prepares for and attends

seven board meetings per month and is already stretched to her limit. The PBAM changes would add a significant amount of work with insufficient time and resources to prepare.

The timeline for implementation needs to be re-evaluated to provide our small districts with the necessary support and resources. Please consider this request seriously. Delaying this change is the best course of action to protect the stability of our business offices and ensure our ability to provide quality education for Oregon's students.

Thank you for your time and consideration.

Respectfully submitted,



Shannon Criss

Superintendent of Record

October 24, 2025

Drewsey School District #13

78834 Drewsey Road

Drewsey, OR 97904

Oregon State Board of Education

255 Capitol Street NE

Salem, OR 97310-0203

Attn: Dr. Charlene Williams, Director, Tenneal Wetherell, Deputy Director of Operations

Subject: Urgent Request for Delay: PBAM 2027 Rule Update

Dear Members of Oregon State Board of Education,

I am writing to you from a small, rural school district with an urgent appeal to delay the implementation of the PBAM 2027 rule update. This change, as currently planned, threatens to crush the business manager workforce that is vital to the operation of small districts like ours.

I wholeheartedly agree with the concerns that have been raised by many of my colleagues. We contract with Harney Education Service District (HESD) for clerk services, which includes business services. Without these services we would fail to be able to meet the stringent requirements placed upon us. Please remember that we have ONE teacher, a part time educational assistant and a part time maintenance person. That's it. And yet, we meet the needs of our community and provide high quality educational opportunities for all of our students. HESD is a necessary partner and if they were to lose their business manager they would not be able to provide the services we require. The HESD business manager does an amazing job managing 6 independent school district budgets as well as the ESD budget.

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The timeline for implementation needs to be re-evaluated to provide our small districts with the necessary support and resources. Please consider this request seriously. Delaying this change is the best course of action to protect the stability of our business offices and ensure our ability to provide quality education for Oregon's students.

Thank you for your time and consideration.

Respectfully submitted,

A handwritten signature in cursive script that reads "Shannon Criss".

Shannon Criss

Superintendent of Record

Harney Education Service District

25 Fairview Heights | Burns, Oregon 97720

Administration 541.573.2122 | Regional Service Center 541.573.2122 | Early Childhood Center 541.573.6461

October 24, 2025

Oregon State Board of Education

255 Capitol Street NE

Salem,OR 97310-0203

Attn: Dr. Charlene Williams, Director, Tenneal Wetherell, Deputy Director of Operations

Subject: Urgent Request for Delay: PBAM 2027 Rule Update

Dear Members of Oregon State Board of Education,

I am writing on behalf of Harney Education Service District (HESD) to formally request a delay in the implementation of the PBAM 2027 rule update. This appeal reflects not only my personal concerns but also the widespread and urgent feedback from many business office staff and superintendents, particularly those in small, rural districts and Educational Service Districts (ESDs). We understand the intent behind the update but believe the current timeline poses a significant risk to the financial stability and continuity of our educational institutions and is not going to meet the intended goal of reducing the reporting burden.

My overall concern is centered on the immense strain this change will place on my already overburdened business manager. As voiced by others in the field, this update could be the "tipping point" for many professionals, including my business manager who said simply, "I just cannot do what they are asking me to do within the scope of my already monstrous tasks."

There are several critical, interconnected issues:

- **Business Manager Burnout:** Many of our business managers are nearing retirement or are experiencing severe burnout. At Harney ESD, my business manager is responsible for HESD and **six** districts, including sponsored charter schools, and serves as a clerk for an additional four of these districts. This results in 7 board meetings per month, a workload that is simply not sustainable with added complexity. The PBAM changes will exacerbate this workload, leading to a potential mass exodus of highly experienced personnel.

- Recruitment and Retention Crisis: There is already a significant and worsening challenge in securing and retaining quality financial staff and auditors, especially in rural areas. The increased complexity introduced by this rule will make these positions even less attractive and may lead to higher turnover. In our rural and remote districts a qualified business manager is non-existent.

- Auditor Inconsistency: We have experienced significant stress due to inconsistent demands from different auditors. Each new auditor—I have worked with four in the last six years—requires something different, which creates a cycle of constantly shifting procedures. Layering the PBAM changes on top of this without a smooth, well-supported transition will compound the problem.

- Significant Financial Burden for ESDs: For many ESDs, like ours, the transition to the new system will require significant investment. I cannot even begin to consider what the cost of this burden would be because my business office (2 people) simply cannot absorb this work. We are already under-funded and this represents a substantial financial burden for an organization already operating with constrained resources.

- Inadequate Transition Time and Support: During a recent OAESD Program Cabinet meeting with ODE Staff, the timeline was discussed at length. As noted in other feedback, the consensus suggests that more time and dedicated support are needed for a successful transition. This is particularly true for small districts with part-time business managers who rely on less complex programs like QuickBooks. The sheer scale of the change has caused considerable alarm among seasoned professionals, many of whom have expressed shock and dismay.

A delay in the implementation is necessary to prevent a financial and human resources crisis in Oregon's rural schools. A postponed rollout would allow for a more structured, realistic transition period, including:

- Providing additional time for our limited staff to properly train and adjust.

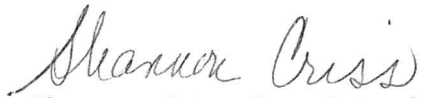
- Developing and implementing standardized, clear guidance that is accessible for all district types, not just large urban ones.

- Allowing time for ESDs and districts to secure funding and resources needed for the transition without crippling budgets.

We urge you to consider these serious concerns. The health of our school system, particularly in our most vulnerable rural areas, depends on a stable and supported business office workforce. Moving forward with the current timeline will have dire, unintended consequences.

Thank you for your time and consideration of this critical matter.

Respectfully,

A handwritten signature in cursive script that reads "Shannon Criss". The signature is written in dark ink and is positioned above the printed name.

Shannon Criss, Superintendent

October 24, 2025

Pine Creek School District #5

79668 Pine Creek Road

Drewsey, OR 97904

Oregon State Board of Education

255 Capitol Street NE

Salem, OR 97310-0203

Attn: Dr. Charlene Williams, Director, Tenneal Wetherell, Deputy Director of Operations

Subject: Urgent Request for Delay: PBAM 2027 Rule Update

Dear Members of Oregon State Board of Education,

I am writing to you from a small, rural school district with an urgent appeal to delay the implementation of the PBAM 2027 rule update. This change, as currently planned, threatens to crush the business manager workforce that is vital to the operation of small districts like ours.

I wholeheartedly agree with the concerns that have been raised by many of my colleagues. We contract with Harney Education Service District (HESD) for clerk services, which includes business services. Without these services we would fail to be able to meet the stringent requirements placed upon us. Please remember that we have ONE teacher, a part time educational assistant and a part time maintenance person. That's it. And yet, we meet the needs of our community and provide high quality educational opportunities for all of our students. HESD is a necessary partner and if they were to lose their business manager they would not be able to provide the services we require. The HESD business manager does an amazing job managing 6 independent school district budgets as well as the ESD budget.

This rule update could become the "tipping point" for this extraordinary professional business manager. She is already overwhelmed and is burning out quickly, burdened by the existing workload and the stress of working with auditors. We have had four auditors in the past six years, and each "demanded" something different from us - this only adds to the constant daily pressure of the work. She prepares for and attends

seven board meetings per month and is already stretched to her limit. The PBAM changes would add a significant amount of work with insufficient time and resources to prepare.

The timeline for implementation needs to be re-evaluated to provide our small districts with the necessary support and resources. Please consider this request seriously. Delaying this change is the best course of action to protect the stability of our business offices and ensure our ability to provide quality education for Oregon's students.

Thank you for your time and consideration.

Respectfully submitted,



Shannon Criss

Superintendent of Record

October 24, 2025

Suntex School District #10

68178 Silver Creek Road

Riley, OR 97758

Oregon State Board of Education

255 Capitol Street NE

Salem, OR 97310-0203

Attn: Dr. Charlene Williams, Director, Tenneal Wetherell, Deputy Director of Operations

Subject: Urgent Request for Delay: PBAM 2027 Rule Update

Dear Members of Oregon State Board of Education,

I am writing to you from a small, rural school district with an urgent appeal to delay the implementation of the PBAM 2027 rule update. This change, as currently planned, threatens to crush the business manager workforce that is vital to the operation of small districts like ours.

I wholeheartedly agree with the concerns that have been raised by many of my colleagues. We contract with Harney Education Service District (HESD) for clerk services, which includes business services. Without these services we would fail to be able to meet the stringent requirements placed upon us. Please remember that we have TWO teachers and a part time maintenance person. That's it. And yet, we meet the needs of our community and provide high quality educational opportunities for all of our students. HESD is a necessary partner and if they were to lose their business manager they would not be able to provide the services we require. The HESD business manager does an amazing job managing 6 independent school district budgets as well as the ESD budget.

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The timeline for implementation needs to be re-evaluated to provide our small districts with the necessary support and resources. Please consider this request seriously. Delaying this change is the best course of action to protect the stability of our business offices and ensure our ability to provide quality education for Oregon's students.

Thank you for your time and consideration.

Respectfully submitted, .

A handwritten signature in cursive script that reads "Shannon Criss".

Shannon Criss

Superintendent of Record



**DAYVILLE
SCHOOL
DISTRICT 16J**

Tiffnie Schmadeka, Superintendent
Dayville SD 16J
285 Schoolhouse Rd.
Dayville OR 97825
(855)617-2412 ext. 2103
schmadekat@dayvillesd.org

November 4, 2025

Oregon State Board of Education
255 Capitol Street NE
Salem, OR 97310-0203

Subject: Request to Delay Implementation of PBAM 2027 Rule Update

237

Dear Members of Oregon State Board of Education,

On behalf of Dayville School District 16J, I am writing with an urgent appeal to delay the implementation of the PBAM 2027 rule update. This change, as currently planned, threatens to crush the business manager workforce that is vital to the operation of small districts like ours. I wholeheartedly agree with the concerns that have been raised by many of my colleagues. In a small district, our business manager is the most important person in the organization. Their departure would have devastating consequences. There is simply little to no replacement for this type of position in our small, rural communities.

This rule update could become the "tipping point" for these experienced professionals, pushing them toward retirement or resignation. My own business manager is already burdened by the existing workload and the stress of working to balance unfunded mandates. The addition of the PBAM modernization implementation would increase that burden tenfold.

Furthermore, many small districts rely on contracted business services from CPA firms or our ESD. My business manager, for instance, serves multiple districts and charter schools in our area. This means she attends multiple board meetings per month and is already stretched to her limit. The PBAM changes would add a significant amount of work with insufficient time and resources to prepare.

We are also aware of the concerns from our ESD, who estimate a substantial cost for this transition, a burden that could be passed down to districts like ours. The ripple effect of this unfunded mandate will be felt acutely in the rural school districts that can least afford it.

285 School House Rd. | P.O. Box C
Dayville, Oregon 97825

Phone: (855) 617-2412

Fax: (866) 847-2155

Website: Dayvilleschools.com



**DAYVILLE
SCHOOL
DISTRICT 16J**

The timeline for implementation needs to be re-evaluated to provide our small districts with the necessary support and resources. Please consider this request seriously. Delaying this change is the best course of action to protect the stability of our business offices and ensure our ability to provide quality education for Oregon's students.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, reading "Tiffnie Schmadeka". The signature is fluid and cursive, with the first name "Tiffnie" being more prominent than the last name "Schmadeka".

Tiffnie Schmadeka

Dayville School District Superintendent

238

285 School House Rd. | P.O. Box C
Dayville, Oregon 97825

Phone: (855) 617-2412

Fax: (866) 847-2155

Website: Dayvilleschools.com

Date: November 04, 2025

To: Dr. Charlene Williams, ODE Director and Oregon State Board of Education members

From: Jackie Olsen, Oregon Association of School Business Officials (OASBO)
 Emielle Nischik, Oregon School Boards Association (OSBA)
 Dr. Krista Parent, Coalition of Oregon School Administrators (COSA)
 Michael Carter, Oregon Small Schools Association (OSSA)
 Debbie Simons, Oregon School Personnel Association (OSPA)
 Sam Breyer, Oregon Association of Education Service Districts (OAESD)

Subject: Program Budgeting and Accounting Manual Updates (PBAM)

Dear Dr. Williams, Chair Scurlock, Vice Chair Montgomery, Second Vice Chair Richardson, and Members of the State Board of Education:

As the Executive Directors of the Oregon School Boards Association, Oregon Association of Education Service Districts, Oregon Association of School Business Officials, Coalition of Oregon School Administrators, Oregon Small Schools Association, and Oregon School Personnel Association, we are taking the unusual step of submitting public comment on an item that is *not* on your November agenda but is currently scheduled for final approval at your December Board meeting. We are referring to the proposed changes shared publicly with K-12 partners on October 10th, and "first read" by the Board on October 16th, to the Program Budgeting and Accounting Manual (PBAM). We believe that the current draft is not implementable under the proposed timeline and will create significant staffing issues and costs for districts and ESDs to implement.

Request to Delay the December Vote to Adopt PBAM Changes

Our ask of you today is to postpone the second reading and final approval of PBAM changes at your December 2025 Board meeting. Instead, we request that you extend the period to receive and review feedback from K-12 partners and allow ODE staff the time needed to integrate that feedback into any final proposed changes to the PBAM. Without this extra time to address our concerns, we believe this will result in an unsuccessful roll-out and be counter-productive to our collective accountability and transparency work.

At a minimum, we believe that:

- **Implementation should not begin until at least July 1, 2027 and include a robust pilot and plan to phase in changes for districts and ESDs to work through technical issues;**
- **In addition to current planned engagements, ODE should meet directly, and regularly, with representatives of our organizations for feedback on proposed PBAM changes;**
- **ODE needs to seek written confirmation and assurances from software and system vendors that the proposed changes are doable and will not result in significant**

- **additional costs for districts; and**
- **ODE must ensure that there are robust professional development modules and opportunities for technical assistance, particularly for our small districts and ESDs.**

We want to be absolutely clear about the proposed PBAM changes - we support the goal of increased transparency in reporting and agree that system improvements are necessary; we are not opposed to shared accountability. But we also believe that the proposed changes we have seen will not achieve the goal of increased transparency and system efficiencies. The process needs to slow down and include additional time for deep collaboration on any proposed PBAM changes with district level users.

Collectively, we can report to you that over the last three weeks we've heard from hundreds of our respective members at meetings, over the phone, or via email with significant concerns about the ability of Oregon's K-12 system to make the PBAM changes in the proposed timeframe without incurring significant costs and overloading staff who currently manage our finances.

We greatly appreciate that there is a robust engagement process occurring now through December 1st. We know that our members are actively participating and giving candid feedback to ODE staff, asking tough questions, and sharing many valid concerns. But we don't believe this timeframe is realistic to address all of the challenges of implementing such significant changes.

Key Concerns Include Implementation Timelines and Costs in our Current K-12 Context

While we will continue to provide feedback through the current engagement process and support the underlying effort to improve fiscal transparency and help support our members in making fiscal decisions that support our students, our members have repeatedly elevated a few key concerns about the PBAM proposal and process.

- **K-12 Context - Federal Cuts to SNAP and Medicaid, and Rising ICE Actions are Harming Students; State Budget Reductions Loom.** Right now, Oregon's K-12 system is bracing for potential state budget cuts that will impact our ability to support our students who are simultaneously facing the loss of access to nutritious food, access to health care services, and being harmed by ICE operations in their neighborhoods. Our school systems and staff are managing multiple crises and are at max capacity.
- **Recruitment and Retention of Key Employees Has Proven Challenging and Could Exacerbate Turnover.** Our fiscal workforce, including business managers, has experienced significant turnover and retirement. Many districts and ESDs will incur significant professional development costs in order to provide the training and workplace supports necessary for implementation.
- **PBAM Changes Increase Data Entry and Will Require More Staff; System and Software Changes and Upgrades Will Be Costly.** The proposed PBAM changes include significant increases in the amount of data entry. For larger school districts, this will require more fiscal staff at a time when budget cuts are looming. For smaller districts

without the ability to add staff, the person or persons managing the PBAM reporting will be overwhelmed. And despite some assurances from software vendors, our staff who engage in this work report they anticipate incurring significant costs across the state to upgrade systems and software.

- **Federal IDEA Maintenance of Effort Issues.** Our members believe proposed PBAM changes to Area of Responsibility 320 (Special Education) create multiple concerns with federal IDEA Maintenance of Effort (MOE) requirements. These issues could put districts at risk of federal noncompliance, artificially inflate MOE obligations, and may inadvertently discourage inclusive education practices. We will share more detailed feedback with ODE staff but want to elevate these concerns and actively look at ways to address them.

Appreciation for Current Engagement Process; Concern Time To Change is Too Short

Our members and organizations have been engaging in the current PBAM comment period that opened on October 10 and closes on December 1st. But with a final adoption by the State Board of Education scheduled for December 11th, we do not believe that ODE staff will have enough time to meaningfully evaluate feedback.

We believe there needs to be time for the field to review and provide additional feedback once ODE has made all of their proposed updates to PBAM. It is critically important that our organizations have the opportunity to review and comment on the final proposed set of comprehensive PBAM changes before they are sent to the State Board for final approval.

Slowing the process down, meaningfully engaging district experts, and collaborating on any final changes to PBAM will ensure that our collective goals of increased accountability and improved transparency are achieved without negatively impacting a K-12 system feeling the strain of multiple crises.

Our organizations and members look forward to our continued work together on PBAM. Please let us know if we can provide any additional information or answer any questions for you. We appreciate you taking the time to hear our input and concerns and look forward to a positive outcome that will be meaningful for everyone, most importantly our students.

Date: November 5, 2025

To: Oregon State Board of Education

From: Cynthia Branger Muñoz, Oregon Education Association

Subject: Petition to Amend OAR 581-015-2430 and 581-015-2360

The Oregon Education Association represents over 42,000 educators across the state of Oregon. The membership of our union spans every aspect of education. We represent educators from pre-kindergarten, K-12 and Community colleges. These members have diverse roles from licensed teachers and specialists, classified/education support professionals (ESPs), community college faculty, bus drivers, school nurses, to counselors and more.

Our members—special education teachers, educational assistants, and related service providers—work daily with students with disabilities and understand both the importance of due process rights and the reality of maintaining safe learning environments. The current Administrative Law Judge authority under OAR 581-015-2430 provides a critical proactive safety mechanism when behavioral patterns indicate substantial likelihood of injury despite intensive interventions.

Eliminating this tool would force purely reactive responses, requiring actual injury before seeking placement changes. This increases risks for students, educators, and school communities. Federal law (20 USC §1415(k)(3)) and ORS 343.177 provide the legal basis for such ALJ orders—the issue is proper implementation with appropriate guardrails, not elimination.

The proposed amendments create confusion among interconnected rule sections (OAR 581-015-2360, -2415, -2425, -2430) while removing safety protections without workable alternatives.

Our Recommendation:

The Board should initiate comprehensive rulemaking that includes all stakeholders—educators, administrators, advocates, students, and families—to:

- Ensure federal IDEA compliance while maintaining necessary safety tools
- Clarify overlapping provisions and conflicting rule language

- Strengthen procedural safeguards with appropriate implementation guardrails
- Establish clear documentation requirements and accountability measures

Students with disabilities deserve robust due process protections and safe learning environments. These goals are not mutually exclusive. We urge collaborative rulemaking to develop rules that effectively protect both student rights and school community safety through clear, workable procedures.

Respectfully submitted,

Cynthia Branger Muñoz
Public Affairs Consultant
Oregon Education Association

From: [REDACTED]
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360"
Date: Wednesday, November 5, 2025 9:59:42 AM

You don't often get email from [REDACTED]. [Learn why this is important](#)

[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a teacher in Douglas County SD4. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Kris Ronk
Roseburg Public Schools
Douglas County SD4



Oregon School Employees Association

www.osea.org

State Office: 4735 Liberty Rd S, Salem, OR 97302-5036

P: 800/252-6732, 503/588-0121 **F:** 503/588-8307

Dear Oregon Department of Education Rules Coordinator,

On behalf of the Oregon School Employees Association (OSEA), which represents more than 25,000 classified school employees across all 36 Oregon counties, we write to express our strong opposition to any proposed amendments to OAR 581-015-2430 and 581-015-2360.

OSEA members work on the front lines of our schools every day as instructional assistants, bus drivers, custodians, and other essential staff, helping to create safe and supportive learning environments for all students in both general education and SPED settings. Our members are often the first to respond in crisis situations when students exhibit behaviors that are unsafe to themselves or others.

The current rules provide an essential, legally sound process for school districts to address situations where a student's behavior presents a substantial likelihood of serious injury through the utilization of an Administrative Law Judge (ALJ) for preventative and proactive safety measures. These rules ensure that any change in placement to an Interim Alternative Educational Setting (IAES) is temporary, carefully considered, and designed to protect both the student's rights and the safety of the school community.

Weakening these safeguards would have real and immediate consequences in classrooms, on school buses, and in all other educational settings. It would force school employees to manage situations that they know carry a high risk of serious harm, without access to the temporary safety measures that the existing rules allow.

OSEA urges the Department to maintain the current rules as written. They strike the right balance between ensuring the due process for students and protecting the safety and well-being of everyone in our schools. Any change that limits a district's ability to respond to substantially likely injurious behavior would endanger students and staff alike.

We appreciate your consideration of this critical matter and your commitment to maintaining safe and equitable learning environments for all. While we urge ODE to reject the petition and not initiate rulemaking, OSEA continues to support the prospect of partner engagement with proponents and other partners in the K-12 system to discuss current concerns and explore mutually beneficial solutions to ensuring student protections are upheld while simultaneously keeping students, teachers, and classified staff safe.



Oregon School Employees Association

www.osea.org

State Office: 4735 Liberty Rd S, Salem, OR 97302-5036

P: 800/252-6732, 503/588-0121 F: 503/588-8307

Sincerely,

Cassidy Kotter, Government Relations Specialist
Oregon School Employees Association

Miles Larson
Government Relations Specialist
Oregon School Employees Association

From: [REDACTED]
To: [StateBoard Public Email](#)
Subject: Petition
Date: Wednesday, November 5, 2025 10:37:49 AM

You don't often get email from [REDACTED]. [Learn why this is important](#)

[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a special education teacher in Pendleton school District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Laura Castro
Special Education Teacher
Sunridge Middle School

From: [REDACTED]
To: [StateBoard Public Email](#)
Date: Wednesday, November 5, 2025 10:45:26 AM

You don't often get email from [REDACTED]. [Learn why this is important](#)

[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a middle school choir and drama teacher in Roseburg. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

I teach grades 6-8 and have a specially designed music class for Special education students. I know that in the past, SPED students have been ignored, mistreated, and given an inferior education, and I can understand the motivation behind this proposed law as a way to correct past wrongs.

However, at some point you must prioritize the health and safety of teachers and students! How can we justify barricading buildings behind fences, requiring ID and a database check to enter the building, active shooter drills and AI-driven gun detection systems, and cameras on every wall in the name of safety, only to be told we have to accept being hit, stabbed, choked, or otherwise harmed by students? At what point will you set a minimum acceptable level of behavior permitted to attend school? A level of behavior that excludes hurting other people?

I strongly oppose this proposed rule. Please, for the health and well-being of the children and staff in schools who are NOT trying to hurt others, do not enact it.

*Stacey Atwell-Keister
Roseburg School District*



Margaret DeLacy, President
Oregon Association for Talented and Gifted
Box 1703, Beaverton OR 97075
November 6, 2025

Public Comment regarding agenda item 4.A.
Senate Bill 141 (2025) Implementation: Definitions and Metrics

Dear members of the State Board of Education:

OATAG respectfully asks you to reconsider the list of student groups in the definitions and metrics for SB 141 (2025).

The goals of this act are to improve accountability and student performance. Neglecting gifted and high-achieving students does not serve those goals. We believe this perpetuates a mistake that was made when the Student Success Act passed in 2019.

The Student Success Act was based on the report of the Joint Legislative Committee on Student Success (JLCSS). That report recommended:

- categorical TAG funding
- universal TAG screening
- periodic evaluation of TAG identification disparities
- developing recommendations to reduce these disparities
- TAG program requirements in each district
- requirements for TAG professional development
- early identification of high-achieving students for advanced high school classes.

It also incorporated recommendations by the Quality Education Model which at that time listed TAG staff among the “specialists” who should be funded in every elementary school.

However, when the Student Success Act was drafted, a section approving grants for “focal groups” of students suffering from “academic disparities” did not include TAG students although it did authorize the Department of Education to add any other groups it deemed necessary.

When the State Board approved rules implementing the Student Success Act, we asked the board to include TAG students. Instead, it approved a declaration that

“Lack of access to programs for academically gifted and high-achieving students does not constitute facing academic disparities.”

Since the SSA passed, state documents and studies incorporate this list of “focal groups” and omit both gifted and high-achieving students.

Moreover, the Quality Education Commission has also dropped TAG services from its estimates. The 2025 report from the American Institutes of Research commented that:

”[QEC] cost estimates do not include the costs of a 180-day school year, expanded Career and Technical Education programs, and gifted and talented services. ... we recommend that these and other components ... be presented to future PJP panels as resource options and choices.”

TAG students do experience academic disparities. Data from the Oregon Department of Education proves that access to advanced classes depends entirely on where the student lives. Many students lack access to advanced opportunities whether or not they are members of a “focal group” listed in the Student Success Act. As noted by the Department of Education:

“...equitable access to accelerated learning programs begins ... in kindergarten. ... The successful implementation of these early education initiatives has been hampered by a lack of adequate funding. It is crucial to secure sustainable funding sources to ensure equitable access to accelerated learning opportunities for all students.”

The largest racial and economic disparities appear *among the highest-achieving students*. When high-achieving students are excluded from accountability data, the state loses the ability to compare how students from focal groups perform relative to their peers at similar achievement levels — perpetuating inequity rather than addressing it.

The effective erasure of Oregon’s most capable students also helps explain the state’s declining performance on national assessments: Oregon now trails other states in the percentage of students scoring at the “advanced” level on the NAEP. Excluding gifted and high-achieving students from accountability tells them that the state is indifferent to their progress.

The Board has the authority to correct this oversight by including TAG students and those who exceed benchmarks among the student groups tracked in accountability reports. Doing so would align with the true spirit of SB 141 and ensure that Oregon’s educational system supports *all* students.

We urge you to support fairness, equity, and excellence for *every* Oregon student.

Sincerely yours,

Margaret DeLacy

“The 2025 Education Accountability Act requires The Department, in rule, to establish definitions of student group, definition of 3rd grade reading proficiency, definition of 8th grade math proficiency, local metrics, differentiated metrics, statewide performance targets, and performance growth targets.”

“(2) “Combined Focal Group Students” means students reported to the Oregon Department of Education through standard data collections in any of the following student groups:

- (a) Economically Disadvantaged Students;
- (b) Students Recently Arrived;
- (c) Justice Involved Youth;
- (d) LGBTQ2SIA+ Students;
- (e) Students from Racial or Ethnic Groups that Have Historically Experienced Academic Disparities
- (f) Students who are Pregnant, Parenting, and/or Students who Experience any Pregnancy-related Condition
- (g) Students with Disabilities
- (h) Foster Students
- (i) Students who are Homeless
- (j) Migratory Students
- (k) Students who are on track to English language proficiency”

From: [Seanne Perkins](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 12:04:17 PM

You don't often get email from seanne.perkins@hermistonsd.org. [Learn why this is important](#)

[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

To the Oregon State Board of Education:

I urge the Board to **reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written** and instead **initiate a collaborative stakeholder rulemaking process**.

The current ALJ authority serves as a critical safety mechanism when a student's behavioral patterns create a substantial risk of injury despite documented interventions. Eliminating this proactive tool would force districts to wait until actual harm occurs—placing students and staff in unsafe situations.

While I support reviewing these rules for federal compliance and clarity, the proposed amendments remove essential safety protections without providing workable alternatives. As the Oregon School Boards Association has noted, the revisions also introduce confusion among overlapping rule sections, creating uncertainty in implementation and accountability.

I strongly recommend that the Board reject the petition and instead convene a comprehensive stakeholder group—including teachers, administrators, advocates, and families—to review these interconnected rules. A collaborative process will ensure any revisions maintain both compliance with federal law and the necessary proactive safety measures that protect all students.

Students deserve both **robust due process protections** and **safe learning environments**. Effective policy must balance these priorities through clear, practical, and equitable procedures that support every learner and safeguard our schools.

Thank you for your consideration.

Sincerely,
Seanne Perkins
Life Skills - Special Education teacher
Hermiston School District

--

Seanne Perkins

Life Skills Teacher

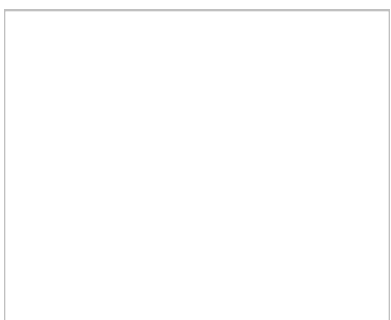
Loma Vista Elementary

2095 NE 10th Street | Hermiston, OR 97838

Tel: 541-667-6400 Fax: 541-667-6050

Email: seanne.perkins@hermistonsd.org

Cultivate opportunities Celebrate achievements Create future-



ready learners.

From: [Tracie Turner](#)
To: [StateBoard Public Email](#)
Subject: State Board Vote tomorrow November 6, 9AM SPED Safety Rules
Date: Wednesday, November 5, 2025 12:30:03 PM

You don't often get email from tracie.turner@morrowisd.org. [Learn why this is important](#)

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*I am a **special education teacher** in Morrow County School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.*

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Tracie Turner, Special Education Teacher,

Morrow County School District

--

Tracie Turner
Special Education
Sam Boardman Elementary

tracie.turner@morrow.sd.org
541-481-7383

From: [REDACTED]
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 12:07:42 PM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

Dear Chair Scurlock, Vice-Chair Montgomery, and State Board of Education members:

I have been an educator in Oregon for 31 years, and a school psychologist for the last 25. I also take part in the Ongoing Rules Community Advisory committee for ODE. I understand there is a petition to remove/amend a section of the rule pertaining to a hearings officer (or administrative law judge) authority to temporarily order a change of placement for a student when the current placement is "substantially likely to result in injury to the child or others." This quoted language is directly from CFR § 300.532, the federal rules. Oregon's language is consistent with the intent and language of IDEA in this section, and should not be modified or removed.

In fact, during the Federal rule-making process including comments and discussion, it was noted by regulators that:

"There is no intended difference between the phrase 'likely to result in injury to the child or others' as used in § 300.532(b)(2)(ii) and 'child would be dangerous' as used in § 300.532(b)(3). Section 300.532(b)(2)(ii) clarifies that the hearing officer can order a change in placement of a child with a disability to an interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or others. To avoid confusion, the term 'dangerous' is replaced with 'substantially likely to result in injury to the child or to others.'"

I support examining these rules for clarity and consistency with the intent of the IDEA, but the proposed changes remove safety protections under potentially dangerous conditions without workable alternatives. As noted in OSBA testimony, these changes create confusion among overlapping rule sections and potential for inconsistency in interpretations.

I recommend the Board reject this petition and convene all relevant stakeholders—teachers, school psychologists (often responsible for facilitating the manifestation determinations conducted in these cases), behavior interventionists, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure compliance with both state and federal laws and rules, while maintaining proactive safety tools with appropriate safeguards. Any proposed changes should be reviewed through the public rule-making and community advisory process already in place.

Students and staff both deserve strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Justin Potts, MS
Nationally Certified School Psychologist

From: [REDACTED]
To: [StateBoard Public Email](#)
Subject: Do not wait until someone gets hurt
Date: Wednesday, November 5, 2025 12:53:22 PM

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I am writing to express my disapproval for the State Board voting tomorrow to remove judges' authority to approve temporary removal of students who pose serious injury threats. This forces schools to wait until someone actually gets hurt before acting.

Have you all lost your minds? Sooner or later it will be one of the children in your family or a teacher you know who will be physically injured, possibly disfigured or disabled for life if you support this horrific statue.

Sincerely,
MaryJo Louise.

“One doesn't do the right thing because it is easy, one does it because it is what is required by one's morality and integrity.”

From: [Billy Ray](#)
To: [StateBoard Public Email](#)
Subject: Reject amendments to OAR 2430/2360
Date: Wednesday, November 5, 2025 2:12:05 PM

You don't often get email from billy.ray.1345@gmail.com. [Learn why this is important](#)

[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

Good morning,

I am a Billy Ray, a special educator with HSD. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

The proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I urge the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you!
Billy Ray
503-200-9742
Billy.Ray.1345@gmail.com



Date: November 6, 2025

To: Oregon State Board of Education

From: Dr. Krista Parent, Coalition of Oregon School Administrators (COSA)
Michael Carter, Oregon Small Schools Association (OSSA)
Sam Breyer, Oregon Association of Education Service Districts (OAESD)
Jackie Olsen, Oregon Association of School Business Officials (OASBO)
Emielle Nischik, Oregon School Boards Association (OSBA)

Subject: Public Comment on the First Reading of SB 141 Education Accountability Rules

- Agenda Item 4A. Definitions and Metrics

Dear Chair Scurlock, Vice Chair Montgomery, Second Vice Chair Richardson, and Members of the State Board of Education:

On behalf of the Coalition of Oregon School Administrators, Oregon Small Schools Association, Oregon Association of Education Service Districts, Oregon Association of School Business Officials, and Oregon School Boards Association, we submit this letter to provide public comment on the first reading of the draft rules relating to: **Agenda Item 4A. Definitions and Metrics.**

Our members lead 197 school districts and 19 education service districts that serve over half a million students in Oregon – we recognize the weight of the roles and responsibilities our members hold to ensure the success of each and every student in Oregon, regardless of zip code.

As we have stated before, accountability is critical. We are all committed to seeing our students reach their full potential and thrive. As education leaders, we are all in for shared accountability for the right things, and with meaningful and effective support in place.

We have engaged in the Accountability Advisory Committee (HB 2656), in the development of the Education Accountability Act of 2025 (SB 141), and now in the rulemaking process through the Technical Advisory Committee and Ongoing Rules Community Advisory meetings.

Agenda Item 4A. Definitions and Metrics

Given all of the provisions covered in this ruleset, we have organized our feedback around a number of key provisions and clauses (see table).

It is important to note that there are a number of the provisions of the draft rule set and accountability work that have not been discussed in detail by the broader Technical Advisory Committee yet, for example:

- Process for setting statewide performance targets
- Process identifying similar districts for district performance targets
- Differentiated metrics for Education Service Districts, Approved Recovery High Schools, Oregon School for the Deaf, Youth Corrections and Juvenile Detention Education Programs, and Long-Term Care and Treatment Programs

With that in mind, it is imperative that there be further engagement on these provisions before the rule set is formally adopted by the State Board of Education.

Local Metrics - “Preferred Five” Proposed in the Draft Rules

SB 141 requires the State Board of Education to adopt up to five local metrics. Districts will be required to select one of these local metrics.

Proposed Language (dated 11/3/2025)	Feedback and Recommendations
Academic Growth Measurement: The change in a student’s score over time on Oregon’s statewide summative assessments in English Language Arts and Math Note: In ELA and/or Math for grades 3 to 8 using the Oregon Statewide Assessment System (OSAS)	While we support the inclusion of academic growth as a metric, we strongly oppose the proposed measurement to measure academic growth. Our members continue to share their concerns around our current statewide summative assessment (see examples of concerns on page 6), along with the unintended impacts of our current opt-out law in Oregon on our accountability system. The summative assessment is done once a year, and does not provide timely and actionable information for districts and schools on how to improve instruction during the school year. Recommendation: Utilize data from district interim assessments to measure student growth over time. The opt out law does not apply to the interim assessments; with that, we would have a more complete set of student growth data to inform our goal setting and continuous improvement work. Additionally, interim assessments are available in other languages like Spanish, these tools help districts accurately measure students’ knowledge, skills, and academic growth throughout the school year. The data from these assessments also provide timely and actionable information for educators to help inform instruction and support for students; there are also districts who currently use these assessments in their district accountability work at the local level.
On-Track to English Language Proficiency Measurement: English Language Proficiency Assessment (ELPA 21)	We have a number of concerns regarding the use of the ELPA 21 assessment for the following reasons: • English-only accountability contradicts best practices for assessing bilingual / multilingual students. This fundamental contradiction undermines dual language programs, heritage language retention, and Indigenous language revitalization. • Testing accountability pressures for English-only measures can cause programs to reduce partner language instruction and assessment. • Multiple measures are essential - no single English proficiency test can capture bilingual/multilingual achievement. Recommendation: Permit and elevate a multiple measures approach to support students who are bilingual / multilingual. For example: assessments in multiple languages like Standards-Based Measurement of Proficiency (STAMP) and Assessment of Performance toward Proficiency

Proposed Language (dated 11/3/2025)	Feedback and Recommendations
	in Languages (ACTFL). Consider innovation and support in a variety of formats that are currently being utilized in existing Indigenous language revitalization programs, dual language programs, and more.
5th Grade Science Achievement Measurement: Oregon Statewide Assessment System (OSAS)	It is not clear what process led to the inclusion of this metric and measurement. In our view, it raises more questions around ODE's current capacity and ability to support districts with science achievement. That, coupled with the fact that many districts struggle to access and afford high-quality curriculum and instructional materials in science, and provide a full year of instruction in science from year to year, gives us pause in including this as one of the five local metrics. We also continue to be concerned about the use of state summative assessments for accountability given the time that it takes to administer and how delayed the results are in being shared back with districts. For example, results from the summative assessment aren't available until the following fall - which is too late for planning and making system adjustments. Recommendation: Given that SB 141 amends the Student Investment Account of the Student Success Act, we recommend exploring a metric that aligns with one of the allowable uses of the Account which includes Addressing Student Health and Safety; Expanding Instructional Time, Providing a Well-Rounded Education, and Reducing Class Sizes or Caseloads. Additionally, the Board may consider the inclusion of "Student Belonging and Engagement" – as long as there is the flexibility to include data from measurements that are widely used by districts and schools.
Post-Secondary Enrollment Measurement: National Student Clearinghouse Data and percentage of students enrolled in post-secondary education within one year of graduation	We oppose the inclusion of this metric and measurement due to a number of concerns regarding the reliability and validity of data collected through the National Student Clearinghouse. Additionally, this data set does not include graduates who go on to adult apprenticeship programs, the military, and other fulfilling pathways after graduation. Given that SB 141 accountability provisions center and rest on the K-12 system, we must focus on what districts have the ability to directly impact. Recommendation: Change this metric to "College Readiness" as measured by multiple measures (or, an index) which may include: • Access and participation in accelerated learning programs like dual enrollment / credit (e.g. Regional Promise Programs, College Now, etc), Advanced Placement, International Baccalaureate, and more. • Access and participation in SAT and ACT • Completion of Oregon Student Aid Application and Free Application for Federal Student Aid

Proposed Language (dated 11/3/2025)	Feedback and Recommendations
CTE Credit Attainment Rate Measurement: Rate of students in the district / school who earned CTE credit in the school year; or increase in the percentage of students taking CTE	We strongly support the inclusion of this metric and measurement. We would also like to offer a few considerations in further enhancing this measure. Recommendation: Update the name of the metric to “Career and Workforce Readiness” and consider data and information on CTE participants and CTE concentrators to further elevate workforce preparation and readiness.

Local Metrics - “Additional Considerations” for the State Board

The following are other metrics that the Technical Advisory Committee was asked to consider.

Proposed Language (dated 11/3/2025)	Feedback and Recommendations
Student Belonging Measurement: Student Educational Equity Development (SEED) Survey	We are open to supporting the inclusion of Student Belonging – and would want to see it expanded to “Student Belonging and Engagement” – as long as there is the flexibility to include data from measurements that are widely used by districts and schools. Currently, participation on the SEED survey varies significantly throughout the state; and the data that is gathered from SEED plays a minimal role in shaping district continuous improvement. Recommendation: If the Board considers adding this metric, we recommend expanding to “Student Belonging and Engagement” and permit districts to utilize multiple measures to demonstrate their work and impact on students. Measures may include, but not limited to: district administered student surveys that are nationally normed (Youth Truth, Panorama, etc); student engagement in school activities (leadership, peer mentorship, the arts, athletics, and student clubs, etc), and more.
Severely Chronically Absent Measurement: 20% or greater absent days; reported in Cumulative ADM	We support the removal of this metric and measurement from the “Preferred Five.” We had concerns about how Severely Chronically Absent was deficit-oriented, and duplicative of the two existing attendance measures (Regular Attendance and Regular Early Grade Attendance) that are already required as Common Metrics for all school districts.
Cohort Dropout/Pushout Rate Measurement: The rate of students who withdrew from school and did not graduate, earn a completion	We support the removal of this metric and measurement from the “Preferred Five.” We had concerns about how severely Cohort Dropout / Pushout Rate was deficit-oriented, and duplicative of the two existing graduation and completion measures (On-Time Graduation Rate and Five Year Completer Rate) that are already required as Common Metrics for all school districts.

Proposed Language (dated 11/3/2025)	Feedback and Recommendations
credential, or transfer to another school that leads to graduation.	
Mental and Behavioral Health Measurement: Student Health Survey	See our comments on Student Belonging. Like the SEED Survey, there are varying levels of district and school participation in the Student Health Survey.

Performance Targets - Stretch Targets and N-Sizes

Proposed Language (dated 11/3/2025)	Feedback and Recommendations
Removed “Stretch Targets”	We support the removal of “Stretch Targets” from the proposed rules. Stretch Targets were never part of the original Student Success Act legislation, and it is not in statute under Senate Bill 141. Removal of the Stretch Targets allows districts to focus on Baseline Targets and Gap-Closing Targets.
Added a minimum denominator of 10 students for each metric and target for each of the last four years or a minimum of 10 students for each year of available data if there are fewer than four years available.	We are in support of the language that sets a number of parameters around minimum n-sizes for metrics and targets, especially for smaller school districts that experience fluctuations in student enrollment. A few initial questions that emerge include: - How will these provisions impact the setting of Baseline Targets, Gap-Closing Targets, and goal setting around Local Metrics? How will that shape co-development? - How will ODE support and balance transparency in reporting, student privacy protections, state and regional supports, and accountability, especially for very small school districts? In implementation, it is critical that ODE is able to align, streamline, and differentiate support for our smaller school districts, in partnership with Education Service Districts.

The State Board plays a critical role in ensuring that ODE has the internal capacity and alignment to provide high-quality, consistent, and timely support to districts. Without a fully built out system of supports – across ODE and regional partners – this approach risks holding districts accountable without equipping them with the tools to succeed.

Continuous improvement work is based on the principles that making sustainable change takes time and involves collective effort; is context specific; and requires constant adaptation, data collection, and learning (Bessant & Caffyn, 1997; Bhuiyan & Baghel, 2005; Langlely, Moen, Nolan, Nolan, & Norman, 2009). In accountability conversations, there's often a lot of talk of interventions, but not enough discussion on the infrastructure of support for districts.

We must ensure that there are sustained investments in ODE and our regional education system partners so that they can do their best work across our system to support districts.

This work cannot be done alone, and we look forward to continuing our work together to support the success of each and every student in Oregon. Thank you again for your continued service and work. Please reach out with any additional questions.

Concerns Regarding the Summative Assessment:

We will continue to share our concerns on the use of the summative test to measure student growth. Here are the common feedback themes among our members:

- The state summative test is completed once a year – it is a snapshot in time. The test often takes districts up to two weeks to administer, which results in students experiencing testing fatigue, anxiety, and the loss of learning time.
- Results from the summative tests aren't available until the following fall - which is too late for planning and making system adjustments. We want the state to see our work in supporting student growth over the course of the school year. This timely and actionable data and feedback helps inform our continuous improvement work.
- The summative test is not available in other languages. Districts who serve many students who are multilingual learners utilize interim assessments in other languages like Spanish to more accurately assess students' knowledge and skills throughout the year. English-only tests are not asset-based.
- Holding districts accountable for test results when we have a statewide opt-out law is challenging, especially given assessment participation, and the higher levels of opt-out in middle and high school (for the eighth grade math assessment, only 87% of students participated in the assessment in 2024 – 8 percentage points lower than the 95% threshold needed for a reliable set of data). Without a serious review of our opt-out law, Oregon is grading our schools with incomplete information. Additionally, even if participation is statistically significant, it is important to acknowledge that the opt-out law sends a message that the state test does not matter at the school level for students, teachers, and families – and yet, we are using it for high-stakes accountability decisions as the only standard of measurement for academic performance.



Philomath School District 17J

Benton County School District No. 17J, 1620 Applegate Street Philomath OR 97370 (541) 929-3169

November 6, 2025

TO: Oregon State Board of Education Members
FROM: Susan Halliday, Superintendent

Re: Proposed Changes to the Program Budget and Accounting Manual (PBAM)

As Superintendent of this amazing and resilient school district, I am doing my best to support student and staff success. While lean, we have an awesome leadership team to support the work of our district and are, consequently, very proud of our achievements.

I want the Philomath School District to continue devoting our resources of both time and money to focus on student success. I believe that proposed alterations to the Program Budget and Accounting Manual (PBAM) will take away both valuable time and money to implement on such a short timeline. While we recognize and support improving statewide consistency in program accounting, we believe that the current draft, as shared, cannot be effectively implemented within the proposed timeframe and under existing fiscal and staffing constraints. In Philomath, we would need to add staffing in order to implement and sustain such changes under the proposed timeline.

Given the scope and complexity of the proposed PBAM changes—and the current budget shortfalls facing our Oregon school districts—we respectfully request the following actions be considered before any final adoption.

- **Delay Implementation Until at Least July 1, 2027:**
This extension will allow school districts more adequate time to assess local impacts, adjust systems, and prepare for accurate reporting under the revised structure.
- **Develop and Communicate a Clear Pilot and Phase-In Plan:**
Suggest establishing a pilot period, involving a range of districts and ESD's of varying size and capacity, to identify and resolve technical issues prior to statewide rollout.
- **Engage in Regular Consultation with Impacted K-12 Districts:**
Suggest involving both school district and school district association representatives to consistently engage with state staff to share and gather feedback to ensure the proposed PBAM revisions are workable in real-world district contexts before final submission to the State Board.
- **Obtain Written Assurances from Software and System Vendors:**
Suggest securing written confirmation from major financial software and data system vendors verifying that the proposed changes are technically feasible and will not impose significant additional costs for school districts.

- Provide Robust Professional Learning and Technical Assistance:
Prior to implementation, suggest developing comprehensive training modules and support opportunities to ensure consistent understanding and successful adoption.

Along with others, we appreciate efforts to improve statewide financial transparency and accountability; however, thoughtful sequencing and sufficient support are essential to ensure these changes strengthen rather than disrupt district operations. A deliberate approach—with clear testing, collaboration, and capacity-building—will be vital to successful implementation.

Thank you for your consideration and for your continued partnership with Oregon's school districts.

cc: Dr. Charlene Williams, Oregon Department of Education Director

From: [REDACTED]
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 3:21:44 PM

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I am a Special Education Teacher in the Pendleton School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

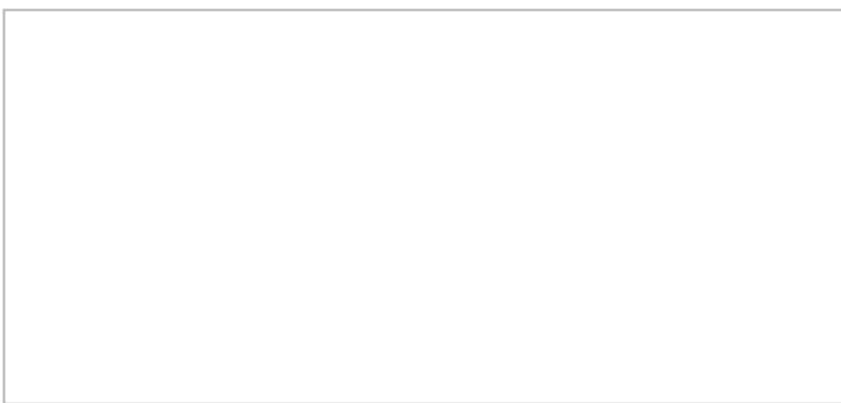
The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,



From: [REDACTED]
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360"
Date: Wednesday, November 5, 2025 3:20:42 PM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a SPED Specialist in Springfield Public Schools. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,
Justin Plaunty
SPED Specialist
Springfield Public Schools

From: [REDACTED]
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 3:19:47 PM

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I am a Greg Howells in Springfield School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,
Greg Howells,
Learning Specialist , Springfield School District 19

Sent from my iPhone

From: [REDACTED]
To: [StateBoard Public Email](#)
Subject: Tag students
Date: Monday, October 27, 2025 9:03:53 PM

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To whom it may concern:

As a parent of a TAG student who has graduated. I feel that not paying attention to their growth is a loss for the state. My student literally was told that the High School could do nothing else for them when they were signing up for their Sophomore year. Think about that.. Most students are 25% of the way through their high school curriculum and here are guidance counselors telling this student that they do not have classes to support them. So not only have they been ostracized by their peers, now the people who they go to for help are telling them they are too different to be helped. The school moved them to a community college to "complete" their high school requirements. What if we lived in a section of the state without access to a community college?

These students who overworked teachers use as tutors, mentors, and help for other students through homework and study halls need to feel included. My student hated that the teachers used them as a student teacher when they were in middle/high school. We were told more than once that they could not differentiate their learning as they knew more than the teacher. They took 6th grade math 3 times. Only failed it the last time. Teacher told me the student did not know how to complete long division. Hint: They had been completing long division problems since first grade. Teacher just didn't care to challenge them and the student reacted by not doing any of the work. And the teacher cared so little that there was no communication to us the parents about what was going on.

TAG did not work for us because teachers were not supported in learning how to work with higher learners. Having them tutor or help teach stagnates their learning and produces an adult who doesn't know how to apply themselves to anything that is challenging.

We should hold our schools accountable for ensuring that all of our students are progressing year over year.

We are an extreme case. My child was listed as an "intellectually gifted" student. The majority of TAG students can keep themselves focused without as much direction from the staff. But I have seen teachers use all TAG students at one point or another as their "helper". They need to be focused on helping these students increase their knowledge as well.

Let me tell you what happens when we ignore those gifted students for even one year: I was a gifted 2nd grader in a different state in a different era, but the story still holds true to this day. We were a class of about 35 students when the school decided that for our 3rd grade year they would pull the top 8 of us into a 2nd grade classroom with minimal interaction from the teacher to help with our social skills. By 6th grade I was the only student who remained in the top 10% of the class for grades and skills. They took 8 promising students and stagnated their learning for one year and turned us into one student who did not fail to keep up. I was not listed as intellectually gifted. If this had happened to my child they would have been one of the other 7 who fell behind and started actually failing classes. All because of 1 year.

Bring accountability to all student groups evenly.

Sincerely,

From: [Iris Maria Chavez](#)
To: [StateBoard Public Email](#)
Cc: [KELLY Christen * ODE](#); [PATTISON Kate * ODE](#)
Subject: Public comment: SB 141/K-12 Accountability Framework
Date: Monday, November 3, 2025 2:24:02 PM
Attachments: [ORC3S Guiding Principles Charter Accountability.pdf](#)

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Members of the State Board of Education,
Please find attached a communication from the Oregon Coalition of Community Charter Schools, our state's charter school association, on "Guiding Principles for Inclusion of Public Charter Schools in Oregon's K-12 Accountability Framework."

We hope that, as you consider the final framework and administrative rules, for Senate Bill 141 (2025) you will remember the intent and purpose of public charter schools as a part of our K-12 education system in Oregon, and that autonomy and innovation are central to this shared promise made with the legislature in 1999. We, as public charter schools, acknowledge that this promise requires accountability to our students, communities, and for good stewardship of the state funds provided to us. We hope to work with you and the team at the Oregon Department of Education to ensure that Oregon's new accountability system honors the role and intent that public charter schools fill in our schools.

Please find our Guiding Principles attached, and we'll be in touch with more information as details on this rulemaking are released by the Oregon Department of Education.

Best,
Iris Maria

Iris Maria Chávez
Director
Oregon Coalition of Community Charter Schools
c: 504-701-3931
e: iris@orc3s.org

From: [REDACTED]
To: [StateBoard Public Email](#)
Subject: Petition to Amend OAR 581-015-2430
Date: Wednesday, November 5, 2025 3:31:52 PM

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I am a Tammy Gattis in Umatilla. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you, [Tammy Gattis, Teacher, Umatilla]

From: [REDACTED]
To: [StateBoard Public Email](#)
Cc: [REDACTED]
Subject: Petition to Amend OAR 581-015-2430 and 581-015-2360"
Date: Wednesday, November 5, 2025 3:34:15 PM

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To Whom it may concern,

I am a Special Education teacher in the Beaverton School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking. Please get the opinions and testimony of the people working in classrooms who are supporting students.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk. This is not an acceptable change, and has the potential to put teachers and other school staff member's in harm's way.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

*Thank you,
Michael Borreggine
Special Education Teacher
Beaverton School District*

From: [REDACTED]
To: [StateBoard Public Email](#)
Subject: Petition to Amend OAR 581-015-2430 and 581-015-2360"
Date: Wednesday, November 5, 2025 3:34:56 PM

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I am a paraprofessional and sub in Umatilla, OR. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards for staff and other students.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures. Safety of all should be highest priority.

Thank you,
Courtney Bivins
Umatilla School District

From: [REDACTED]
To: [StateBoard Public Email](#)
Subject: Reject the petition to amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 3:48:19 PM

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I am a Learning Specialist in Springfield, Oregon, as well as a member of the special education advisory boards to both the local Springfield Education Association and the state Oregon Education Association. I hear regularly from special educators, specialists, and general education teachers across Oregon about the unsafe working conditions in our schools due to extremely aggressive and violent behaviors. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. These patterns are not single occasions of unsafe behaviors, but repeated incidents of students begin dangerously aggressive, unsafe, and violent behaviors. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Venus Reeve

Learning Specialist, Special Educator, Case Manager at Springfield Public Schools

Co-Chair Oregon Education Association Special Education Advisory Committee

From: [REDACTED]
To: [StateBoard Public Email](#)
Date: Wednesday, November 5, 2025 4:45:10 PM

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I am an instructional assistant in district 9 I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Erica Wolf, IA, District 9



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From: [Christina Struyk-Bonn](#)
To: [StateBoard Public Email](#)
Subject: Public Comment
Date: Wednesday, November 5, 2025 4:52:40 PM

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To: Oregon Department of Education; Oregon State Board of Education; Oregon Legislature
Submitted by: Dr. Christina Struyk-Bonn, Executive Director from the Metro East Web Academy
Date: November 5, 2025
RE: SB 141 and Guiding Principles for Charter School Inclusion in Oregon's K-12 Accountability System

Thank you for including charter schools in your discussion of SB141 and Guiding Principles for Charter School Inclusion in Oregon's K-12 Accountability System. As a charter school leader, I do have some concerns about SB141 and how charter schools have been written into the Guiding Principles.

As an online charter school, we have a very different student population from our neighboring brick and mortar schools. Many of our students come to us credit deficient or having been out of school for some time and our mission is to provide innovative pathways to student success. Because of this, the accountability measures that we rely on to understand student success have been in place for quite some time and one of those is interim assessments. We have been using the interim assessment, STAR360 through Renaissance for years and have years of data built up that we examine regularly. This has provided us with data about student growth, since our on-track accountability measures don't show this. We have had the autonomy to choose this tool even though the district that holds our charter did not have this particular interim assessment in place. We would like to maintain our current practice, which has been ahead of its time, and not be dependent on the district for the measure that they choose to implement. As a charter school, we should have this autonomy.

Also, we know our students well. We have been working with the same student population since the inception of the school 16 years ago. For the district to set our accountability measures, when they are not working with these students day in and day out, does not take into account our autonomy and student population. We should set our own Performance Targets that align with our unique mission, unique student population and our specific needs.

We welcome the possibility of working in collaboration with our sponsoring district rather than having the district decide on both the metrics and the interim assessments. Taking away that autonomy means we are no longer acting in the spirit

of charter schools, which focuses on innovation and creativity to support a unique student population as described in ORS338:

338.015 Legislative intent; goals. It is the intent of this chapter that new types of schools, called public charter schools, be created as a legitimate avenue for parents, educators and community members to take responsible risks to create new, innovative and more flexible ways of educating children within the public school system. The Legislative Assembly seeks to create an atmosphere in Oregon's public school system where research and development of new learning opportunities are actively pursued. The provisions of this chapter should be interpreted liberally to support the goals of this section and to advance a renewed commitment by this state to the mission, goals and diversity of public education. It is the intent that public charter schools may serve as models and catalysts for the improvement of other public schools and the public school system. The goals of public charter schools shall be to:

- (1) Increase student learning and achievement;
- (2) Increase choices of learning opportunities for students;
- (3) Better meet individual student academic needs and interests;
- (4) Build stronger working relationships among educators, parents and other community members;
- (5) Encourage the use of different and innovative learning methods;
- (6) Provide opportunities in small learning environments for flexibility and innovation, which may be applied, if proven effective, to other public schools;
- (7) Create new professional opportunities for teachers;
- (8) Establish additional forms of accountability for schools; and
- (9) Create innovative measurement tools. [1999 c.200 §1]

Thank you,
Dr. Christina Struyk-Bonn

--

Christina Struyk-Bonn

Executive Director

Phone: 971-413-5733

email: struyk@mewebacademy.org

Zoom: <https://zoom.us/j/2888247431>



From: [REDACTED]
To: [StateBoard Public Email](#)
Subject: Public Comment
Date: Wednesday, November 5, 2025 5:48:34 PM

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Testimony on Senate Bill 141 (2025)

Chair Lew Fredrick, Vice Chair Suzanne Weber, and Members of the Committee:

Thank you for the opportunity to share testimony on *Senate Bill 141 (2025)*. I appreciate the Legislature's continued focus on equitable student outcomes and accountability. However, as Principal of Clackamas Web Academy (a community-based public online charter school) I am concerned about several provisions that limit flexibility and equitable access for charter students.

First, the restriction on local metric selection undermines innovation. Schools like ours rely on data points such as advisory participation, service learning, and early college credit completion to measure engagement and belonging—key predictors of student success in blended and online settings. We ask that charter schools be allowed to propose a locally developed metric, subject to ODE approval, to ensure accountability reflects our students' lived experiences.

Second, public online charter schools do not receive Student Investment Account (SIA) funds, despite being held to the same performance expectations as districts. This inequity prevents us from expanding bilingual family engagement, mental health supports, and targeted interventions. Equity requires that SIA funding follow all public school students, regardless of whether they attend a district or charter school.

Finally, our dependency on sponsoring districts for participation in state initiatives creates unnecessary barriers. CWA operates transparently and in partnership with our sponsor, but direct collaboration with ODE would better align accountability with responsibility.

Clackamas Web Academy has increased its four-year graduation rate from 20% to 81% through family partnerships and data-informed practices...without SIA funding. With fair access and local flexibility, we can continue leading improvement for all students.

Thank you for your time and for considering adjustments that ensure SB 141 promotes both equity and innovation across Oregon's public schools.

Brad Linn

--

Brad Linn, Principal
Clackamas Web Academy
(503) 659-4664 Office
(503) 659-4994 Fax

Dear Members of the Oregon Board of Education:

I am the parent of three adult children who were identified as gifted and participated in programs in their schools in CA. Two of them live in OR and are parents of children who have graduated or attend OR public schools.

I knew nothing about gifted when my oldest was in 2nd grade and I received a letter asking permission for him to be assessed for the GATE program. I have spent the last 40+ years learning about and advocating for appropriate identification and services for gifted and talented students. These students are among the most overlooked and underserved in school districts across the country.

I was dumbfounded and dismayed when I learned that the OR State Board of Education asserted that "Lack of access to programs for academically gifted and high achieving students does not constitute facing academic disparities." Clearly there is a paradox in this statement when it both acknowledges the lack of access and yet somehow doesn't see this as a disparity. It is obvious that some school districts provide more advanced opportunities than others. Even schools within a district vary in how TAG students are served. To pretend otherwise is an insult to the students who have learning needs that are not met in the regular classroom. The need for appropriate instruction is stated in OAR 581-022-2325. 1

Not including TAG students as a focal group means these students are erased in terms of access to funding through the Student Success Act. This is on top of the general absence of funding for TAG. That erasure will continue in the lack of accountability in the Governor's "accountability" bill. The data from test scores will not accurately reflect how schools are furthering student learning if they do not disaggregate the data in meaningful ways.

One of the common criticisms of TAG programs is that they are "elitist" because they fail to identify in proportion to the population students who are ethnic or racial minorities, are economically disadvantaged, Special Education (twice exceptional) or are English Language Learners. The effort to overcome this disparity in identification often results in pursuing "equity"

by offering nothing to anyone through the elimination of TAG services - if they were provided at all.

When public schools do not serve the needs of gifted students, affluent parents can and often do provide appropriate learning opportunities through private tutors, after school and weekend classes, homeschooling, private schools, or relocating to a different school district. These options are not available to students with fewer family or community resources. When public schools fail in their obligation to appropriately provide for gifted students it is the gifted students among the traditionally underrepresented groups who suffer most. Equity requires acknowledging that students are different from each other in their learning. Providing services for a wide range of ability and life circumstances among the population is not only appropriate but necessary if the goal is to educate **all** students.

I ask you as members of the State Board of Education to give TAG and high-achieving students the visibility that will hold schools accountable for their appropriate education by naming them as a focal group.

1 OAR 581-022-2325

Identification of Academically Talented and Intellectually Gifted Students

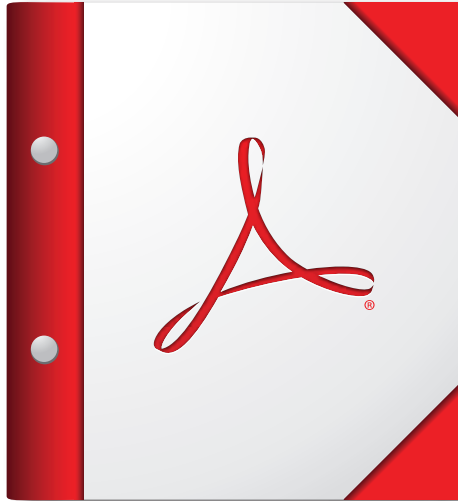
(1) Each school district shall have policies and procedures for the identification of talented and gifted students as defined in ORS 343.395.

(a) This population of students demonstrates exceptional performance when compared to applicable developmental or learning progressions, with consideration given for variations in student's opportunity to learn and to culturally relevant indicators of ability.

(b) Students identified as talented and gifted **require** differentiated instructional services and/or programs designed to address their strengths and needs. (emphasis added)

Respectfully,

Judith C. Smith



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From: [Angelia Sanchez](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 5:55:24 PM

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I am a Kindergarten teacher in the Bethel School District in Eugene. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you, Angelia Sanchez, Kindergarten teacher, Bethel School District
Sent from my iPhone

From: [E.R](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 6:09:34 PM

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I am a behavior consultant in Eugene School District 4J. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you for your time and consideration,
Elizabeth Perini
Behavior Consultant - Middle Schools
Eugene School District 4J

From: [Sofie Prideaux](#)
To: [StateBoard Public Email](#)
Subject: Keep Everyone Safe
Date: Wednesday, November 5, 2025 6:09:56 PM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a Kindergarten Teacher in Eugene School District 4j. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Sofie Prideaux
Kindergarten Teacher
Eugene School District 4j

From: [Jessy Corliss](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 6:12:43 PM

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To Whom It May Concern,

I am a teacher in Eugene School District 4J. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rule making.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Jessy Corliss
Teacher
Eugene School District 4J

Sent from my iPad

From: [Rebecca Gourgey](#)
To: [StateBoard Public Email](#)
Subject: OAR 581-015-2430
Date: Wednesday, November 5, 2025 6:14:31 PM

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Hello,

I am a Special Educator in Eugene School District 4J. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,
Rebecca Gourgey
Special Education Teacher
Eugene School District

From: [ann_domholt](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 6:19:28 PM

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Hello,

I am a resource special education teacher in the Beaverton School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Ann Domholt
Learning Specialist

She/Her
Learning Strategies 6/7th Grade
ann_domholt@beaverton.k12.or.us
503-356-6214

Beaverton School District | Whitford Middle
7935 SW Scholls Ferry Road, Beaverton, OR 97008

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From: [Judith Richards](#)
To: [StateBoard Public Email](#)
Subject: Tera Dean SPED Teacher Talent Middle School
Date: Wednesday, November 5, 2025 6:28:51 PM

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*I am a **Special Education Teacher**. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.*

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank You,

Tera Dean, Special Education Teacher

Talent Middle School

Phoenix Talent School District

From: [Torrie Fox](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 6:37:59 PM

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I am a teacher in Riverdale School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative rulemaking. The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk (despite interventions). Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk. I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections. I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Torrie Fox

Art Teacher

Riverdale Grade School

From: [M Sager](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 6:38:43 PM

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*I am a 2nd grade teacher in Riverdale Grade School. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative rulemaking. The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk (despite interventions). **Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk. I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives.** As OSBA noted, these changes create confusion among overlapping rule sections. I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.*

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Michelle Sager

Riverdale Grade School

2nd Grade Teacher

From: [David Thompson](#)
To: [StateBoard Public Email](#)
Subject: Public comment: OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 6:39:52 PM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a teacher in the Riverdale School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative rulemaking. The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk (despite interventions). Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk. I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections. I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

David Thompson

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From: [Kaitlin Peters](#)
To: [StateBoard Public Email](#)
Subject: Public Comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 6:42:21 PM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

To whom it may concern:

I am a Special Education Teacher in Beaverton School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I urge the Board to reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards that prioritize student and staff safety.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you, Kaitlin Peters, Learning Specialist, Beaverton School District

From: [Adam McLain](#)
To: [StateBoard Public Email](#)
Subject: petition re alt placements
Date: Wednesday, November 5, 2025 6:43:15 PM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a teacher and local association President in the Riverdale school district. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360. Current processes represent a critical step for the safety of students and staff. Changing the process as proposed represents a blind acceptance of real physical harm. Of course we should examine these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. Please reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Due process procedures are critical protections for students. So is the ability to act to protect the safety of students and staff. Blanket rules like those proposed in this petition are the wrong way to achieve that balance. Careful deliberation and planning achieved through collaborative rulemaking processes are the right way to go.

Thank you,

Adam McLain

President, Riverdale Teachers Association & High School Technology Teacher

From: [Kim Skomerza](#)
To: [StateBoard Public Email](#)
Subject: "Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360"
Date: Wednesday, November 5, 2025 6:44:42 PM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.***]

I am a special education teacher in the Central Point School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Kim Skomerza, Special Education Teacher, Central Point School District 6

From: [A wyncoop](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 8:46:01 PM

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I am a elementary teacher in Eueven 4j. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,
Amanda Johnson
5th Grade Teacher
Eugene 4j

[Yahoo Mail: Search, Organize, Conquer](#)

From: [Amy](#)
To: [StateBoard Public Email](#)
Subject: NO on OAR 581-015-2430 amendment
Date: Thursday, November 6, 2025 8:19:53 AM

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I am a classroom teacher in the Lake Oswego School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative rulemaking. The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk (despite interventions). Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk. I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections. I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Amy Ryan

Lakeridge High School

Lake Oswego

From: [Ann Krimetz](#)
To: [StateBoard Public Email](#)
Subject: Petition to ammend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 10:18:49 PM

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I am a school board director in Roseburg School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

I am a School Board Member of the Roseburg School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Ann Krimetz

Director, Roseburg School District

Sent from my iPhone

From: [April Martindale](#)
To: [StateBoard Public Email](#)
Subject: "Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360"
Date: Wednesday, November 5, 2025 7:58:58 PM

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*I am a **paraeducator** in **Umatilla School District**. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.*

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you, April Martindale, Paraeducator, Umatilla School District

From: [Carrie Bartlett](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 9:31:22 PM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am an Occupational Therapist in Eugene 4j district]. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rule-making.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Carrie Bartlett
Occupational Therapist
Eugene 4J School District

From: [Cayla Papke](#)
To: [StateBoard Public Email](#)
Date: Wednesday, November 5, 2025 7:43:50 PM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a teacher in Riverdale School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative rulemaking. The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk (despite interventions). Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk. I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections. I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you, Cayla Papke

Riverdale School District

From: [Christina Hinton](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 8:28:22 PM

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I am a teacher in Eugene. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you, Christina Hinton, Eugene teacher

Sent from my iPhone

From: [Emily Erbin](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR
Date: Wednesday, November 5, 2025 7:49:14 PM

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To whom this concerns,

I am a third grade teacher in Riverdale School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative rulemaking. The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk (despite interventions). Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk. I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections. I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Emily Erbin, Third Grade Teacher, Riverdale School District.

--

Emily Erbin (She/her/hers)
Riverdale Grade School
3rd Grade
Assistant Coach 7/8th Girls Basketball

I live and work on the ancestral, traditional, and contemporary lands of Oregon's indigenous people.

From: [leaniegay](#)
To: [StateBoard Public Email](#)
Subject: "Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360"
Date: Wednesday, November 5, 2025 8:16:43 PM

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State Board of Education,

I am a urging you to vote NO on Petition to remove judges' authority to approve temporary removal of students who pose serious injury threats.

Gaylene Lyda
251 River Club Drive
Roseburg, OR 97471

From: [Gene and Jamie Newbold](#)
To: [StateBoard Public Email](#)
Subject: Amend OAR 581-015-2430 and 581-015-2360"
Date: Thursday, November 6, 2025 12:43:19 AM

[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a Middle School Art Teacher in Eugene 4j. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you, Gene Newbold, Art Teacher, District Eugene 4j.

From: [Griseldo Nuñez](#)
To: [StateBoard Public Email](#)
Subject: Amend OAR 581-015-2430 and 581-015-2360
Date: Thursday, November 6, 2025 6:31:06 AM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

Good morning,

I am a 2nd grade dual language classroom teacher in the Hillsboro School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rule making.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Griseldo Nuñez
2nd Grade Dual Language Teacher
Hillsboro School District

From: [Jennifer Coffey](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Thursday, November 6, 2025 6:04:28 AM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a Speech Language Pathologist in the Beaverton School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Jennifer Coffey, MS CCC-SLP

Beaverton School District

From: jsulli62@aol.com
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 8:14:51 PM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a special education teacher in the Eugene 4 J school district. I am writing to you as a concerned citizen and not in any official capacity. I urge the Board to reject the petition to amend OAR [581-015-2430](#) and [581-015-2360](#) as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial risk of injury despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk. This smacks of wilfull and wanton negligence and is abusive. Please protect our children. They are our future.
-Jim Sullivan

[Sent from the all new AOL app for iOS](#)

From: [Kate Aly-Brady](#)
To: [StateBoard Public Email](#)
Subject: special education
Date: Wednesday, November 5, 2025 8:31:16 PM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

My name is Kate Aly, and I teach in Springfield Public Schools. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written, and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk, despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk. And staff and students are currently being injured, even with this authority in place.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Kate Aly

ELD Teacher

Springfield Public Schools

From: [trailsmitten](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-0152430 and 581-015-2360
Date: Thursday, November 6, 2025 7:01:05 AM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a teacher in Eugene School District 4J. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,
Leah Willow
1st grade general education teacher
Eugene SD 4J

From: [Lora Dee](#)
To: [StateBoard Public Email](#)
Subject: Public comment: petition to amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 7:59:31 PM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

Good evening,

I am a special education teacher in the Beaverton School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Lora Dee, M.A.T, Special Education Endorsement

Elementary Special Education Teacher

From: [Maria Strawhorn](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 8:52:35 PM

You don't often get email from maria.strawhorn@district6.org. [Learn why this is important](#)

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*I am a **special education teacher** in **Central Point School District (D6)**. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.*

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Maria Strawhorn
Special Education Teacher
Central Point School District (D6)

From: [Nicole Patrick](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-243
Date: Thursday, November 6, 2025 6:15:23 AM

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[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a Special Education Teacher in Beaverton School District. Already, despite implementation of myriad positive behavioral supports, both myself and another student have made trips to urgent care at the hands of another student. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Nicole Patrick, Special Education Teacher, BSD

From: [Rena Jan](#)
To: [StateBoard Public Email](#)
Subject: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 11:37:44 PM

You don't often get email from rena.jan@gmail.com. [Learn why this is important](#)

[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

Hello members,

I am Rena Jan, a school counselor in Beaverton School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Rena Jan
school counselor
Beaverton School District

From: [Sandi Hickok](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 7:24:22 PM

You don't often get email from sandrahickok@gmail.com. [Learn why this is important](#)

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I am a teacher in Eugene School District 4J. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Sandi Hickok
Middle School Science Teacher
Eugene School District 4J

From: [Sandra Walk](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Thursday, November 6, 2025 4:33:17 AM

You don't often get email from sandra.walk@canby.k12.or.us. [Learn why this is important](#)

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State Board,

I am a School Psychologist in Canby, Oregon. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Sandra Walk Ed.S. School Psychologist

*Canby High School 503-263-7200 X 5104
503-263-7140 X 3490*

From: [Suzannah Swinehart](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Wednesday, November 5, 2025 8:58:50 PM

You don't often get email from swinehart_s@4j.lane.edu. [Learn why this is important](#)

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To whom it may concern:

I am a teacher in Eugene School District 4J. I am writing to urge that you reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

As written, the current policy requires a due process hearing with an administrative law judge, and the burden of proof rests on the school district to show why a temporary removal to an alternative setting is justified and necessary to keep students and staff safe. It is not something taken lightly or without evidence. Removing the ability to take preventative steps when there is "substantial likelihood of injurious behavior" will result in us only being reactive after someone gets seriously hurt.

I have been in this position before with one of my first graders. I had to try to keep both the student who was demonstrating violent behavior and all of the classmates safe, while also teaching my students to read, write, and do math. When the behavior continued to escalate and I could no longer keep everyone safe, it was crucial that we moved the child to an alternative setting *before* someone got sent to the hospital. Children deserve to come to school to learn, not to fear for their personal wellbeing in the presence of increasingly disregulated peers.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Sincerely,
Suzannah Swinehart
First Grade Teacher
Eugene School District 4J

From: [Teresa Barrington](#)
To: [StateBoard Public Email](#)
Subject: Reject the petition to amend OAR 581-015-2430
Date: Wednesday, November 5, 2025 7:05:40 PM

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I am a public middle school teacher in Eugene 4J. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,
Teresa Barrington
Middle School Teacher
Eugene 4J School District

Teresa M Barrington

From: [terry_cherney](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360"
Date: Wednesday, November 5, 2025 8:27:20 PM

You don't often get email from terry_cherney@beaverton.k12.or.us. [Learn why this is important](#)

[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a Special Educator in the Beaverton School District I urge the Board to **reject the petition to amend OAR 581-015-2430 and 581-015-2360** as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,

Terry Cherney

Special Education Teacher
Academic Learning Center
Pronouns She/Her/Hers

Beaverton School District | Beaverton High
13000 SW Second Street, Beaverton, OR 97005
Main Office: 503-356-2830 | Attendance: 503-356-2831 | Fax: 503-356-2825

Go Beavers!



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The contents of this email and any attachments are confidential. They are intended for the named recipient(s) only. If you've received this communication in error, please immediately notify us by phone at 503-356-4500 and destroy the original message. Thank you.

From: [Aimee Harrington](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Thursday, November 6, 2025 8:56:08 AM

You don't often get email from aimeeorr@gmail.com. [Learn why this is important](#)

[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a teacher in Eugene school district 4J. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative stakeholder rulemaking.

The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk despite interventions. Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk.

I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections.

I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,
Aimee Harrington
ELA8
4J

Aimee Harrington

From: [Ashley Hayes](#)
To: [StateBoard Public Email](#)
Subject: Public comment: Petition to Amend OAR 581-015-2430 and 581-015-2360
Date: Thursday, November 6, 2025 8:56:11 AM

You don't often get email from ashley.hayes.a@gmail.com. [Learn why this is important](#)

[*** This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond. ***]

I am a primary teacher in Riverdale School District. I urge the Board to reject the petition to amend OAR 581-015-2430 and 581-015-2360 as written and instead initiate collaborative rulemaking. The current ALJ authority provides a critical safety mechanism when student behavioral patterns create substantial injury risk (despite interventions). Eliminating this proactive tool forces districts to wait until actual harm occurs, putting students and staff at risk. I support examining these rules for federal compliance and clarity, but the proposed changes remove safety protections without workable alternatives. As OSBA noted, these changes create confusion among overlapping rule sections. I recommend the Board reject this petition and convene all stakeholders—teachers, administrators, advocates, and families—to comprehensively review these interconnected rules. This process should ensure federal compliance while maintaining proactive safety tools with appropriate safeguards.

Students deserve both strong due process protections and safe learning environments. Effective policy must protect student rights and school safety through clear, workable procedures.

Thank you,
Ashley Hayes
Primary Teacher
Riverdale School District

I am Jennifer Waggoner, Chief Operations Officer of Whitmore Classical Academy in Florence, Oregon. We are a brand new charter school set to open Fall 2026.

I will read a portion of ORS 338.015 describing the intent of Charter Schools:

The Legislative Assembly seeks to create an atmosphere in Oregon's public school system where research and development of new learning opportunities are actively pursued. The provisions of this chapter should be interpreted liberally to support the goals of this section and to advance a renewed commitment by this state to the mission, goals and diversity of public education. It is the intent that public charter schools may serve as models and catalysts for the improvement of other public schools and the public school system.

The goals of public charter schools shall be to:

- (1) Increase student learning and achievement;
- (2) Increase choices of learning opportunities for students;
- (3) Better meet individual student academic needs and interests;
- (4) Build stronger working relationships among educators, parents and other community members;
- (5) Encourage the use of different and innovative learning methods;
- (6) Provide opportunities in small learning environments for flexibility and innovation, which may be applied, if proven effective, to other public schools;
- (7) Create new professional opportunities for teachers;
- (8) Establish additional forms of accountability for schools; and
- (9) Create innovative measurement tools. [1999 c.200 §1]

Charter schools are supposed to be the outliers per Oregon state law. Charter schools were created for our measurement tools to be innovative. We were created as an additional form of accountability for schools. We were created to encourage the use of different and innovative learning. We were created to provide opportunities in small learning environments for flexibility and innovation, which may be applied, if proven effective, to other public schools

As written-Charter Schools are in and of themselves a means of “accountability” which is the goal of SB 141. But unfortunately, the current draft rules for SB 141 are counter to this intent because they hinder charter school autonomy.

IF you truly want to find ways of educating our kids better, then charter schools need to stand alone in their assessment and and reporting to the state. Otherwise if the data for school districts and charter schools is all blended together, you don’t have the opportunity to learn what is working and what isn’t.

If you want accountability so that we can make positive changes in our educational system FOR OREGON KIDS, then this has to be approached differently. Really seek to get good data but even more importantly, find a way to get better results.

Charter schools aren’t the only answer. But certainly, they are one controlled laboratory already in place to study different educational approaches. And why not seek to understand what charter schools can do for 80% of the per student funding compared to what school districts are doing because that too is our reality. A reminder that charter schools don’t get 100% of the per student funding so we shouldn’t be lumped together with a school district that gets 20% of our per student funding and 100% of their student funding. It isn’t apples and apples.

Please go back to the drawing board on this and really bring charter schools to the table to discuss this. It is vital that Charter Schools' autonomy is preserved for all of us.

343.177**Educational placement during administrative or judicial proceedings; circumstances where placement may be changed**

(1) During the pendency of any administrative or judicial proceedings concerning the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child, the child shall remain in the then current educational program placement.

(2) Notwithstanding subsection (1) of this section, the placement of a child may be changed if:

(a) The parent consents to placement in a program provided or selected by the district at the district's expense until the parent provides a written revocation of consent or until the proceedings referred to in subsection (1) of this section are completed if applying for initial admission to a public school;

(b) The parent and the school district agree to temporary placement in some other program;

(c) The school district orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability:

(A) Due to a weapon, illegal drug or controlled substance incident; or

(B) Because the child has inflicted serious bodily injury upon another person while at school, on school premises or at a school function under the jurisdiction of the Department of Education or school district;

(d) A hearing officer orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to the substantial likelihood of injurious behavior, pursuant to rules of the State Board of Education; or

(e) School personnel order a change in placement to an interim alternative educational setting for more than 10 school days for a child with a disability who violates a code of student conduct and the behavior that gave rise to the violation is determined not to be a manifestation of the child's disability.

(3) If the placement of a child with a disability is changed under subsection (2)(e) of this section:

(a) The relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration as the disciplinary procedures would be applied to children without disabilities;

(b) The child continues to be entitled to a free appropriate public education under ORS 339.252, although the education may be provided in an interim alternative educational setting; and

(c) The child shall remain in the interim alternative educational setting pending the decision of a hearing officer or until the expiration of the school district's determination of duration of the change in placement under paragraph (a) of this subsection, whichever occurs first.

(4) For the purposes of subsection (2)(b) of this section, a decision of a hearing officer under ORS 343.165 that agrees with the child's parents that a change of placement is appropriate shall be treated as an agreement between the school district and the parents. [1979 c.423 §10 (enacted in lieu of 343.077); 1991 c.795 §7; 1993 c.749 §13; 1995 c.237 §1; 1999 c.989 §20; 2005 c.662 §8; 2009 c.255 §6]

581-015-2430

Removal to an Interim Alternative Educational Setting by Administrative Law Judge (Injurious Behavior)

(1) "Injurious behavior" means behavior that is substantially likely to result in injury to the child or to others.

(2) School districts may request an expedited due process hearing under OAR 581-015-2445 to obtain an order from an administrative law judge to order a change in placement of the child to an interim alternative educational setting for not more than 45 school days for injurious behavior.

(3) The interim alternative educational setting must meet the requirements of OAR 581-015-2435(2).

(4) The procedures in subsection (2) may be repeated if the school district believes that returning the child to the original placement is substantially likely to result in injurious behavior.

(5) Nothing in this rule precludes a school district from seeking a court order to remove a child from the child's current educational placement to another placement if the district believes that the maintaining the child in the child's current educational placement is substantially likely to result in injurious behavior.

Statutory/Other Authority: ORS 343.041, 343.045 & 343.155

Statutes/Other Implemented: ORS 343.155 & 34 CFR 300.532

History:

Renumbered from 581-015-0556, ODE 10-2007, f. & cert. ef. 4-25-07

ODE 2-2003, f. & cert. ef. 3-10-03

ODE 35-1999, f. 12-13-99, cert. ef. 12-14-99

581-015-2360

Pre-Hearing Conference, Notice of Hearing and Hearing Rights

(1) Upon receipt of a written request by a parent or the school district for a hearing regarding the identification, evaluation, individualized education program, educational placement of the child or the provision of a free appropriate public education to a child, the Superintendent will:

(a) Appoint an administrative law judge, in accordance with OAR 581-015-2365, to conduct the hearing.

(b) Provide the parent with a copy of the Notice of Procedural Safeguards;

(c) Inform the parties that mediation is available at no cost to the parents or school district; and

(d) Inform the parent of any free or low-cost legal services and other relevant services.

(2) Subject matter of hearing: The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the hearing request unless the other party agrees otherwise.

(3) Pre-Hearing Conference: The administrative law judge will require the parties to appear in person or by telephone for a pre-hearing conference for the purpose of:

(a) Identifying the issues to be resolved;

(b) Establishing the length and scheduling of the hearing;

(c) Deciding whether the hearing record will be a written or electronic verbatim record;

(d) Reviewing the parties' hearing rights and procedures; and

(e) Notifying the parties of the availability of mediation at no cost through the Department.

(4) Notice of Hearing:

(a) The administrative law judge will provide a notice to the parties of the hearing. The notice will be served by registered or certified mail.

(b) The hearing notice will include:

(A) A statement of the time and place of the hearing, the scheduling of pre-hearing exchange of documents and any other filing deadlines, and the date for issuance of the final order;

(B) A statement of the authority and jurisdiction under which the hearing is to be held;

(C) A reference to the particular sections of the statutes and rules involved;

(D) A short and plain statement of the matters asserted or charged;

(E) A statement that mediation is available to the parties at no cost from the Department;

(F) A statement of hearing rights as described in subsection (3).

(5) Due Process Hearing Rights: Parties to a due process hearing conducted under OAR 581-015-2360 (Notice of Hearing, Hearing Rights, and Pre-Hearing Conference) or 581-015-2400 through 581-015-2445 (Discipline for Students with Disabilities) have the following rights:

(a) During the pendency of any due process hearing or judicial appeal, the child must, remain in the present educational placement unless:

(A) The school district and the parent agree otherwise;

(B) If applying for initial admission to a public school, the parent consents to the child's placement in a program provided or selected by the district at the district's expense until all proceedings are completed;

(C) The school district orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to a weapon, illegal drug, or controlled substance incident or for serious bodily injury;

(D) The administrative law judge orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to the substantial likelihood of injurious behavior; or

(E) The school district implements a disciplinary removal to an interim alternative educational setting for a student when the student's behavior is determined not to be a manifestation of the student's disability.

(b) Any party to a hearing has the right to:

(A) Be accompanied and advised by counsel and by individuals who have special knowledge or training with respect to the problems of children with disabilities;

(B) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(C) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;

(D) Obtain a written or, at the option of the parents, electronic verbatim record of the hearing at no cost to the parents; and

(E) Obtain a written or, at the option of the parents, electronic findings of fact and hearing decision at no cost to the parents.

(c) The parent involved in a hearing has the right to:

(A) Have the child present who is the subject of the hearing; and

(B) Open the hearing to the public.

Statutory/Other Authority: ORS 343.041, 343.045, 343.055, 343.155 & 343.165

Statutes/Other Implemented: ORS 343.155, 343.165, 343.177, 34 CFR 300.504, 300.507(b)(2), 300.511, 300.512, 300.518, 300.530 & 300.533

History:

Renumbered from 581-015-0080, ODE 10-2007, f. & cert. ef. 4-25-07

ODE 2-2003, f. & cert. ef. 3-10-03

ODE 20-1999, f. & cert. ef. 9-24-99

EB 11-1995, f. & cert. ef. 5-25-95

EB 9-1992, f. & cert. ef. 4-7-92

EB 3-1990, f. & cert. ef. 1-26-90

EB 29-1989(Temp), f. & cert. ef. 10-16-89

EB 28-1989(Temp), f. & cert. ef. 10-16-89

1EB 5-1980, f. 2-22-80, ef. 2-23-80

1EB 18-1979(Temp), f. & ef. 11-15-79

ORS 183.390**Petitions requesting adoption of rules**

(1) An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. Not later than 90 days after the date of submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with ORS 183.335.

(2) If a petition requesting the amendment or repeal of a rule is submitted to an agency under this section, the agency shall invite public comment upon the rule, and shall specifically request public comment on whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses.

(3) In reviewing a petition subject to subsection (2) of this section, the agency shall consider:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;

(e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and

(f) The statutory citation or legal basis for the rule. [1957 c.717 §5; 1971 c.734 §8; 2003 c.749 §6]

137-001-0070**Petition to Promulgate, Amend, or Repeal Rule**

(1) An interested person may petition an agency to adopt, amend, or repeal a rule. The petition shall state the name and address of the petitioner and any other person known to the petitioner to be interested in the rule. The petition shall be legible, signed by or on behalf of the petitioner, and shall contain a detailed statement of:

(a) The rule petitioner requests the agency to adopt, amend, or repeal. When a new rule is proposed, the petition shall set forth the proposed language in full. When an amendment of an existing rule is proposed, the rule shall be set forth in the petition in full with matter proposed to be deleted and proposed additions shown by a method that clearly indicates proposed deletions and additions;

(b) Facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment, or repeal of the rule;

(c) All propositions of law to be asserted by petitioner.

(2) If the petitioner requests the amendment or repeal of an existing rule, the petition must also contain comments on:

(a) Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses;

(b) The continued need for the existing rule;

(c) The complexity of the existing rule;

(d) The extent to which the existing rule overlaps, duplicates, or conflicts with other state or federal rules and with local government regulations; and

(e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.

(3) If a petition requests the amendment or repeal of a rule, before denying a petition, the agency must invite public comment upon the rule, including whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses.

(4) The agency:

(a) May provide a copy of the petition, together with a copy of the applicable rules of practice, to all persons named in the petition;

(b) May schedule oral presentations;

(c) Shall, in writing, within 90 days after receipt of the petition, either deny the petition or initiate rulemaking proceedings.

Statutory/Other Authority: ORS 183.390

Statutes/Other Implemented: ORS 183.390



August 22, 2025

Via Email Only

Dr. Charlene Williams, Director
Oregon Department of Education
255 Capitol St NE
Salem, OR 97310

Re: Petition for Rulemaking under ORS 183.390; 45-Day Interim Placement and Amendments to OAR 581-015-2430(2) and OAR 581-015-2360(5)(a)(D)

Dear Dr. Williams,

The Oregon Law Center (OLC) advocates for low-income Oregonian families with children with disabilities, including occasionally filing due process complaints pursuant to the Individuals with Disabilities Education Act (IDEA).

Under ORS 183.390(1), any “interested person may petition an agency requesting the promulgation, amendment or repeal of a rule.” Within 90 days, the agency must either deny the petition in writing or initiate rulemaking proceedings. ORS 183.390(1); OAR 137-001-0070. **OLC writes to formally petition the Oregon Department of Education (ODE) for changes to OAR 581-015-2430 and OAR 581-015-2360(5)(a)(D),** two rules governing placements in interim alternative educational settings.

As currently written, these Oregon Administrative Rules conflict with key IDEA provisions and related regulations and harm students with disabilities and their families by impeding their due process rights.

In the special education context, “placement” is the set of special education services and type of environment where a child receives those services (i.e. a neighborhood school, a special program for students with disabilities, etc.). The placement decision is carefully made by the child’s Individualized Education Program (IEP) team, including the child’s parents, as the last step in crafting or revising a child’s IEP, and the placement decision must be tailored to the unique needs of that individual child. 20 USC § 1401(14), 1414(d).

An “interim alternative educational setting” (IAES) is a temporary placement for students with disabilities who have been removed from their regular placement, typically due to disciplinary reasons, allowing the student to continue receiving educational services to progress on IEP goals and behavior in a different location. 20 USC § 1415(k)(3), 34 CFR § 300.532.

Research shows that all children benefit from positive outcomes when children with disabilities are educated to the maximum extent possible with their general education peers. *See* Sandi M Cole, et al., *The Relationship of Special Education Placement and Student Academic Outcomes*, 54 J. OF SPECIAL EDUC. 217-227 (2021). Recognizing that placement in the least restrictive environment is an essential component to a student’s receipt of a free appropriate public education (FAPE), Congress amended the IDEA to only allow school districts to unilaterally place a child into an IAES after serious misconduct *has already occurred*, and even then, the law places significant restrictions on such placements. Removal to an IAES is only permitted (up to 10 days) in the presence of violations of a school’s code of conduct, or (up to 45 days) for egregious misconduct involving a weapon, drugs, or the infliction of serious bodily injury that occurs at school. The IDEA does not allow for removals to IAESs, in the first instance, merely based on the prospect of potential, future misconduct.

While federal law sets a baseline that requires a concrete incident to justify a student’s change of placement to an IAES, Oregon’s rules allow school districts to act on conjecture. As currently written, OAR 581-015-2430(2) and OAR 581-015-2360(5)(a)(D) pave the way for districts to petition an Administrative Law Judge (ALJ) for removal to an IAES when they perceive a “substantial likelihood” of injury to the student or others, and omit the IDEA requirement that this request follow a discrete discipline-related removal and related administrative processes. OAR 581-015-2430 currently allows an ALJ to place a child with disabilities into an IAES, against the wishes of her parents, based on the prospect of potential, future misconduct.

IAES placements permitted by OAR 581-015-2430 do not include protections required by the IDEA such as the requirement of a Functional Behavioral Analysis (FBA). And IAES placements under OAR 581-015-2430 disrupt a central tenet of the IDEA, the “stay put” requirement triggered by the filing of a due process complaint. OAR 581-015-2430(2) and OAR 581-015-2360(5)(a)(D) subject students with disabilities to disciplinary placements with *less* due process protections than those enjoyed by students without disabilities.

Representing children in due process hearings, we have been on the receiving end of several such requests by districts for an IAES placement based on *prospective* misconduct.

Federal law and rules set the minimum standard that states must implement to receive funding under the IDEA, which states may build upon, but may not diminish. *See Cipollone v. Liggett Grp.*, 505 U.S. 504, 516 (1992); *see also* 20 USC § 1415(a) (requiring state educational agencies that receive federal assistance to maintain procedures in accordance with the IDEA); ORS 183.332.

In Section I, this petition sets forth the OAR amendments we propose. In Section II, we provide arguments and propositions of law in support of the rule amendments. Specifically, (A) OAR 581-015-2430(2) and OAR 581-015-2360(5)(a)(D) conflict with the IDEA because they permit ALJs to order a change in placement based on “substantial likelihood of injury” outside

the context of an administrative appeal; and (B) OAR 581-015-2360(5)(a)(D) contravenes the IDEA requirement that students “stay put” in their current educational placements while due process hearings are being conducted.

I. Proposed Amendments

Or. Admin. R. 581-015-2430

Removal to an Interim Alternative Educational Setting by Administrative Law Judge (~~Injurious Behavior~~ Appeals)

(1) This section applies only when a school district is appealing a manifestation determination, OAR 581-015-2415(4)(a)(C), or appealing the end of the removal period, OAR 581-015-2425(2)."

(12) "Injurious behavior" means behavior that is substantially likely to result in injury to the child or to others.

(23) School districts may request an expedited due process hearing under OAR 581-015-2445 to obtain an order from an administrative law judge to order a change in placement of the child to an interim alternative educational setting for not more than 45 school days for injurious behavior.

(34) The interim alternative educational setting must meet the requirements of OAR 581-015-2435(2).

(45) The procedures in subsection (2) may be repeated if the school district believes that returning the child to the original placement is substantially likely to result in injurious behavior.

(56) Nothing in this rule precludes a school district from seeking a court order to remove a child from the child's current educational placement to another placement if the district believes that the maintaining the child in the child's current educational placement is substantially likely to result in injurious behavior.

Or. Admin. R. 581-015-2360

Pre-Hearing Conference, Notice of Hearing and Hearing Rights

(1) Upon receipt of a written request by a parent or the school district for a hearing regarding the identification, evaluation, individualized education program, educational

placement of the child or the provision of a free appropriate public education to a child, the Superintendent will:

(a) Appoint an administrative law judge, in accordance with OAR 581-015-2365, to conduct the hearing.

(b) Provide the parent with a copy of the Notice of Procedural Safeguards;

(c) Inform the parties that mediation is available at no cost to the parents or school district; and

(d) Inform the parent of any free or low-cost legal services and other relevant services.

(2) Subject matter of hearing: The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the hearing request unless the other party agrees otherwise.

(3) Pre-Hearing Conference: The administrative law judge will require the parties to appear in person or by telephone for a pre-hearing conference for the purpose of:

(a) Identifying the issues to be resolved;

(b) Establishing the length and scheduling of the hearing;

(c) Deciding whether the hearing record will be a written or electronic verbatim record;

(d) Reviewing the parties' hearing rights and procedures; and

(e) Notifying the parties of the availability of mediation at no cost through the Department.

(4) Notice of Hearing:

(a) The administrative law judge will provide a notice to the parties of the hearing. The notice will be served by registered or certified mail.

(b) The hearing notice will include:

(A) A statement of the time and place of the hearing, the scheduling of pre-hearing exchange of documents and any other filing deadlines, and the date for issuance of the final order;

(B) A statement of the authority and jurisdiction under which the hearing is to be held;

(C) A reference to the particular sections of the statutes and rules involved;

(D) A short and plain statement of the matters asserted or charged;

(E) A statement that mediation is available to the parties at no cost from the Department;

(F) A statement of hearing rights as described in subsection (3).

(5) Due Process Hearing Rights: Parties to a due process hearing conducted under OAR 581-015-2360 (Notice of Hearing, Hearing Rights, and Pre-Hearing Conference) or 581-015-2400 through 581-015-2445 (Discipline for Students with Disabilities) have the following rights:

(a) During the pendency of any due process hearing or judicial appeal, the child must, remain in the present educational placement unless:

(A) The school district and the parent agree otherwise;

(B) If applying for initial admission to a public school, the parent consents to the child's placement in a program provided or selected by the district at the district's expense until all proceedings are completed;

(C) The school district orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to a weapon, illegal drug, or controlled substance incident or for serious bodily injury; **or**

~~(D) The administrative law judge orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to the substantial likelihood of injurious behavior; or~~

~~(ED)~~ The school district implements a disciplinary removal to an interim alternative educational setting for a student when the student's behavior is determined not to be a manifestation of the student's disability.

(b) Any party to a hearing has the right to:

(A) Be accompanied and advised by counsel and by individuals who have special knowledge or training with respect to the problems of children with disabilities;

(B) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(C) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;

(D) Obtain a written or, at the option of the parents, electronic verbatim record of the hearing at no cost to the parents; and

(E) Obtain a written or, at the option of the parents, electronic findings of fact and hearing decision at no cost to the parents.

(c) The parent involved in a hearing has the right to:

(A) Have the child present who is the subject of the hearing; and

(B) Open the hearing to the public.

II. Arguments and Propositions of Law in Support of Rule Amendments

A. OAR 581-015-2430(2) and OAR 581-015-2360(5)(a)(D) conflict with the IDEA because they permit ALJs to order a change in placement based on “substantial likelihood of injury” outside the context of an administrative appeal.

Under the IDEA, a school district may place a child in an IAES, or just suspend him, for up to 10 school days based on his violating a code of conduct; after those 10 days the district must conduct a manifestation determination to analyze whether the misconduct was disability-related. *See* 20 USC §§ 1415(k)(1)(B), (C), (E), (F). A district may also unilaterally impose a 45-day IAES placement if the student brings a weapon or illicit drugs to school or causes serious bodily injury to a student at school or school related function. 20 USC § 1415(k)(1)(G). After one of the scenarios above plays out, subject to various procedural protections, a district can *then* request a 45-day IAES placement based on the “substantial likelihood of injurious behavior” in the course of *appealing* a manifestation determination or appealing the end of a valid, initial 45-day IAES placement. 20 USC § 1415(k)(3)(A). In either scenario, an ALJ is only considering an IAES placement based on future misconduct *after* the student has already engaged in misconduct.

However, OAR 581-015-2430(2) enables districts to seek an ALJ order to change placement to an IAES for 45 school days, in the first instance, upon the mere showing of “injurious behavior.” “Injurious behavior” is defined as “behavior that is substantially likely to result in injury to the child or to others” and does not need to be based on any past actions. OAR 581-015-2430(1). Similarly, OAR 581-015-2360(5)(a)(D) allows a district to petition for up to a 45 school day IAES placement upon a showing of “substantial likelihood of injurious behavior” during the pendency of a due process proceeding. OAR 581-015-2360(5)(a)(D). These OARs conflict with the IDEA by expanding opportunities for districts to seek removal of challenging students to an IAES based on potential, prospective harmful behavior that has not yet occurred.

To understand why these OARs conflict with the IDEA in this regard, it is helpful to first review (1) IDEA provisions governing IAES; and then consider (2) OAR 581-015-2430(2) and OAR 581-015-2360(5)(a)(D).

1. IDEA provisions governing IAES

20 USC § 1415 governs procedural safeguards under the IDEA. Specifically, subsection § 1415(k), titled “Placement in alternative educational setting,” addresses circumstances in which challenging classroom behavior might prompt a district to seek discipline, removal from the classroom or school, and/or an alternative educational setting. These are decisions with which

parents may disagree. Subsection § 1415(k) balances schools' need to maintain a safe environment with the rights of disabled students to education.

Subsection § 1415(k) contains seven subsections. Two are relevant here: § 1415(k)(1) which covers the “[a]uthority of school personnel” to impose discipline – including suspensions, expulsions, and/or removals to interim alternative educational settings – on students with disabilities who violate student codes of conduct; and § 1415(k)(3) which covers “*Appeals*” of the decisions resulting from the processes described in § 1415(k)(1). The “substantially likely to result in injury” standard set forth in OAR 581-015-2430(2) is *only available* in the course of “Appeals” under § 1415(k)(3). Contrary to OAR 581-015-2430(2) and OAR 581-015-2360(5)(a)(D), under the IDEA a school district cannot avail itself of that “substantially likely to result in injury” standard to obtain a 45-day IAES placement order from an ALJ until it has been through the administrative procedures of § 1415(k)(1) and has a placement decision to *appeal*.

Subsubsection § 1415(k)(1): Disciplinary removals by the school district

Subsubsection § 1415(k)(1) allows a district to discipline a student with disabilities who violated a student code of conduct, subject to a raft of procedural protections. This framework allows school districts to unilaterally remove a student with a disability from their placement to an interim alternative educational settings (IAES), irrespective of whether the conduct is related to the disability, and over the objections of the child's parents. However, this authority is temporally limited, it is subject to protections immediately following the placement change, and, crucially, it must be in response to *misconduct that already occurred*. This authority arises in two circumstances.

First, schools may immediately remove a student from her current placement for violating a code of conduct, and place her in an IAES or just suspend her, for up to 10 school days. 20 USC §§ 1415(k)(1)(B). Removals for more than 10 school days based on misconduct by a student with disabilities generally require the district to convene the IEP team to hold a manifestation determination review (MDR) to evaluate whether the conduct either (1) had a direct and substantial relationship to the disability; or (2) directly resulted from lack of IEP implementation. 20 USC §§ 1415(k)(1) (C), (E), (F).

If the conduct is found to be a manifestation of the child's disability, the IEP team must conduct a Functional Behavioral Assessment (FBA), and either implement or modify an existing behavioral intervention plan for the child, and *the district must return the child to the placement from which she was removed* – unless the district and parents agree to a change of placement as part of the modification of the behavioral intervention plan. 20 USC § 1415(k)(1)(F).

For students who are removed from the classroom for non-manifestation conduct, the district can discipline a child “in the same manner and for the same duration in which the procedures would be applied to children without disabilities,” including placement in an alternative education setting without time limits. 20 USC § 1415(k)(1)(C).

Second, districts may circumvent the manifestation determination process, and “remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child’s disability,” if the child brings a weapon to school; knowingly possesses or uses or sells illegal drugs on school premises; or “has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function[.]” 20 USC § 1415(k)(1)(G). The school must notify the parents of the interim alternative placement on the same date they make the decision. 20 USC § 1415(k)(1)(H). And subsection § 1415(k)(2) clarifies that the interim alternative educational setting “shall be determined by the IEP Team[.]” which includes the parents.

In either of the two scenarios above, a child with disabilities removed to an IAES placement for more than 10 days must “receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.” 20 USC § 1415(k)(1)(D)(ii). In addition, the district must continue to provide education services and progress towards the goals in the child’s IEP, although in another setting. 20 USC § 1415(k)(1)(D)(i).

In sum, schools can remove a disabled child from the classroom for misbehavior, even before any procedural safeguards or requirements, and place them in an IAES or just suspend them with no education at all; but that discretion is limited to a total of 10 school days over the course of the year, or 45 school days based on extremely dangerous misconduct. In both scenarios, the student with disabilities *has already violated a code of conduct* and has robust rights under the IDEA including, post-removal, an FBA and behavioral intervention services.

Subsection § 1415(k)(3): Appeals

20 USC § 1415(k)(3) is titled “Appeal” and establishes rights and procedures applicable to *appeals* of placement decisions under § 1415(k)(1), including the outcome of manifestation determinations. Specifically, 20 USC § 1415(k)(3)(A) states, in full:

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

This provision contains the procedural protections available to parties dissatisfied with placement determinations resulting from the proceedings described above. If there was any confusion about the limited circumstances when this rule applies, Congress labeled the subsection, “Appeals.”

This provision provides a parent with the right to an administrative hearing to challenge a removal exceeding 10 school days due to a determination that the conduct was not a manifestation of the disability. Or a parent might rely on this provision to dispute a conclusion that their child brought a gun to school resulting in a 45-day IAES placement.

School districts may rely on this same section in instances where the manifestation determination concludes the child’s misconduct *was* a manifestation of the disability – requiring the child return to the setting from which he was removed – but the district fears future injury to the student or others. A district may also request a hearing for a 45 day *extension* of an IAES placement if the district fears there is a substantial likelihood the student will cause injury if returned to the original educational placement. These *appeals* arise from concrete behaviors that triggered the disciplinary process addressed in § 1415(k)(1). They are not based on generalized fear or hypothetical scenarios.

Similarly, the federal regulation that details how to implement 20 USC § 1415(k)(3), 34 CFR § 300.532, clearly titled “Appeals[,]” provides:

The parent of a child with a disability who disagrees with any *decision regarding placement under §§ 300.530 and 300.531* [regulations for 20 U.S.C. § 1415(k)(1)-(2) governing placements in alternative educational settings], or the manifestation determination under § 300.530(e), or an LEA [local education agency, or school district] that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal *the decision* by *requesting a hearing*.

(Emphasis added.) Again, the plain language clarifies that placements in an IAES based on “substantial likelihood” of harm are limited to disciplinary placement *appeals* of placements resulting from the circumstances described in 20 USC § 1415(k)(1), not involuntary removals in the first instance.

2. OAR 581-015-2430(2) and OAR 581-015-2360(5)(a)(D)

Oregon Administrative Rules (OAR) Chapter 581, Division 15 regulates special education in Oregon. For the most part, these rules mirror their federal counterparts. However, OAR 581-015-2430(2) and OAR 581-015-2360(5)(a)(D) do not. Instead, Oregon plucked out language from the federal law and created a path for districts to work around the paradigm described above. Oregon neglected to include qualifying language that limits a district’s ability to seek an IAES based on the prospect of future harm only during placement *appeals*. This omission erodes the federal educational rights of students with disabilities by expanding situations when students with disabilities face a 45-school day IAES removal.

Contrary to the IDEA, the plain language of OAR 581-015-2430(2) and OAR 581-015-2360(5)(a)(D) allows a district to file for a due process hearing seeking a 45-day IAES placement before the parent(s) and IEP team have gathered to review any code of conduct violation, 20 USC § 1415(k)(1)(E); before there has been a manifestation determination, *id.*; and before any serious § 1415(k)(1)(G) misconduct has even occurred. The absence of one word, “appeal,” empowers districts to pursue hearings against students outside of what is permissible under the IDEA. Congress created a high standard – engagement in serious misconduct – to warrant a 45-day IAES placement, and it allowed for 45-day IAES placements based on future injurious behavior in *appeals* of other administrative processes. But ODE’s rules open the door for 45-day IAES placements based on possible future conduct in the first instance. In fact,

pursuant to these two rules, a school district can pursue a 45-day placement in an IAES *even if the child never violated any code of student conduct at all.*

There is no federal law or rule that empowers a school district to remove a *non-disabled* child to an IAES placement, over the parents' objections, based on the possibility of conduct that has not yet happened. Accordingly, OAR 581-015-2430(2) and OAR 581-015-2360(5)(a)(D) provide Oregon students with disabilities *less* due process rights in the context of behavioral management than their non-disabled peers. In this way, the two rules turn the foundational underpinning of the IDEA on its head. Students with disabilities should never be afforded less due process protection than their non-disabled peers.

Moreover, Oregon students placed in an IAES pursuant to OAR 581-015-2430(2) and OAR 581-015-2360(5)(a)(D) are not guaranteed the educational and behavioral supports necessary to receive a free appropriate public education (FAPE) as required by the IDEA. The IDEA requires all students with disabilities to receive behavioral and educational supports necessary to provide FAPE, even when removed to an IAES. 20 USC § 1415(k)(1)-(2). For example, the IDEA requires districts to conduct an FBA, adjust behavior plans, provide supports that allow progress toward IEP goals, and provides for parental involvement in selecting the IAES. See 20 USC § 1415(k)(1)(D) (applicable to all IAES placements over 10 days).

At first glance, Oregon captures these fundamental IDEA components in its IAES structure. Specifically, OAR 581-015-2435(1)-(2) provides that IAES placements must be “determined by the child’s IEP team” (which include the parent) and enable the child to “[c]ontinue to participate in the general curriculum” and “[p]rogress toward achieving the goals in the child’s IEP.” However, by its terms, OAR 581-015-2435 only applies to “[a]n interim alternative educational setting under OAR 581-015-2415 [IAES placement post-MDR]... and 581-015-2425 [45-day IAES removals based on previous serious misconduct].” Excluded from this mandate are Oregon students placed in IAESs under OAR 581-015-2360(5)(a)(D). Children removed pursuant to OAR 581-015-2430 are provided the protections in OAR 581-015-2435(2) only through incorporation in OAR 581-015-2430(3). OAR 581-015-2360(5)(a)(D) must be eliminated to ensure children are provided the IDEA’s minimum requirements when removed to an IAES.

Together, these Oregon regulations, OAR 581-015-2360 and OAR 581-015-2430 (with help from OAR 581-015-2435), whittle away Oregon students’ educational rights. Unlike the IDEA, which places clear limits on when districts can file for an IAES placement, Oregon regulations permit removals under far more permissive standards without needing to provide FAPE for these impacted students. There is no instance under the IDEA that permits districts to seek removal based on speculative risk without an actual incident of misconduct. Nor is there ever a time the IDEA contemplates leaving students without educational supports. This disconnect deprives Oregon students with disabilities the fundamental rights provided under the IDEA. Therefore, these regulations must be changed.

B. OAR 581-015-2360(5)(a)(D) contravenes the IDEA requirement that students “stay put” in their current educational placements while due process hearings are being conducted.

Another way in which OAR 581-015-2360(5)(a)(D) conflicts with federal law is by disrupting a foundation principle of the IDEA due process hearing procedure, the “stay put” requirement. Under the IDEA’s “stay put” provision, a student shall remain in their then-current educational placement during the pendency of any legal proceedings under the IDEA, with two exceptions. 20 USC § 1415(j). These exceptions are when (1) the parents and district agree otherwise or (2) there is an *appeal* of a placement determination stemming from a disciplinary proceeding under 20 USC §1415(k)(3)-(4). 20 USC § 1415(j)-(k)(1).

Again, Congress made clear its intention that a student remain in the then-current educational placement throughout the due process proceeding absent these two exceptions by titling subsection 1415(k)(4), “Placement during *appeals*.” (emphasis added). Subsection 1415(k)(4) provides for an expedited due process hearing and directs that “the child *shall remain* in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C)[.]” 20 USC § 1415(k)(4)(A) (emphasis added). A child cannot “remain” somewhere if they were not there in the first place. Therefore, the phrase “remain in the interim alternative educational setting” language of 1415(k)(4) is further evidence that Congress intended to limit the application of this provision to circumstances where the child *is already in* an IAES at the time a discipline related placement decision is appealed.

There is no IDEA exception to “stay put” that allows a district to ask for removal to an IAES for “behavior substantially likely to result in injury” outside of a disciplinary placement appeal. However, Oregon school districts can currently request a 45-school day placement change to an IAES by simply alleging a substantial likelihood of injury, *even if there is already due process hearing pending*. OAR 581-015-2360(5)(a)(D). Consider a due process hearing that has nothing to do with alleged misconduct, i.e. a due process complaint alleging failure to provide FAPE as set forth in a child’s IEP. Despite the IDEA’s clear “stay put” directive, the school district could nonetheless seek an IAES placement based only on prospective misconduct. The IDEA does not allow this.

Oregon’s expansive use of the “substantially likely to result in injury” standard in regulating the removal of students into IAES placements impermissibly leaves students with disabilities in Oregon without the clear procedural safeguards outlined in 20 USC § 1415.

III. Conclusion

ODE should revise these Oregon Administrative Rules so that they do not conflict with section 1415(k) and so that they protect the due process rights of students with disabilities and

their families. Thank you for dedicating time to this critical work for Oregonian families. We look forward to further collaboration and engagement on this topic.

Sincerely,



Emily Teplin Fox



Rachel Laing

Oregon State Board of Education

November 6, 2025

AGENDA ITEM:

SUBJECT: Petition to Amend OAR 581-015-2430 (Removal to an Interim Alternative Educational Setting by Administrative Law Judge (Injurious Behavior)) and 581-015-2360 (Pre-Hearing Conference, Notice of Hearing, and Hearing Rights) STAFF NAME & OFFICE: Ramonda Olaloye, Assistant Superintendent, Office of Enhancing Student Opportunities, and Mark Mayer, Senior Policy and Rules Advisor, Government and Legal Affairs The State Board of Education has received a petition to amend two administrative rules: OAR 581-015-2430 and 581-015-2360. Using the criteria set forth in ORS 183.390, the Board must determine whether to direct the Oregon Department of Education to initiate rulemaking proceedings or deny the petition.	☒ Petition to adopt, amend, or repeal an administrative rule
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BACKGROUND

On August 22, 2025, the Oregon Department of Education and the State Board of Education received a petition from the Oregon Law Center to amend OAR 581-015-2430 (Removal to an Interim Alternative Educational Setting by Administrative Law Judge (Injurious Behavior)) and 581-015-2360 (Pre-Hearing Conference, Notice of Hearing, and Hearing Rights).

The Oregon Law Center requests the State Board of Education to initiate a rulemaking that would remove from an administrative law judge’s discretion the ability to order – during the pendency of an administrative hearing regarding the identification, evaluation, individualized education program, or educational placement of a child, or regarding the provision of a free appropriate public education to a child – the placement of children in an appropriate interim alternative educational setting when the administrative law judge determines that there is a “substantial likelihood of injurious behavior.”

PROPOSED AMENDMENTS

The proposed amendments to OAR 581-015-2430 and 581-015-2360 are set forth below. Language proposed to be added is bold. Language proposed to be deleted is in brackets and italicized.

[OAR 581-015-2430 \(Removal to an Interim Alternative Educational Setting by Administrative Law Judge \(Injurious Behavior\)\)](#)

Oregon State Board of Education

November 6, 2025

AGENDA ITEM:

(1) This section applies only when a school district is appealing a manifestation determination, OAR 581-015-2415(4)(a)(C), or appealing the end of the removal period, OAR 581-015-2425(2).

(2) [(1)] "Injurious behavior" means behavior that is substantially likely to result in injury to the child or to others.

(3) [(2)] School districts may request an expedited due process hearing under OAR 581-015-2445 to obtain an order from an administrative law judge to order a change in placement of the child to an interim alternative educational setting for not more than 45 school days for injurious behavior.

(4) [(3)] The interim alternative educational setting must meet the requirements of OAR 581-015-2435(2).

(5) [(4)] The procedures in subsection (2) may be repeated if the school district believes that returning the child to the original placement is substantially likely to result in injurious behavior.

(6) [(5)] Nothing in this rule precludes a school district from seeking a court order to remove a child from the child's current educational placement to another placement if the district believes that the maintaining the child in the child's current educational placement is substantially likely to result in injurious behavior.

581-015-2360 (Pre-Hearing Conference, Notice of Hearing, and Hearing Rights)

(1) Upon receipt of a written request by a parent or the school district for a hearing regarding the identification, evaluation, individualized education program, educational placement of the child or the provision of a free appropriate public education to a child, the Superintendent will:

(a) Appoint an administrative law judge, in accordance with OAR 581-015-2365, to conduct the hearing.

(b) Provide the parent with a copy of the Notice of Procedural Safeguards;

(c) Inform the parties that mediation is available at no cost to the parents or school district; and

(d) Inform the parent of any free or low-cost legal services and other relevant services.

(2) Subject matter of hearing: The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the hearing request unless the other party agrees otherwise.

Oregon State Board of Education

November 6, 2025

AGENDA ITEM:

(3) Pre-Hearing Conference: The administrative law judge will require the parties to appear in person or by telephone for a pre-hearing conference for the purpose of:

- (a) Identifying the issues to be resolved;
- (b) Establishing the length and scheduling of the hearing;
- (c) Deciding whether the hearing record will be a written or electronic verbatim record;
- (d) Reviewing the parties' hearing rights and procedures; and
- (e) Notifying the parties of the availability of mediation at no cost through the Department.

(4) Notice of Hearing:

(a) The administrative law judge will provide a notice to the parties of the hearing. The notice will be served by registered or certified mail.

(b) The hearing notice will include:

(A) A statement of the time and place of the hearing, the scheduling of pre-hearing exchange of documents and any other filing deadlines, and the date for issuance of the final order;

(B) A statement of the authority and jurisdiction under which the hearing is to be held;

(C) A reference to the particular sections of the statutes and rules involved;

(D) A short and plain statement of the matters asserted or charged;

(E) A statement that mediation is available to the parties at no cost from the Department;

(F) A statement of hearing rights as described in subsection (3).

(5) Due Process Hearing Rights: Parties to a due process hearing conducted under OAR 581-015-2360 (Notice of Hearing, Hearing Rights, and Pre-Hearing Conference) or 581-015-2400 through 581-015-2445 (Discipline for Students with Disabilities) have the following rights:

(a) During the pendency of any due process hearing or judicial appeal, the child must, remain in the present educational placement unless:

(A) The school district and the parent agree otherwise;

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(B) If applying for initial admission to a public school, the parent consents to the child's placement in a program provided or selected by the district at the district's expense until all proceedings are completed;

(C) The school district orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to a weapon, illegal drug, or controlled substance incident or for serious bodily injury; **or**

[(D) The administrative law judge orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to the substantial likelihood of injurious behavior; or]

(D) [(E)] The school district implements a disciplinary removal to an interim alternative educational setting for a student when the student's behavior is determined not to be a manifestation of the student's disability.

(b) Any party to a hearing has the right to:

(A) Be accompanied and advised by counsel and by individuals who have special knowledge or training with respect to the problems of children with disabilities;

(B) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(C) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;

(D) Obtain a written or, at the option of the parents, electronic verbatim record of the hearing at no cost to the parents; and

(E) Obtain a written or, at the option of the parents, electronic findings of fact and hearing decision at no cost to the parents.

(c) The parent involved in a hearing has the right to:

(A) Have the child present who is the subject of the hearing; and

(B) Open the hearing to the public.

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LEGAL AUTHORITY

An interested person may petition an agency to request the agency adopt, amend, or repeal an administrative rule. See [ORS 183.390](#) & [OAR 137-001-0070](#).

ORS 183.390(1) establishes the right to petition and directs the Attorney General to prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition.

OAR 137-001-0070 is the administrative rule adopted by the Attorney General. Under that rule, a petition must include the full text of the rule with proposed deletions and additions clearly marked. OAR 137-001-0070(1)(a). The petition must include “facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment, or repeal of the rule.” OAR 137-001-0070(1)(b). And the petition must include “all propositions of law to be asserted by the petitioner.” OAR 137-001-0070(1)(c).

A petition requesting amendment of an existing rule must meet additional criteria. The petition must contain comments on:

- (a) Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses;
- (b) The continued need for the existing rule;
- (c) The complexity of the existing rule;
- (d) The extent to which the existing rule overlaps, duplicates, or conflicts with other state or federal rules and with local government regulations; and
- (e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.

OAR 137-001-0070(2).

After a petition is submitted, the agency must determine whether to deny the petition or initiate a rulemaking. Before the agency denies the petition, the agency must invite public comment on the rulemaking, including whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses. See ORS 183.390(2) & OAR 137-001-0070(3).

When considering whether to initiate a rulemaking, the agency must consider the following factors:

- (a) The continued need for the rule;

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- (b) The nature of complaints or comments received concerning the rule from the public;
- (c) The complexity of the rule;
- (d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;
- (e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and
- (f) The statutory citation or legal basis for the rule.

ORS 183.390(3).

The agency must make its decision on whether to deny the petition or initiate a rulemaking no later than 90 days after the date of submission of a petition. ORS 183.390(1) and OAR 137-001-0070(4)(c). In this case, that date is November 20, 2025.

PUBLIC COMMENT

On October 14, 2025, pursuant to OAR 133-001-0070(3), the Oregon Department of Education [invited written public comment](#) on the petition to amend OAR 581-015-2430 and 581-015-2360.

The public comment period closed on October 28, 2025.

All comments received during the comment period have been posted to [Boardbook](#).

Comments submitted in support of initiating a rulemaking state that the amendments are necessary to ensure that the rules are in alignment with the federal Individuals with Disabilities Education Act (IDEA). The comments also state that the amendments are necessary to protect students and families. Specifically,

- IDEA provides a framework of rights and procedures that are designed to ensure that students with disabilities are not isolated from their non-disabled peers or excluded from school, except under rare and extreme circumstances.
- IDEA includes strict procedural protections to ensure that students with disabilities are not disciplined or excluded from school for behaviors that are the result of their disabilities or district failures to provide effective behavioral supports and services.
- Removal of a student with a disability to a 45-day interim alternative educational setting is limited to specific circumstances under federal law, and those circumstances do not include placement of children in an appropriate interim alternative educational setting

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when the administrative law judge determines that there is a “substantial likelihood of injurious behavior.”

- As written, OAR 581-015-2430 and 581-015-2360 allow removal to an interim alternative educational setting based on the possibility of future conduct, whereas IDEA only allows such removals after a specified incident of serious misconduct.
- Some districts declare the substantial likelihood of injurious behavior rationale for an interim alternative educational setting without actually initiating a due process hearing.
- As written, OAR 581-015-2430 and 581-015-2360 expose students with disabilities to disciplinary removals without the same due process protections afforded to other students.
- Significant harms occur when students with disabilities are removed from school for significant periods of time.
- The amendments will ensure equitable treatment of students with disabilities, maintain due process rights, and protect such students access to a free appropriate public education.

Comments submitted in support of denying the petition emphasize that educators work hard to keep students safe and in school and that some students need a “different placement” for their needs to be met. The comments also state that such placements “don’t happen easily” and that decisions to make such placements are not “made lightly.”

Other comments in support of denying the petition point to the complexity of the rules and the interrelationship between OAR 581-015- 2430, 581-015-2360, and a third rule, OAR 581-015-2415. Specifically,

The proposed rule change to OAR 581-015-2430 makes it only applicable when a district is appealing a manifestation determination under OAR 581-015-2415(4)(a)(C) or appealing the end of the removal period under OAR 581-015-2425(2). However, that particular subsection relates to a district’s ability to seek an order from Administrative Law Judge to allow for placement in an interim alternative educational setting for injurious behavior and what a district must do prior to seeking that order. That section does not relate to a district appealing a manifestation determination.

The proposed rule change to OAR 581-015-2360 further confuses matters. Currently, during the pendency of any due process hearing or judicial appeal, the child must remain at their current placement unless an ALJ orders a change of placement for up to 45 days due to the substantial likelihood of injurious behavior. OAR 581-015-2415 provides that if a determination is made that the student’s behavior is a manifestation of their disability, then the school district must return the student to the placement from which they were removed unless a district obtains an order from an ALJ under OAR 581-015-2430 allowing a

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change in placement to an interim alternative educational setting for injurious behavior and (1) conducts a functional behavioral assessment or (2) reviews the student's behavioral plan and modifies it as necessary.

Finally, comments in support of denying the petition propose working with the petitioners and other proponents of the petition to "dicuss their concerns and look for ways to collaboratively work to improve outcomes for students."

DETERMINATION AND RECOMMENDATION

The State Board of Education must now decide whether to direct the Oregon Department of Education to initiate rulemaking proceedings. In making this determination, the Board must follow ORS 183.390(3) and consider the following factors:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments received concerning the rule from the public;
- (c) The complexity of the rule;
- (d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;
- (e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and
- (f) The statutory citation or legal basis for the rule.

In considering these factors, the department must draw the Board's attention to the continued need for the rule and the statutory citation or legal basis for the rule.

Under ORS 343.177,

(1) During the pendency of any administrative or judicial proceedings concerning the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child, the child shall remain in the then current educational program placement.

(2) Notwithstanding subsection (1) of this section, the placement of a child may be changed if:

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(d) A hearing officer orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to the substantial likelihood of injurious behavior, pursuant to rules of the State Board of Education[.]

Under that provision, the Oregon State Legislature specifically authorizes administrative law judges to place a child in an interim alternative education setting for up to 45 school days due to the substantial likelihood of injurious behavior.

The language in rule is almost identical to this statutory language. The language that the petition requests to be deleted reads:

During the pendency of any due process hearing or judicial appeal, the child must, remain in the present educational placement unless:

(D) The administrative law judge orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to the substantial likelihood of injurious behavior[.]

Under these circumstances, where the statute authorizes the placement and impliedly directs the Board to adopt rules to that effect, the department recommends that the Board deny the petition. In making its recommendation, the department emphasizes that the current rule reflects and accounts for a statutory mandate established by the Oregon State Legislature.

After full consideration of the petition, public comment, and the factors set forth in ORS 183.390(3), department staff recommend that the Board vote to deny the petition.

ATTACHMENTS

Attachment 1: OAR 581-015-2430 (Removal to an Interim Alternative Educational Setting by Administrative Law Judge (Injurious Behavior)) and 581-015-2360 (Pre-Hearing Conference, Notice of Hearing, and Hearing Rights).

Attachment 2: Relevant Statute and Rules:

- ORS 343.177 (Educational placement during administrative or judicial proceedings; circumstances where placement may be changed)
- OAR 581-015-2360 (Pre-Hearing Conference, Notice of Hearing, and Hearing Rights)

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- OAR 581-015-2430 (Removal to an Interim Alternative Educational Setting by Administrative Law Judge (Injurious Behavior))

Attachment 3:

Laws Related to Right to Petition:

- ORS 183.390 (Petitions requesting adoption of rules)
- OAR 133-001-0070 (Petition to Promulgate, Amend, or Repeal Rule)



Petition to Amend OAR 581-015-2360 and -2430

Ramonda Olaloye, Assistant Superintendent,
Office of Enhancing Student Opportunities,
Mark Mayer, Senior Policy and Rules Advisor,
Government and Legal Affairs

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Background and Legal Authority

On August 22, 2025, the Oregon Law Center petitioned ODE to amend OAR 581-015-2360 and 581-015-2430.

An interested person may petition an agency to request the agency to adopt, amend, or repeal an administrative rule.

After a petition is submitted, an agency must determine whether to deny the petition or initiate a rulemaking. The agency must do so within 90 days.

Before an agency denies a petition, the agency must invite public comment on the proposed rulemaking.



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Proposed Amendment to -2360



Petitioners
propose to delete
the following
bracketed and
italicized language
from OAR 581-
015-2360:

- (1) During the pendency of any due process hearing or judicial appeal, the child must remain in the present educational placement unless:
- *[(D) The administrative law judge orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to the substantial likelihood of injurious behavior;]*

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Proposed Amendments to -2430

Petitioners
propose to add
the following
language to
OAR 581-015-
2430:

- **This section applies only when a school district is appealing a manifestation determination, OAR 581-015-2415(4)(a)(C), or appealing the end of the removal period, OAR 581-015-2425(2).**

Public Comment in Support of the Petition



IDEA provides a framework of rights and procedures that are designed to ensure that students with disabilities are not isolated from their non-disabled peers or excluded from school.

IDEA includes strict procedural protections to ensure that students with disabilities are not disciplined or excluded from school for behaviors that are the result of their disabilities or district failures to provide effective support. 368

Removal of a student with a disability to a 45-day interim alternative educational setting is limited to specific circumstances under IDEA.

Public Comment in Support of the Petition



IDEA only allows removal after a specified incident of serious misconduct.

Some districts declare that substantial likelihood of injurious behavior will occur without initiating a due process hearing.

As written, OAR 581-015-2430 and 581-015-2360 expose students with disabilities to disciplinary removals without the same due process protections afforded to other students. ³⁶⁹

Significant harms occur when students with disabilities are removed from school for significant periods of time.

The amendments will ensure equitable treatment of students with disabilities, maintain due process rights, and protect such students access to a free appropriate public education.

Public Comment in Support of Denying the Petition

Educators work hard to keep students safe and in school and some students need a “different placement” for their needs to be met.

Placements in interim alternative educational settings “don’t happen easily” and decisions to make such placements are not “made lightly.”

The complexity of the rules and their interrelationship require careful deliberation. The proposed rulemaking “confuses matters.”

School districts and other proponents of denying the petition should meet with petitioners to “discuss their concerns and look for ways to collaboratively work to improve outcomes for students.”

Determination



In making its determination whether to initiate a rulemaking or deny the petition, the State Board of Education must consider the following factors:

- *The continued need for the rule;*
- The nature of complaints or comments received concerning the rule from the public;
- The complexity of the rule;
- The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;
- The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and
- *The statutory citation or legal basis for the rule.*

Continued Need and Statutory Basis



Under ORS 343.177:

- (1) During the pendency of any administrative or judicial proceedings concerning the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child, the child shall remain in the then current educational program placement.
- (2) Notwithstanding subsection (1) of this section, the placement of a child may be changed if:
- **(d) A hearing officer orders a change in placement to an appropriate interim alternative educational setting for up to 45 school days due to the substantial likelihood of injurious behavior, pursuant to rules of the State Board of Education[.]**

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Recommendation



In consideration of this statute and the continued need for the rule and the statutory citation or legal basis for the rule, ODE staff recommend that the Board deny the petition.

- The language in rule is almost identical to the language in ORS 343.177.
- The statute authorizes placements in interim alternative educational settings under these circumstances, and amending the rule would not change the authority of an ALJ to order such a placement.
- The statute impliedly directs the Board to adopt rules allowing an ALJ to order such a placement.
- The current rule reflects and accounts for a statutory mandate established by the Oregon State Legislature

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Questions



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Definitions

581--003-0001

Definitions for the Education Accountability Act

The following definitions apply to OAR 581-014-0001 to 581-014-9999 & OAR 581-003-0001 to 581-003-0030:

- (1) “Academic Growth” means the change in a student’s score over time on Oregon’s statewide summative assessments in English Language Arts and Mathematics.
- (2) “Combined Focal Group Students” means students reported to the Oregon Department of Education through standard data collections in any of the following student groups:
 - (a) Economically Disadvantaged Students;
 - (b) Students Recently Arrived;
 - (c) Justice Involved Youth;
 - (d) LGBTQ2SIA+ Students;
 - (e) Students from Racial or Ethnic Groups that Have Historically Experienced Academic Disparities
 - (f) Students who are Pregnant, Parenting, and/or Students who Experience any Pregnancy-related Condition
 - (g) Students with Disabilities
 - (h) Foster Students
 - (i) Students who are Homeless
 - (j) Migratory Students
 - (k) Emerging bilingual students
- (3) “Common Metrics” means the following student performance metrics:
 - (a) On-time graduation rate;
 - (b) Five-year completion rate;

- (c) Ninth-grade on-track rate;
 - (d) Eighth-grade mathematics proficiency rate;
 - (e) Third-grade English Language proficiency rate;
 - (f) Regular attendance rate; and
 - (g) Regular early-grade attendance rate
- (4) “CTE Credit Attainment Rate” means Rate of Students in the district/school who earned CTE credit in the school year; or (increase % of students taking CTE) .
- (5) “Differentiated Metrics” means the metrics included in the Performance Growth Targets for institutions receiving state school funds that are serving students in nontraditional settings, including:
- (a) An education service district that has enrolled students in any grade from kindergarten through grade 12 for specialized services;
 - (b) An approved recovery school;
 - (c) The Youth Corrections Education Program;
 - (d) The Juvenile Detention Education Program;
 - (e) The Oregon School for the Deaf; and
 - (f) Eligible day treatment programs and eligible residential treatment programs for education services to children who are in treatment programs as described in ORS 343.961
- (6) “Disaggregated” means separated based on student group
- (8) “Economically Disadvantaged Students” means students who meet one or more of the following qualifications:
- (a) are participating in Supplemental Nutrition Assistance Program funded by the United States Department of Agriculture;
 - (b) are participating in the Temporary Assistance for Needy Families program as defined in Title IV of the Social Security Act;
 - (c) are foster students;
 - (d) are migratory students; or
 - (e) are students who are homeless.
- (8) “Foster Students” has the same meaning as defined in ORS 30.297(5)(c).
- (9) “Fifth Grade Science Achievement” means the indexed measure of student achievement in Science for fifth grade students using the Oregon Statewide Assessment System.

(10) “Justice Involved Youth” means a student who is pre or post adjudication, has been or is currently detained in a secure juvenile justice facility, and/or has been or is currently placed in a community juvenile justice program.

(11) “LGBTQ2SIA+ Students” means students who may have one or multiple gender identities and/or sexual orientations including lesbian, gay, bisexual, pansexual, transgender, nonbinary, queer, questioning, two-spirit, intersex, and asexual. The plus sign (“+”) recognizes and includes the myriad ways to describe marginalized gender identities and sexual orientations.

(12) “Migratory Students” means a student who is a migratory worker or whose parent or guardian is a migratory worker in the agricultural, dairy, lumber, or fishing industries and who has moved due to economic necessity between school districts in the last thirty six months, and is eligible to be a part of the Title 1-C Migrant Education Program.

(14) “On-track to English Language Proficiency” means the proportion of English Learner Students who are meeting progress expectations on the state English Language Proficiency Assessment.

(14) “Optional Metrics” are metrics not included in the Common Metrics, the school district’s selected Local Metric, or Differentiated Metrics that the school district chooses to include in their Performance Growth Targets.

(15) “Performance Growth Targets” means the targets set for each year through co-development between the school district and the Oregon Department of Education, starting with the 2026-27 school year, to comply with ORS 327.006-327.133.

(16) “Post-secondary Enrollment” means the percentage of students enrolled in post-secondary education within one year of graduation.

(19) “Students Recently Arrived” means a student who was NOT born in any state or US Territory and who has not been attending one or more schools in any one or more state for more than three full academic years.

(20) “Students from Racial or Ethnic Groups that Have Historically Experienced Academic Disparities” includes, but is not limited to American Indian and Alaska Native (AI/AN and AI/AN+) students, Black and African American students, Hispanic and Latino students, Asian students, Native Hawaiian and Pacific Islander students, and multiracial students, and any other racial or ethnic group identified by the school district as historically experienced academic disparities.

(21) “Students who are Homeless” has the same meaning as in section 725 of the McKinney-Vento Act, 42 USC § 11434a (2).

(22) “Students who are Pregnant, Parenting, and/or Students who Experience any Pregnancy-related Condition” means students who are pregnant for any length of time, or who are actively caring for a child, whether biologically related to them or otherwise. This includes students with pregnancy-related conditions, including, but not limited to loss or termination of a pregnancy, childbirth, lactation, and/or mental health conditions.

(23) “Students with Disabilities” means a child with a disability as defined in ORS 343.035(1).

(24) “School district” means:

- (a) A common school district or a union high school district;
- (b) An education service district that has enrolled students in any grade from kindergarten through grade 12 for specialized services;
- (c) A public charter school;
- (d) An approved recovery school;
- (e) The Youth Corrections Education Program;
- (f) The Juvenile Detention Education Program;
- (g) The Oregon School for the Deaf; or
- (h) Eligible day treatment programs and eligible residential treatment programs for education services to children who are in treatment programs as described in ORS 343.961.

Third Grade Reading Proficiency

581-003-0005

Definitions for Education Accountability Act: Third Grade Reading Proficiency

“Third-grade reading proficiency rate” means the percentage of students in the third grade who are determined to be proficient or above based on Oregon’s statewide summative assessments in English Language Arts (ELA).

Eighth Grade Math Proficiency

581-003-0010

Definitions for Education Accountability Act: Eighth Grade Math Proficiency

“Eighth-grade math proficiency rate” means the percentage of students in the eighth grade who are determined to be proficient or above based on Oregon’s statewide summative assessments in Mathematics.

Local Metrics

581-003-0015

(1) “Local metric rate” means the school district’s performance on a measurable student performance outcome.

(2) School districts shall select one of the following Local Metrics for inclusion in their Performance Growth Targets:

- (a) Academic growth rate
- (b) On-track to English language proficiency rate
- (c) 5th grade science achievement rate
- (d) Post-secondary enrollment rate
- (e) CTE credit attainment Rate

Differentiated Metrics

581-003-0020

(1) For school districts not identified in OAR 581-003-0001 (24)(a) and OAR 581-003-0001 (24)(c) the following Differentiated Metrics have been identified for the following:

(2) Education Service District that has enrolled students for specialized services

- (a) Dropout or pushout rate
- (b) K-12 regular attendance
- (c) 3 years combined 4-year graduation rate
- (d) 3 years combined 5-year completion rate
- (e) 9th-grade on-track rate
- (f) 8th grade math proficiency rate

(3) Approved recovery schools

- (a) Attendance rate
- (b) 3 years combined 4-year graduation rate

- (c) 3 years combined 5-year completion rate
- (4) The Youth Corrections Education Program
 - (a) Dropout or pushout rate.
 - (b) Percentage of students who earned high school course credits (in facility).
 - (c) Percentage of students enrolled in their local school district within 90 days of exit from the program.
 - (d) Five-year completion rate
 - (e) K-12 regular attendance rate
- (5) The Juvenile Detention Education Program
 - (a) Dropout rate.
 - (b) Percentage of students who earned high school course credits (in facility).
 - (c) Percentage of students enrolled in their local school district within 90 days of exit from the program.
- (6) The Oregon School for the Deaf
 - (a) K-12 regular attendance rate
 - (b) 3 years combined 4-year graduation rate
 - (c) 3 years combined 5-year completion rate
- (7) Eligible day treatment programs and eligible residential treatment programs for education services to children who are in treatment programs as described in ORS 343.961
 - (a) Dropout or pushout rate.
 - (b) Percentage of students who earned high school course credits (in facility).
 - (c) Percentage of students enrolled in their local school district within 90 days of exit from the program.
 - (d) Five-year completion rate
 - (e) K-12 regular attendance rate
 - (f) K-2 regular attendance rate

Statewide Performance Targets

581-003-0025

(1) For Statewide Performance Targets, the targets for the 2029-30 school year are as follows:

(a) Common Metric targets:

(A) On-time graduation rate

(B) Five-year completion rate

(C) Ninth-grade on-track rate

(D) Eighth-grade mathematics proficiency rate

(E) Third-grade reading proficiency rate

(F) Regular attendance rate

(G) Regular early-grade attendance rate

(b) Local Metric targets:

(A) Academic growth rate

(B) On-track to English language proficiency rate

(C) 5th grade science achievement rate

(D) Post-secondary enrollment rate

(E) CTE credit attainment rate

Performance Growth Targets

581-003-0030

(1) “Baseline Targets” means the minimum growth target that the school district and the Oregon Department of Education agree is satisfactory for all students included in the metric.

(2) “Gap-Closing Targets” means the growth target that the school district and the Oregon Department of Education agree is needed to close existing gaps between all students included in the metric and the combined focal group students included in the metric within a reasonable period of time.

(4) Each school district receiving state school funds co-develops four years of Performance Growth Targets with the Oregon Department of Education, starting with the 2026-27 school year.

(5) Performance Growth Targets include the following metrics:

(a) For school districts identified in OAR 581-003-0001 (24)(a) and OAR 581-003-0001 (24)(c):

(A) Each of the Common Metrics; and

(B) One Local Metric.

(b) For school districts not identified in OAR 581-003-0001 (24)(a) and OAR 581-003-0001 (24)(c)

(A) Differentiated Metrics as identified in OAR 581-003-0020

(6) Each school district may add Optional Metric targets to their Performance Growth Targets.

(7) For the purposes of setting targets, the following minimum student size (denominator) is required for each metric and target type:

(a) a minimum denominator of 10 students for each of the last four years, or

(b) a minimum denominator of 10 students for each year of available data if there are fewer than four years available

(8) For each year and metric, two types of targets are included in Performance Growth Targets:

(a) Baseline Targets;

(b) Gap-Closing Targets

Summary

Meeting Date: 11/6/2025

Title: Education Accountability Act: Definitions & Metrics

Status: First Reading

Presentation: Yes

Key Staff: Cassie Medina, Leah Thorp, Blake Whitson

Topic Summary: The 2025 Education Accountability Act requires The Department, in rule, to establish definitions of student group, definition of 3rd grade reading proficiency, definition of 8th grade math proficiency, local metrics, differentiated metrics, statewide performance targets, and performance growth targets.

ODE Education Equity

Stance

Education equity is the equitable implementation of policy, practices, procedures, and legislation that translates into resource allocation, education rigor, and opportunities for historically and currently marginalized youth, students, and families including civil rights protected classes. This means the restructuring and dismantling of systems and institutions that create the dichotomy of beneficiaries and the oppressed and marginalized.

BACKGROUND AND NEED

Members of the State Board of Education are volunteers, with unique professional and lived experiences. Using plain language, this section should provide context for this item, including any needed overviews of relevant programs or initiatives.

- Briefly, how does this topic, program, or initiative currently operate? Where is it located within Oregon's school systems? How does it ultimately serve students?**

The Education Accountability Act is a new statewide initiative grounded in the foundation laid by the Student Success Act. It establishes a comprehensive accountability framework that requires the State Board of Education to, through rule adoption, develop Statewide Performance Targets; the Oregon Department of Education to collaborate with districts to co-develop Performance Growth Targets, and provide differentiated support along a Continuum of Support. The Act also requires the department to monitor progress and determine whether districts are meeting their targets.

This initiative primarily affects school districts, which are responsible for aligning local efforts to statewide goals and demonstrating measurable progress that results in improved student outcomes.

Ultimately, the Act serves students by making desired outcomes transparent and actionable. It helps focus resources and investments on what matters most. By emphasizing equity,

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transparency, and continuous improvement, the initiative aims to ensure every student in Oregon has the opportunity and support to thrive.

- 2. Please list the specific rule(s), statute(s), or recently passed legislation that allows the Board to take action on this item. Where are they prescriptive and where do they provide the Board and Department flexibility?**

The 2025 Education Accountability Act (SB 141) directs the State Board of Education to adopt multiple items in rule.

- 3. Has this item come before the Board before? If so, when did the Board last take action, and what was that action?**

No, this is first reading of this rule set.

- 4. Why is this item coming before the Board now?**

This is our first opportunity to present a first reading with the timeline that has been established for implementation of the Education Accountability Act.

- 5. Who requested or brought about the need for this item? (Select all that apply.)**

- ☐ ODE Staff
- ☐ Students
- ☐ Families
- ☐ Community-Based Organizations
- ☐ Culturally Specific Organizations
- ☐ School Districts
- ☐ Education Service Districts
- ☐ Charter Schools
- ☒ Oregon State Legislature
- ☐ Educational Associations
- ☐ Racial Justice Council
- ☐ Federal Government
- ☐ One or more of Oregon's nine federally recognized tribes: _____
- ☐ Other: _____

ENGAGEMENT STRATEGY AND LEARNINGS

The State Board of Education expects all items that come before it be reviewed and influenced, to the greatest extent possible, by a robust community engagement process. Using plain language, this section should provide an overview of the role that engagement played in this item, including with Oregon's nine federally recognized Tribes, other state agencies, and external partners.

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6. How did the [Equity Decision Tree](#) inform your office/team engagement strategy? Who is most likely to be affected and how have they been intentionally incorporated into the engagement process for this item?

As we engaged in the formal rule-making process, we prioritized inclusive outreach to ensure that those most impacted, school districts across Oregon, were meaningfully involved in the development and refinement process. Recognizing that Statewide Performance Targets and district-level Performance Growth Targets will directly affect how districts are held accountable, we intentionally engaged with, and continue to engage with, a diverse range of partners across the state.

Our engagement efforts included representation from districts and ESDs of varying sizes and geographic regions, ensuring the rules reflect the realities and needs of Oregon's education landscape. By centering equity in

7. After consulting with ODE's Rules Coordinator and the Office of Indian Education, did this item require Tribal Consultation and/or Tribal Communication with Oregon's nine federally recognized tribes? (For more information, please reference ODE's [Tribal Consultation Toolkit](#).)

- ☒ No
☐ Yes – Both Consultation and Communication.
☐ Yes – Only Communication.

8. Has your office/team considered how this item intersects with the authority of other state entities that serve the health and education needs of Oregon's students, or otherwise contribute to the climate of Oregon's school systems? If so, please select from the below list.

- ☒ N/A; this item does not intersect with other state entities.
☐ Oregon Health Authority (OHA)
☐ Department of Early Learning and Care (DELIC; formerly ELD)
☐ Educator Advancement Council (EAC)
☐ Higher Education Coordinating Commission (HECC)
☐ Youth Development Oregon (YDO)
☐ Teacher Standards and Practices Commission (TSPC)
☐ Oregon Housing and Community Services (OHCS)
☐ Other: _____

If you selected any of the above entities, please share why they were involved, how the Department partnered with them, and what feedback they provided.

Please enter your answer here

9. Which geographic perspectives are intentionally represented in your office/team engagement strategy?

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- ☒ Northeast Oregon
- ☒ Central and Southeast Oregon
- ☒ Southwest Oregon
- ☒ Willamette Valley and Central Coast
- ☒ Northwest Oregon
- ☐ Tribal lands
- ☐ Other: _____

Why did your office/team focus on the above geographical perspective(s)?

Please enter your answer here

10. Please highlight some of the key pieces of feedback your office/team received during the engagement process. How did this feedback influence the development of this item? How were differences in opinion accounted for?

During the engagement process, we received substantial feedback on the proposed Local Metrics. Partners expressed concern about relying on state summative assessments in the Local Metrics, particularly their limitations in recognizing the growth of emerging bilingual students as the test is only offered in English. There was strong support for incorporating interim assessments as more responsive and locally relevant measures. Additionally, feedback highlighted duplication between two proposed Local Metrics and existing Common Metrics in statute, prompting calls for greater clarity and alignment. Many partners also advocated for the inclusion of Career and Technical Education and Post-Secondary metrics to better reflect student pathways. These insights have directly informed ongoing revisions to the draft rules, and we remain committed to refining them through continued engagement during the formal rule-making process.

11. Please describe any additional engagement opportunities your office/team will be pursuing prior to asking the Board to take action on this item.

To date, we've convened three sessions of the ODE Technical Advisory Committee (TAC), held an initial read with the Oregon Rules Community Advisory (ORCA), and facilitated three engagement sessions with external partners. Between now and the December State Board meeting, we will continue weekly TAC meetings, conduct a second ORCA read, and engage broader external audiences through additional group sessions. These ongoing conversations are critical to finalizing the rule sets in a way that reflects diverse perspectives and ensures clarity, feasibility, and equity in implementation.

FISCAL AND ADMINISTRATIVE IMPACT ANALYSIS

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Equitable resource allocation is a critical component of education equity. Using plain language, this section should describe the fiscal, administrative, and small business impacts of this item, and how it affects the larger social system that serves Oregon's students.

12. After consulting with ODE's Rules Coordinator and Grant Consolidation Team, was this item identified as a grant-related item?

☒ No

☐ Yes; please review Appendix B: Grant Consolidation below.

13. Will Board action create fiscal or administrative impacts on districts, ESDs, community-based organizations, and/or the nine federally recognized tribes? If so, please describe the anticipated short- and long-term effects and how they may be felt differently in small, rural, or remote communities.

These rules will not create additional fiscal or administrative burden for any of the above named.

14. Will Board action create a fiscal or administrative impact on state agencies, units of local government, and/or the public? Will it increase costs associated with compliance for small businesses?

These rules will not create additional fiscal or administrative burden on the above named.

EQUITY IMPACT ANALYSIS

The State Board of Education envisions an aspirational education system that honors its increasingly diverse student body and affirms every student to reach their full potential in a rapidly shifting global environment. Using plain language, this section should describe the impact of this item on students and the larger social system that serves their health and education needs.

15. How will Board action on this item ultimately impact students and their families, particularly those who have been and continue to be systemically marginalized?

Administrative Rules implemented under the 2025 Education Accountability Act present a significant opportunity to advance racial equity in Oregon's education system by making disparities more visible, setting growth targets, and providing support to districts in order to close gaps. The rules continue on the work started with the Student Success Act and Student Investment Account in centering equity at the core of the improving outcomes.

16. How will Board action on this item ultimately impact school district employees and volunteers, particularly those who have been and continue to be systemically marginalized?

NA

- 17. What are the anticipated short- and long-term consequences of Board action on this item? Will Board action have a cumulative effect on students, families, educators, districts, or Oregon's school systems?**

In the short term, Board action will support the Department's work to continue developing Statewide Performance Targets and provide districts with guidance to begin planning their Performance Growth Targets. This action creates clarity and momentum for implementation. In the long term, it allows districts more time to prepare, align local systems, and build capacity for meaningful engagement with the new accountability framework. It also enables the Department to offer more comprehensive and responsive guidance, ultimately supporting smoother implementation of the Education Accountability Act. Over time, this will contribute to greater system stability and more consistent, equitable outcomes for students across Oregon.

- 18. What are the anticipated short- and long-term consequences of inaction on this item and who would experience those consequences?**

If the Board does not take action on this item, it will delay the Department's ability to implement key components of the Education Accountability Act, including the timely development of Statewide Performance Targets and the co-development of Performance Growth Targets with districts. This delay would impact the Department's capacity to provide clear, actionable guidance to districts, potentially creating confusion. Ultimately, inaction could disrupt the timeline established in the Act, reduce system readiness, and hinder efforts to build a stable and equitable accountability framework that supports improved outcomes for students across Oregon.

RECOMMENDED ACTION

The State Board of Education has dedicated itself to challenging the status quo and sharing responsibility for every student's academic and lifelong success. Using plain language, this section should describe the choice before the Board, the Department's recommendation, and any other relevant information.

- 19. Please provide a brief summary of the specific language your office/team is bringing to the Board. Are there any key decisions within this language that your office/team would like the Board to make?**

- This rule set consists of seven different rules:
 - Definitions - The definitions rule set define student groups and provides definitions of metrics. The student group definitions have been taken from the definitions for focal student groups as adopted for the Student Investment Account.
 - Third Grade Reading Proficiency - The definition for third grade reading proficiency was taken as adopted from the Student Investment Account.
 - Eighth Grade Math Proficiency - The definition for eighth grade math proficiency has been based on the adopted definition of third grade reading proficiency.

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- Local Metrics - The local metrics establish the list of local metrics, from which school districts will choose one for inclusion in their Performance Growth Targets.
- Differentiated Metrics - This rule set established metrics for Education Service Districts that have enrolled students for specialized services, approved recovery schools, the Youth Corrections Education Program, the Juvenile Detention Education Program, The Oregon School for the Deaf, and eligible day treatment programs.
- Statewide Performance Targets - This rule set establishes the metrics that will be used for setting Statewide Performance Targets for the 2029-2030 school year.
- Performance Growth Targets - This rule set establishes the process for co-development of growth targets between the Oregon Department of Education and School Districts. The rules also establish the minimum n-size requirement for the purpose of target setting.

20. How is this language responsive to identified needs and/or feedback received through the engagement process? How is it in alignment with [the Board's Mission, Vision, and Values](#)?

The rule language has been developed and refined through internal conversations with ODE staff, the Oregon Rules Community Advisory (ORCA), the Technical Advisory Committee, surveys, engagement with external partners, and more. The draft rules continue to be revised based on feedback through these engagement efforts.

21. Please describe the action your office/team is recommending to the Board (for example, the adoption of rules or the approval of a waiver) and how it reflects the Department's commitment to academic excellence, belonging and wellness, and reimagining accountability.

This is a first reading. We will come back in December for second reading and adoption.

22. Please note any additional support the Department is (or will be) providing to ensure successful implementation of this item.

- ☐ N/A; this item does not require any additional support.
- ☒ Communications plan
- ☒ Technical assistance, professional development, and/or coaching
- ☒ Direct or differentiated support for small, rural, or remote school districts
- ☒ Corrective Action Processes
- ☐ Safety measures
- ☐ Organizational culture or practice changes (change management)
- ☐ Materials and/or supplies
- ☒ Guidance and/or supplemental resources
- ☐ Other: _____

23. Has this item changed since the last Board meeting?

- ☒ N/A; this item has not previously been before the Board
☐ No; same as last month
☐ Yes; please review Appendix A: Second Reading below.

APPENDIX A: SECOND READING

Appendix A should only be completed if “yes” is selected for question 23. Using plain language, this section should provide a summary of any additional engagements, learnings, or changes that have occurred since the First Reading of this item.

1. Please describe any additional engagement opportunities your office/team has pursued since the First Reading of this item. Which perspectives were intentionally included?

Please enter your answer here

2. Has your office/team received any additional public comment on this item? If so, who provided that comment and what feedback did they provide?

Please enter your answer here

3. Please describe any overall learnings that have occurred since the First Reading of this item. How were differences in opinion accounted for?

Please enter your answer here

4. Please provide a brief summary of the changes your office/team have made to this item since the First Reading. How are these changes responsive to identified needs and/or feedback received through the engagement process?

Please enter your answer here

APPENDIX B: GRANT CONSOLIDATION

Appendix B should only be completed if “yes” is selected for question 12. Using plain language, this section should provide additional detail on how grant rules have been aligned and designed to support districts and meet administrative needs.

1. Please indicate which of the following underlying processes are required for this grant program.

- ☐ Conduct a needs assessment
☐ Gather and provide additional data
☐ Submit an application to ODE
☐ Submit a report to ODE

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- ☐ Submit a plan to ODE
- ☐ Submit a budget to ODE
- ☐ Conduct community engagement
- ☐ Other: _____

- 2. How has your team/office worked to encourage more equitable resource allocation and address administrative impacts, particularly for small or rural school districts? How has this grant been aligned with existing grant programs?**

Please enter your answer here

- 3. How are the grant requirements differentiated for small and rural school districts?**

Please enter your answer here