

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of the Oregon Department ) of Education and the Klamath Falls City ) School District ) )	FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER Case No. 21-054-038
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**I. BACKGROUND**

On December 7, 2021, the Oregon Department of Education (Department) received a written request for a special education complaint (Complaint) from an attorney (Complainant) representing a state-wide advocacy group. The Complaint requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this Complaint and forwarded the Complaint to the District on December 9, 2021.

The Complaint also alleged that the Oregon Department of Education (Department) systematically violated the IDEA.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.<sup>1</sup> This timeline may be extended if the complainant and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On December 21, 2021, the Department's Complaint Investigator (Complaint Investigator) sent a *Request for Response* to the District and the Department identifying the specific allegations in the Complaint to be investigated and establishing a *Response* due date of January 4, 2022.

On December 21, 2021, the District requested additional time to prepare its response. That request was granted. The District submitted a *Response* on January 14, 2022 denying the allegations, providing an overview of the education plans for the relevant Students, and supporting documents for the District's position. The Complaint Investigator interviewed the Complainant on February 2, 2022. The Complaint Investigator interviewed the District's Director of Special Education and Autism Specialist on February 14, 2022. The District submitted additional documents in this matter on February 15, 2022, and February 17, 2021. In total, the District submitted the following items:

1. District Response

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<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

2. Index of District documentation
3. District Policy, IGBAG-AR Special Education—Procedural Safeguards
4. District Policy, IGBAI-AR Special Education—Private Schools
5. District Policy, IGBAJ-AR Special Education—Free Appropriate Public Education (FAPE)
6. District Policy, IGBAF-AR Special Education—Individualized Education Program (IEP)\*\*
7. District Policy, IGBAJ Special Education—Free Appropriate Public Education (FAPE)
8. District Policy, JO/IGBAB-AR Education Records/Records of Students with Disabilities Management
9. District Policy, IGBAB/JO-AR Education Records/Records of Students with Disabilities Management
10. District Policy, JGDA/JGEA-AR Discipline of Disabled Students\*\*
11. District Policy, IGBAL-AR Special Education—Services for Home-Schooled Students with Disabilities\*\*
12. District Policy, IGBAG Special Education—Procedural Safeguards\*\*
13. District Policy, IGBAH Special Education—Evaluation Procedures\*\*
14. District Policy, IGBAH-AR, Special Education—Eligibility Procedures\*\*
15. District Policy, IGBAE-AR Special Education—Participation in Regular Education Programs\*\*
16. District Policy, IGBAB/JO Education Records/Records of Students with Disabilities
17. District Policy, JO/IGBAB Education Records/Records of Students with Disabilities
18. District Policy, IGBAI Special Education—Private Schools
19. District Policy, IGBAE Special Education—Participation in Regular Education Programs
20. District Policy, IGBAL Special Education—Services for Home Schooled Students with Disabilities\*\*
21. District Policy, IGBAK Special Education—Public Availability or State Application
22. District Policy, IGBAF Special Education—Individualized Education Program (IEP)
23. District Policy, IGBA-AR Students with Disabilities—Child Identification Procedures\*\*
24. District Policy, JGDA/JGEA Discipline of Disabled Students\*\*
25. District Policy, IGBAC Special Education—Personnel
26. District Policy, LBE-AR Public Charter Schools
27. District Policy, IGBA Students with Disabilities
28. District Policy, JECBD-AR Homeless Students
29. District Policy, JECA Admission of Resident Students
30. District Policy, JECBB-AR Intradistrict Transfer Procedures
31. District Policy, JBAA-AR Section 504—Students
32. District Policy, IGBG Homebound Instruction
33. District Policy, EEACC-AR Discipline Procedures for District-Approved Student Transportation
34. District Policy, JFCJ Weapons in the Schools\*\*
35. Relevant District Checklist forms
36. Completing an IEP in Tyler SIS

37. Senate Bill 263 Abbreviated Day District Guide
38. Legal Counsel advice regarding Abbreviated Day Statements in IEPs
39. District Behavior observation/FBA Referral Systems Flow Chart
40. District Behavior Observation Consent Form
41. ABC Tracker form
42. District checklist for PSP, SSP, FBA, and BIP
43. Recovery services one pager
44. 09/07/2021 letter from Director of Special Services regarding consideration of recovery services
45. Flow chart to consider recovery services
46. District forms re: Individual Covid-19 Recovery Services Review
47. Document: Training provided to SpEd teachers during 2019-20, 2020-21, 2021-22 school years and attachments
48. Email to SpEd Staff: PNW, 02/19/2020
49. Email to SpEd Staff: Abbreviated Day Additional Guidance, 01/03/2022
50. Detailed List of student sin the District's RISE classroom who have reduced day scheduled and their circumstances
51. Copies of IEPs and progress notes for students in RISE classroom during 2019-20, 2020-21, and 2021-22 years
52. Copies of Abbreviated Day Planning/Check-in documentation for student in RISE classroom during 2019-20, 2020-21, and 2021-22 years
53. Copies of educational placement determinations for students in RISE classroom during 2019-20, 2020-21, and 2021-22 years
54. Additional documentation related to the allegations that the District believes may be helpful in resolving this complaint
55. List of relevant staff knowledgeable about the circumstances in this complaint
56. Photos of the classroom
57. Supplemental student education records.

Due to the number of records included in the District's Response, the 60-day final order timeline under OAR 581-015-2030 was extended by 30 days. On February 7, 2022, the Complaint Investigator interviewed the Complainant who filed this Complaint. On February 14, 2022, the Complaint Investigator interviewed the District's Director of Special Education and Special Education Teacher. During the interviews additional relevant documents were identified. On February 15, 2022, the District provided additional student records as part of its response. Part of the February 15, 2022, supplementary materials included a letter from the District's Behavior Analyst describing the various behavior interventions and supports utilized in the District. The Complaint Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This Order is issued in accordance with the 30-day extension determined necessary.

## **II. ALLEGATIONS AND CONCLUSIONS**

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The relevant allegations and the Department's conclusions are set out in the chart below. The conclusions are based on the Findings of Fact in Section III and the Discussion in Sections IV and V. This Complaint covers the

one-year period from December 7, 2020, to the filing of this Complaint on December 6, 2021.

**A. Allegations Relevant to the District**

<b>Allegations</b>	<b>Conclusions</b>
<p><b>Placement of the Child</b></p> <p>The Complainant alleges that the District violated the IDEA when it placed students on reduced day schedules in lieu of providing appropriate behavioral services and support when the students struggled with behavioral issues in the educational setting, doing so through in a programmatic manner summarized in “Abbreviated Day Planning/Check in” documents.</p> <p>(OAR 581-015-2240 – 2250; 34 CFR § 300.114, 300.115, 300.116 and 300.327)</p>	<p><b>Substantiated</b></p> <p>While some students in the District’s program were already on abbreviated school days at the time they were placed into the program, the District acknowledged placing all students in the program on abbreviated days for the convenience of the program.</p>
<p><b>Alternative Placements and Supplementary Aids and Services</b></p> <p>The Complainant alleges that the District violated the IDEA when it did not consider a full continuum of placements as possibilities when it decided to shorten the students’ school days. Instead, it is alleged that the District presented a single placement option as the lone choice suitable for students.</p> <p>(OAR 581-015-2240 – 2250; 34 CFR § 300.114, 300.115, 300.116 and 300.327)</p>	<p><b>Substantiated</b></p> <p>The District did not give individual consideration to needs of each student when abbreviated day schedules were selected. Rather, the option was presented to parents as the only option for their child.</p>
<p><b>Content of IEP – Present Levels</b></p> <p>The Complainant alleges that the District violated the IDEA by providing a justification for a reduced school day that was not individualized, but rather a common general justification for the student’s school schedule.</p> <p>(OAR 581-015-2200; 34 CFR § 300.320)</p>	<p><b>Substantiated</b></p> <p>Abbreviated school day determinations were not always made in an individualized manner for students, as evidenced by the same language on multiple IEPs to justify the choice of abbreviated school day.</p>
<p><b>Assistive Technology</b></p>	<p><b>Substantiated</b></p>

<b>Allegations</b>	<b>Conclusions</b>
<p>The Complainant alleges that the District violated the IDEA by not providing required assistive technology for students in the RISE classroom resulting in their inability to access their education.</p> <p>(OAR 581-015-2055; 34 CFR § 300.105)</p>	<p>While the District utilized assistive technology in the classroom, it was not explained in student IEPs or individualized with a rationale as required by the IDEA.</p>
<p><b>Functional Behavioral Assessments</b></p> <p>The Complainant alleges that the District violated the IDEA by not assessing and formulating appropriate behavior interventions for students to assist and support them accessing their education and the school environment.</p> <p>(OAR 581-015-2181; 34 CFR § 300.530)</p>	<p><b>Substantiated</b></p> <p>The classroom staff provide behavior interventions to students. However, the District has not documented the specific concerns and the corresponding interventions for students in their IEPs.</p>
<p><b>Parent Participation</b></p> <p>The Complainant alleges that the District violated the IDEA by failing to provide parents with a meaningful opportunity to participate in such decisions as the educational placement of their children.</p> <p>(OAR 581-015-2190—2195; 34 CFR § 300.500, 300.327, 300.501(b)—(c), 300.322, and 300.328)</p>	<p><b>Substantiated</b></p> <p>While Parents were invited to meetings regarding abbreviated school days, the initial decision was made by the District and was presented to parents at these meetings as the only option for their child.</p>
<p><b>IEP Team Considerations and Special Factors</b></p> <p>The Complainant alleges that the District violated the IDEA when it failed to consider and accommodate special factors such as the student’s ability to tolerate masks due to their disability as a reason for shortening the student’s school day or limiting access to in-person instruction.</p> <p>(OAR 581-015-2205; 34 CFR § 300.320, 300.324(a)(1) &amp; (2), &amp; (b)(2))</p>	<p><b>Substantiated</b></p> <p>District staff observations regarding effective services, interventions, and devices, were generally left in working files and not considered by the IEP team.</p>
<p><b>Content of the IEP—Measurable Annual Goals</b></p> <p>The Complainant alleges that the District violated the IDEA by not creating measurable IEP goals or collecting appropriate data to determine the student’s</p>	<p><b>Substantiated</b></p> <p>Some of the student records reviewed included annual goals and how they would be</p>

<b>Allegations</b>	<b>Conclusions</b>
<p>progress in their IEPs.</p> <p>(OAR 581-015-2200; 34 CFR § 300.320)</p>	<p>measured or assessed. However, none had goals designed in a manner to allow measurement toward increasing student instructional time following students being placed on abbreviated school days.</p>
<p><b>Prior Written Notice</b></p> <p>The Complainant alleges the District violated the IDEA when it failed to provide parents with Prior Written Notice after it changed placement and/or refused a parent’s request to change placement.</p> <p>(OAR 581-015-2310; 34 CFR § 300.503)</p>	<p><b>Substantiated</b></p> <p>Prior written notice forms were present in all student files reviewed for placement determinations. However, they do not include a statement of the evaluation procedures by which the District determined that students lacked the “stamina” for a full day of school.</p>
<p><b>Disciplinary Removals of More than 10 School Days: Manifestation Determination</b></p> <p>The Complainant alleges that the District violated the IDEA when it failed to conduct manifestation determinations following disciplinary removals from educational placements for students in the RISE classroom.</p> <p>(OAR 581-015-2415; 34 CFR § 300.504(a)(3), 300.530, 300.531, 300.532 &amp; 300.533)</p>	<p><b>Not Substantiated</b></p> <p>A review of student records finds no disciplinary removals due to the District tolerating a higher degree of behavior before initiating a behavior referral. There is no evidence that disciplinary removals resulting in a requirement for a manifestation determination occurred.</p>
<p><b>Notice of Procedural Safeguards</b></p> <p>The Complainant alleges the District violated the IDEA when it failed to provide parents a copy of the Notice of Procedural Safeguards and/or that the Notice of Procedural Safeguards was deficient.</p> <p>(OAR 581-015-2315; 34 CFR § 300.504)</p>	<p><b>Not Substantiated</b></p> <p>Student records document, and District staff report, providing copies of procedural safeguards to parents.</p>
<p><b>Extended School Year Services</b></p>	<p><b>Substantiated</b></p>

Allegations	Conclusions
<p>The Complainant alleges that the District violated the IDEA when it did not consider extended school year services for students in the RISE classroom without collecting or considering data on an individualized basis.</p> <p>(OAR 581-015-2065; 34 CFR § 300.106)</p>	<p>While the District documented considering the need for extended school year services, the determination was left to a single teacher rather than considered by the IEP team.</p>
<p><b>Content of IEP - Supplementary Aids and Services</b></p> <p>The Complainant alleges the District violated the IDEA when it failed to include additional Specially Designed Instruction, Related Services and Supplementary Aids and Services that might have supported students to the extent that students were able to attend for a full day of school.</p> <p>(OAR 581-015-2200; 34 CFR § 300.320)</p>	<p><b>Substantiated</b></p> <p>The District employed supplementary aides and services to assist students to access their education but did not individualize these aids nor describe them in Students' IEPs.</p>
<p><b>Free Appropriate Public Education (FAPE)</b></p> <p>The Complainant alleges that the District violated the IDEA in several ways, and that because of these violations, the students identified in the Complaint and other similarity situated students with a special education identification of Autism Spectrum Disorder and receiving services through the District's RISE classroom in the District have been denied FAPE.</p> <p>(OAR 581-015-2040; 34 CFR § 300.101)</p>	<p><b>Substantiated</b></p> <p>The substantiated issues in allegations 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, and 13 evidence a denial of FAPE.</p>

**B. Allegations Relevant to the Department**

Allegations	Conclusions
<p><b>Compliance Monitoring</b></p> <p>The Complainant alleges the Oregon Department of Education (Department) violated the IDEA and therefore did not guarantee FAPE to students in the Klamath Falls City School District as indicated above when it:</p> <p>a) Did not provide the necessary supervision</p>	<p><b>Not Substantiated</b></p> <p>a) There is no evidence the</p>

Allegations	Conclusions
<p>and monitoring to ensure that students in the District received FAPE; even though students evidenced behavioral and other challenges in the school setting;</p> <p>b) Did not maintain a complaint system capable of addressing complaints, rather requiring parents and their advocates to file separate complaints alleging specific violations of the IDEA, Section 504, and the ADA.</p> <p>(OAR 581-015-2015; 34 CFR § 300.101)</p>	<p>Department was or should have been aware of this situation prior to receiving this Complaint.</p> <p>b) This Complaint is the first received by the Department regarding this population of students in this District. The Department had no other notice regarding concerns with this population of students. When complainants allege concerns outside the scope of the IDEA, the Department directs them to alternative procedures to address those concerns.</p>

REQUESTED CORRECTIVE ACTION
<ul style="list-style-type: none"> <li>• ODE should order KFCSD to identify every student with disabilities who has received less than a full day of school for more than one month between December 1, 2019 and today because of behavior. That identification should include students who received shortened school days because of issues related to the District’s theory of limited stamina as a reason to shorten the school day of a child for non-medical reasons.</li> <li>• ODE should investigate whether KFCSD received a full day state funding for any of the above-described students and consider a claw back procedure if that was the case for more than thirty school days for any KFCSD student.</li> <li>• ODE should evaluate both the <b>amount and nature</b> of compensatory education that will be required to restore each of the complainant students and others who may have been similarly affected by KFCSD’s systemic use of shortened school days as a response to disruptive behaviors to the position that those children would have been in if KFCSD had not systemically failed to provide them a FAPE free from discrimination. As a starting point, ODE should consider that each of the affected students received far less than half of the school hours that they were entitled to during the relevant period before the March 2020 school closure. It should also consider that most or all of the affected students, because of their limited capacity to engage with virtual learning, did not receive a FAPE between March of 2020 and the beginning of the 2021-2022 school year.</li> <li>• ODE should independently determine whether KFCSD is capable of providing the above-described compensatory education without additional expertise.</li> </ul>

- In the event that ODE makes that determination, it should order KFCSD to provide the required compensatory education and closely monitor the District's compliance with that order.
- In the event that ODE determines that KFCSD is not capable of providing the required compensatory education without additional expertise, ODE should provide or contract with suitable experts to support and advise the District sufficiently that it can provide the ordered compensatory education.
- ODE should order that well-crafted FBAs and BSPs are in place and faithfully implemented for every KFCSD student who has received a reduced school day for more than a month during the two years that precede this complaint and the two years that follow it. ODE should monitor the District's compliance with that order and be prepared to provide additional expertise and/or employ Chapter 22 sanctions if there is non-compliance.
- In the event that KFCSD fails to deliver the required compensatory education, ODE should employ its Chapter 22 powers to reduce district funding.
- ODE should order that all KFCSD teachers and administrators who regularly interact with students with disabilities should participate in training that would ensure their understanding of the District's general responsibility to provide reasonable accommodations via the interactive process that is required by the ADA. In addition, that training should also ensure a more particular understanding of those responsibilities as they pertain to COVID and related masking requirements.

### **III. FINDINGS OF FACT**

#### **Background**

- 1) Prior to the 2018-19 school year, the District maintained a self-contained classroom at the elementary school level. The District reports having observed an increase in the number and severity of the behaviors of students placed in the self-contained classroom. Some of the students in this population included severely medically fragile students and those exhibiting violent and aggressive behaviors. To address the increased needs and numbers, the District created a new program, the RISE classroom, specifically tailored to serve the needs of students identified as eligible for special education under the category of autism spectrum disorder (ASD). The RISE classroom began operating in the 2018-19 school year.
- 2) The District's Response states that the RISE classroom's focus is to determine "the cause of severe behaviors and to teach ways to communicate and self-regulate in a more positive manner." The District reports that the RISE classroom "uses evidence-based curriculum to teach behavioral communication skills and implements sensory strategies to help children tolerate environmental stimuli." The benefits of such a program include more direct related service and instruction time for students and more focused curriculum and behavioral interventions specific to individual student needs.

- 3) The District reports that the intensity of student needs resulted in the temporary suspension of full day instruction for all students in the program, “to provide much more individualized instruction with a 1:1 staffing ratio for each student.” The District explained that the intent was to “better assess behavioral needs and respond in a way that would be more beneficial for the students.” The District described this decision to suspend full day instruction for these students as it, “taking a step back in order to move forward.”
- 4) The District reports that beginning in October 2019, “...despite the structure of the classroom, it was apparent that there were significant safety and behavioral concerns for students and staff in the RISE classroom due to the severity of behaviors of students who had not attended a full day program, especially one of this intensity. Even though the students were attending for a full day, the intensity and demands of the program were difficult. Students were not learning at the time due to the high level of dysregulation, and it was evident that they were quickly exhausting, leading to an increase in behavioral outbursts.”
- 5) The District further reports that in the process of implementing this plan for the RISE classroom, the COVID-19 pandemic occurred, resulting in schools closing statewide, and students transitioning to comprehensive distance learning (CDL). As a result of the pandemic, students in the RISE classroom did not have an opportunity to attend for full days for the remainder of the 2019-20 school year, with many unable to attend school in-person at all during the 2020-21 school year due to mask requirements. Many students in the RISE classroom were unable to tolerate mask wearing, leading them to continue to receive their education through distance learning.
- 6) The Complaint Investigator requested copies of IEPs for all students in the RISE classroom for the 2019-20, 2020-21, and 2021-22 school years. Additional documentation regarding these students was requested from the District and reviewed as part of the District’s January 14, 2022 Response.
- 7) The District provided data for 24 students enrolled in the RISE classroom who were placed on abbreviated school days. This submission included copies of the students’ IEPs, special education placement determinations, prior written notices, and IEP meeting notes. These records show that some students were on abbreviated day schedules prior to the fall 2019 decision by the District to transition all students in the RISE classroom to abbreviated day schedules, which is the basis for this Complaint.
- 8) Numerous student files also included a form titled “Modified Day Planning Check-In Meeting.” The documents received also included forms titled “Abbreviated Day Review Check In.” These forms included a “Review of Current Data” section followed generally by a single sentence summary of the data. The forms also included yes/no check fields for the question: “Is the student making adequate progress toward the goal?” The forms continued: “If NO, what revisions to the current plan can be made to support this student?” and “If YES, is the team ready to increase time to the abbreviated schedule?”

- 9) Following the Complaint Investigator's initial review of the District's Response and interviews with District staff, the District provided a Supplementary Response. The Supplementary Response included additional information relevant to student goals and behavior.
- 10) Student 1 is eligible for special education under the category of ASD. A review of the records show that Student 1 was on an abbreviated school day during first grade, prior to the fall of 2019. On May 7, 2019, Student 1's "Modified Day Planning Check-in Meeting" form shows that the Student's schedule was 8:15 a.m.—1:30 p.m.
  - a) Student 1's 11/15/2019 "Modified Day Planning Check-in Meeting" form shows that at the meeting, the team discussed "academic task completion, aggressive & verbal behavior" and that Student 1, "is having difficulty maintaining [their] sensory system, which leads to [increases] in behavior and [decreases] in work."
  - b) In December 2019, when the Student was in first grade, instruction was changed to 12:00 p.m. to 3:00 p.m. daily schedule.
  - c) The documents provided for Student 1 did not include a functional behavioral assessment (FBA). On December 3, 2019, the District obtained consent to conduct a behavior observation. On April 1, 2020, the District provided a Prior Written Notice (PWN) related to the change from abbreviated school day in-person instruction to CDL. On November 2, 2020, the District noted that there was no increase in maladaptive behaviors for Student 1.
  - d) During the period of CDL, the District did not observe an increase in maladaptive behavior.
  - e) Student 1's March 8, 2021 IEP noted that Student 1 required adult assistance to complete work/tasks and prompting to increase work stamina. It also noted that they fatigued easily and didn't tolerate wearing clothes. As a result of this meeting, the Student's abbreviated school day was continued in order to address building tolerance to address these concerns.
  - f) In the Supplementary Response, the District provided documentation it maintains in the classroom. The working files for Student 1 contain goals, tracking data, and District staff's handwritten notes regarding interventions attempted and observations of student progress. The Response included forms titled, "Multiple Goal Data Sheets" which tracked data for Student 1's goals. Also included in the Supplementary Response were goals for Student 1 and how the goals would be tracked. These forms show that Student 1 had goals such as: reading functional sight words, independent writing skills, performing simple mathematical computations, self-direction and self-regulation, and use of self-regulation tactics.
- 11) Student 2 entered the District as a third grader with an IEP from a school district in another state. The out of state school district found Student 2 eligible for special education under the category of ASD. Student 2's former school district noted that Student 2 had difficulty remaining on task, but planned for Student 2 to spend some time in the general education environment.
  - a) The District formulated an IEP for Student 2 on 11/30/2021. Student 2 was then in fourth grade. The District chose an abbreviated school day for Student 2. The District documented that the reason for the abbreviated school day was

- to assist Student 2 in transitioning from their prior school district to the new school district. There is no explanation regarding what issues the Student had transitioning to the new District.
- b) On 09/07/2021, Student 2's IEP team determined that an abbreviated school day would be appropriate for them "in order to establish routines in a new school and bak [sic] to in person instruction."
  - c) The District provided "Abbreviated Day Review Check-In" forms for 10/15/21, 11/30/21, and 1/7/22 documenting that Student 2 was "...making progress both academically and socially." As a result, Student 2 was provided an additional 30 minutes of instruction following each of these meetings.
  - d) In a Supplementary Response, the District provided additional documentation for Student 2 maintained in the classroom. Included in this documentation was an "antecedent, behavior, consequence" form. This form charted some of the behaviors observed in the classroom, their antecedents, and the outcome of those scenarios.
- 12) Student 3 entered the District as a kindergartener with two special education eligibilities, Developmental Delay (DD) and Communication Disorder (CD). Student 3 was placed on an abbreviated day schedule on 06/07/2019.
- a) Student 3's IEP included many services, with most of the service time focused on academics, social/emotional support, and communication.
  - b) The District documented that Student 3 made some progress toward their IEP goals, but that Student 3 was significantly impacted by their disabilities.
  - c) On 12/03/2019, the District obtained consent to conduct a behavior observation.
  - d) The District documented that during the 2019-20 school year, Student 3's schedule provided for one hour per day of instruction. On 12/19/2021, the District met with the Parents and obtained consent to conduct an FBA. At this meeting, the District proposed to increase the Student's schedule to 1.5 hours daily.
  - e) Student 3's 03/15/2021 IEP, when Student 3 was in the first grade, documents that Student 3 was eligible for special education under the eligibility categories of ASD and DD. Student 3 was placed in the RISE classroom on an abbreviated school day.
  - f) Student 3's 03/15/2021 IEP also noted that Student 3 continued to attend school on an abbreviated school day "due to needs in the areas of stamina and work tolerance. As a result [Student 3] has limited access to [their] typically developing peers and the general education classroom. As [Student 3] builds [their] tolerance in an academic environment, [their] abbreviated day will be slowly adjusted to meet [their] current level of skill and abilities."
  - g) On 04/12/2021, the District provided a PWN that, while the District was returning to full day instruction, the Student would continue the current abbreviated school day schedule of 1.5 hours daily since the Student was "experiencing success on this schedule." The PWN does not indicate whether this instruction was to be remote or in-person.
  - h) On 09/02/2021, the District met with the Parents of Student 3 to discuss the abbreviated day schedule. The District documented that Student 3's Parents wanted Student 3 to attend school longer, but that the District cited Student 3's inability to tolerate wearing a face mask as a reason to continue the

- abbreviated school day of 1.5 hours of instruction.
- i) The District's Supplementary Response documents show that Student 3 had goals such as: independence in completing academic work, independence in following 1-step directions, increasing stamina and tolerance for adult-directed tasks, and increasing fine motor skills.
- 13) On 04/22/2019, the District determined that Student 4 should be placed on an abbreviated school day. Student 4 was then in the first grade. Student 4 is eligible for special education under the category of ASD. Student 4's 04/22/2019 IEP and present levels statements do not provide an indication that there were serious obstacles to Student 4 accessing the educational environment. Student 4's placement was changed to the RISE classroom at this meeting.
- a) Included with the District's Response was documentation regarding Student 4's Early Childhood Intervention (ECI) program to kindergarten transition meeting, held 05/05/2017. These forms do not document any significant behavior concerns.
  - b) On 04/20/2020, Student 4's IEP team met to review Student 4's progress with the abbreviated school day placement. Student 4's 04/20/2020 IEP notes that Student 4's "behavior sometimes limits [their] access to the general education setting. With support from an adult [Student 4] is able to maintain [their] behavior in the general education classroom for up to 45 minutes at a time." Student 4's IEP indicates that the Student was transitioned to CDL due to the COVID-19 pandemic. As of the shift to CDL, Student 4 was making adequate progress toward IEP goals. Student 4's IEP included goals in reading, writing, math, social-emotional, communication, language, and social language.
  - c) On 06/02/2020, the District documented that no progress data was gathered for Student 4 due to the District's move to CDL.
  - d) The District tracked Student 4's progress on an abbreviated day planning form. Student 4 was then in the second grade. The District documented that the "...abbreviated day [would] allow for more individualized program planning. This will be more concentrated on learning at the student's level in order to accelerate learning and school success while increasing [their] opportunities in the general education classroom."
  - e) There is no FBA for Student 4 in the materials provided by the District, but the District noted a goal or target of completing tasks while remaining safe.
  - f) The Student's 10/10/2019 abbreviated school day schedule provided four hours of instruction four days per week and three hours of instruction on the fifth day. There is no additional information in the District's files regarding this Student after April 2020.
- 14) Student 5 is eligible for special education under the category of ASD. Student 5's 05/29/2019 IEP documents significant behavior challenges. Student 5 was placed on an abbreviated school day prior to the 2018-19 school year. The District documented that during the 2019-20 school year, following the onset of the COVID-19 pandemic, little data was gathered regarding Student 5's progress toward goals.
- a) Student 5's file included a "Modified Day Planning" form dated 01/28/2019. Student 5 was then in first grade. Student was attending a full day of school. The Student's IEP does not contain an FBA, though there is a note to draft a behavior plan due to concerns around physical aggression. Student 5's IEP

- team was to meet every 3-4 weeks to review daily behavior data. Student 5's 03/25/2019, "Modified Day Planning" form indicated that Student does not have an FBA, that one should be drafted, and that the Student's day was shortened to 10:00 a.m. to 1:30 p.m.
- b) Documents in the Student 5's files show that the IEP team reviewed Student 5's abbreviated schedule on 10/11/2019, 12/16/2019, 10/30/2020 and 4/15/2021.
  - c) On 12/16/2019, the District completed an "Abbreviated Day Planning" form, shortening Student 5's day to four hours, 11:00 a.m. to 3:00 p.m. The form indicated that Student 5 does not have an FBA or a BSP, and that no evaluation of Student 5 was being considered.
  - d) On 09/24/2020, the District held an IEP team meeting and determined that Student 5 would be placed on an abbreviated school day due in part due to Student 5's behavior and dysregulation issues. Student 5 was placed in the RISE classroom. The Student received services related to speech language pathology, occupational therapy, and autism consultation, and Student 5's curriculum was modified. Student 5's IEP also included goals around behavior and calming; however Student 5's IEP does not articulate what the behavior concerns were.
  - e) On 10/30/2020, the District completed an "Abbreviated Day Review" form. Student 5 was then in the third grade. At this time the Student received instructions through CDL due to the COVID-19 pandemic.
  - f) Student 5's 04/15/2021 IEP included goals around basic social interactions but does not mention behaviors that impeded Student 5's access to education. The Student's "Abbreviated Day Review" form of the same date indicated that the Student then received instruction for 2.5 hours per day.
  - g) The District's Supplementary Response shows that Student 5 had goals such as how to read sight words, perform simple mathematical computations, establish hand dominance, begin to use a keyboard, and engage in appropriate social interactions.
- 15) Student 6 was placed on an abbreviated day schedule as early as 01/28/2019. The earliest "Abbreviated Day Planning" form in Student 6's file indicates an intent to draft a behavior plan for the Student and that the Student displayed difficulty in the mornings, specifically with physical aggression.
- a) The files for Student 6 show "Abbreviated Day Planning" forms for 02/25/2019, 04/01/2019, 05/29/2019, 10/30/2020, and 09/02/2021. The Student displayed progress toward objectives tending to show readiness for additional instruction time, with the District increasing the Student's instructional time over that period. This improvement was interrupted by the COVID-19 pandemic.
  - b) Student 6's 05/20/2020 and 03/20/2021 IEPs do not make mention of Student 6's ability to tolerate a full day of school or what concerns may have led to Student 6 being placed on an abbreviated day other than the 02/25/2019 "Modified Day Plan" form. This form indicated that the District had concerns around sleepiness in the morning, reduction of tensions, concerns around transitions, and reducing physical aggression.
  - c) For Student 6, the Supplementary Response documents show that Student 6 had goals such as: following simple adult direction, increasing stamina and tolerance for completing work tasks, increasing social engagement with adults

and peers, and using gross motor/playground equipment safely and independently.

- 16) Student 7 is eligible for special education under the category of ASD. Student 7's 02/04/2019 IEP indicated that they were then in the first grade, and that there were no behavior concerns.
- a) The District placed Student 7 on an abbreviated school day on 12/16/2019. The "Abbreviated Day Planning" form documenting this decision indicated that no FBA was conducted and that Student 7's goal was to stay in their workspace and to work on non-preferred tasks without destroying work samples. Student 7's schedule was three hours per day four days per week, and 2.5 hours on the fifth day.
  - b) Student 7's 01/28/2020 IEP, formulated when the Student was in second grade, indicates that Student 7 sometimes required assistance in the bathroom as well as monitoring for self-safety.
  - c) The District collected progress monitoring data for Student 7's IEP goals on the following dates: 02/02/2020, 04/03/2020, 06/03/2020, and 11/02/2020. The District collected social/emotional data only for 04/03/2020.
  - d) Student 7's records contained an occupational therapy (OT) evaluation dated 02/13/2020. The OT evaluation indicated that Student 7 was easily dysregulated and that OT services would be warranted.
  - e) On 10/30/2020, the District reviewed Student 7's abbreviated school day. Student 7 received three hours per day of instruction, which the District noted was impacted by high rates of COVID-19 in the community.
  - f) Student 7's 01/25/2021 IEP indicated that the Student was placed on an abbreviated school day. Student 7 displayed dysregulated behaviors such as "biting tongue, attempt to elope, hitting parent, ripping paper." Student 7's IEP had a goal of increasing flexibility in completing non-preferred work at school.
  - g) The District completed an "Abbreviated Day Review" form on 04/12/2021, indicating that Student 7 would continue with three hours per day of instruction for the remainder of the 2020-21 school year. Student 7 was then in third grade. No further explanation was provided.
  - h) For Student 7, the Supplementary Response show that Student 7 had goals such as: demonstrating comprehension of written material; producing writing samples that demonstrate the use of upper- and lower-case letters; working with word problems that use fractions, multiplication, or division; and increasing flexibility in completing non-preferred work at school.
- 17) Student 8 entered the District as a kindergartener in 2019. Student 8 was found eligible for special education with an eligibility of ASD. Records for Student 8 indicated that they were functioning below grade level, had "difficulty participating in large group activities and need[ed] small group 1:1 support."
- a) The District's "Abbreviated Day Planning" form for Student 8, dated 12/04/2019, indicated that, during kindergarten, Student 8 was scheduled to attend school from 12:00 p.m. to 3:00 p.m., having previously been scheduled to attend 8:30 a.m. to 3:00 p.m. The form indicated that there was no FBA for Student 8 and that no BSP was developed. The justification for the abbreviated day was to allow for more individualized program planning and learning at the student's level."

- b) Student 8's 03/11/2020 IEP indicated that the Student was placed in the RISE classroom on an abbreviated school day. Student 8's IEP indicated the "need for significant adult assistance throughout school day," although there is nothing indicating how this was determined. The District determined that Student 8's school day would be abbreviated to three hours per day, to work on attending to tasks for longer with fewer adult prompts.
  - c) During the 03/11/2020 IEP meeting, Student 8's Parents requested a longer school day for Student 8. The District documented that the data did not support a longer school day for Student 8.
  - d) Student 8's Parents requested a transfer out of the District, which the District granted.
- 18) Student 9's IEP team developed an IEP for the Student on 10/13/2019. Student 9 was then in kindergarten and was found eligible for special education under the categories of ASD and CD. No behavior concerns are noted in Student 9's IEP.
- a) On 11/02/2020, Student 9's IEP team met to review the IEP. Data was gathered on 02/02/2020, 04/02/2020, 06/03/2020, 10/30/2020 and 11/02/2020. Little progress was documented in large part due to Student 9 participating in CDL due to the COVID-19 pandemic.
  - b) Student 9's 01/14/2021 IEP indicates that Student 9's schedule was abbreviated due to behaviors and decreased work stamina. The IEP contains a goal to increase Student 9's stamina. The concerns regarding "stamina" are not defined or explained.
  - c) Student 9's file includes "Abbreviated Day Review" forms for 04/01/2020 and 10/30/2020 documenting that Student 9 was placed on an abbreviated school day due to the COVID-19 pandemic.
  - d) Student 9's file includes a PWN for 09/28/2020 indicating that Student 9 was not attending school due to a lack of parent cooperation. The form notes, "Case manager was unable to contact parents to review [Student 9's] IEP. [Student 9] has not yet attended school this year, [they are] not registered for the 2020-2021 school year, and the school has been unable to make contact with [Student 9's parent]. The case manager reviewed the current IEP and determined that it can be implemented, as written, through comprehensive distance learning instruction..." The District indicated that it stood ready to serve Student 9.
  - e) Student 9's "Abbreviated Day Review" form for 04/12/2021 indicated a return to 2.5 hours of school per day.
  - f) Recovery services were considered for Student 9 on 11/09/2021 but were rejected due to a lack of data.
  - g) For Student 9, the Supplementary Response forms show that Student 9 had goals such as: demonstrating the ability to follow classroom routine and transitions, demonstrating independence in completing academic work at school, and begin engaging in appropriate social interactions with peers.
- 19) Student 10 was in the first grade at the time of the formulation of their IEP on 04/29/2019, when they were found eligible for special education under the category of ASD. Student 10 is represented by the Complainant who filed this Complaint.
- a) Student 10 was placed on an abbreviated day schedule on 12/02/2019, during their second grade year. Student 10 would receive instruction from 12:00 p.m.

- to 3:00 p.m. having previously been scheduled to attend 8:30 a.m. to 3:00 p.m. The District did not document an FBA or BSP at the time of this determination.
- b) On 09/22/2020 Student 10's IEP conducted the annual review of their IEP. In the 09/22/2020 IEP, the District documented aggressive behavior toward others, placing Student 10 on an abbreviated school day as a result. The justification for the abbreviated school day includes aggression and limited work stamina.
  - c) Student 10's file included "Abbreviated Day Review" forms for 10/20/2020, 04/01/2021, and 10/07/2021. During CDL, Student 10's instructional time was 2.5 hours per day.
  - d) Student 10's 04/01/2021 IEP, when the Student was in third grade, indicated that the Student needed to increase stamina for non-preferred activities, and capability to be near other students. It also noted that Student 10 required significant adult support in the achievement of these goals. As a result of these observations, the District determined that an abbreviated day schedule was appropriate. The District noted that Student 10's Parent wanted the Student to attend for a full day.
  - e) Student 10's 02/25/2021 IEP notes that the District and the Parents disagreed regarding Student 10's school schedule. The Parents preferred that Student 10 attend in-person, while the District contended that Student 10's inability to tolerate wearing a face mask made them ineligible to receive in-person instruction. The District determined to work toward creating goals to address Student 10's mask wearing struggle to help them access their education.
  - f) The District completed an FBA on Student 10 on 11/30/2021 and created a Mask Intervention Plan on 12/01/2021.
  - g) The District's Supplementary Response showed that Student 10 had goals such as: increasing stamina and tolerance for adult directed tasks, demonstrating independence in completing academic work at school, showing independence in following adult directions, and using writing utensils to create simple shape formations.
- 20) Student 11 transferred into the District in 2020 as a kindergartener, with an out of state IEP dated 10/12/2020. Student 11's 01/16/2020 out of state IEP showed they were eligible for special education under the eligibility of ASD. Student 11 was placed in a self-contained classroom in the out of state district. On May 17, 2021, the District formulated an IEP for Student 11. Student 11 was placed on abbreviated school day for "pervasive behavioral and sensory needs." Specific needs were not described in Student 11's IEP.
- a) In a 09/21/2021 PWN, the District documented Student 11's inability to wear a face mask as a justification for maintaining Student 11's abbreviated schedule.
  - b) Student 11's 06/17/2021 IEP included goals in the areas of behavior, social emotional, reading, math, special social communication, and functional communication.
  - c) The IEP's nonparticipation justification shows Student 11's IEP team chose an abbreviated school day due to "significant and pervasive behavioral and sensory needs..." These needs are not specifically described in Student 11's IEP.
  - d) Data collected by the District on 06/10/2021 and 11/05/2021, as documented in the Student's 05/17/2021 IEP, shows that Student 11 was making progress

- toward all pre-academic goals. These “pre-academic” goals were described as increasing “stamina and tolerance for completing work tasks. [Student 11] will maintain [themselves] during ‘seated work’ for 15 minutes without elopement to tantrum behavior.”
- e) For Student 11, the District’s Supplementary Response showed that Student 11 had goals in areas such as: reading Fry Sight Word lists, identifying phonetic sounds, counting numbers 1-50, counting with one to one correspondence, attending to academic tasks for specified time, and using words to indicate a want or need by using “I want” or “help me please.”
  - f) Review of PWNs and interviews with District staff show that out of concerns for the COVID-19 pandemic, Student 11’s Parents preferred that Student 11 continue with CDL through the 2020-21 school year.
- 21) Student 12 entered kindergarten in 2020 from one of the District’s ECI programs. Student 12 is eligible for special education under the category of ASD. Student 12 was placed in the RISE classroom on an abbreviated school day schedule.
- a) The District determined that an abbreviated school day schedule was appropriate for Student 12 due to the need for frequent access to breaks, behavior supports, and the need for a higher staff support ratio. This decision was made while the District was implementing CDL for all students due to the COVID-19 pandemic, and was based on progress reports from the prior school year.
  - b) On 01/13/2021, the District completed an Occupational Therapy (OT) evaluation of Student 12. The OT evaluation concluded that Student 12 had “some fine motor challenges in the area of grasping skills...demonstrated sensory processing challenges” and “can easily become dysregulated in the classroom.” School based OT support was recommended to provide staff support for Student 12’s special education programs.
  - c) Student 12’s 02/25/2021 IEP includes a nonparticipation justification that explained that Student 12 requires an abbreviated school day due to “...significant and pervasive behavioral and sensory needs...”
  - d) Student 12’s 01/25/2021 IEP documents the IEP team’s review of Student 12’s progress during the academic year. Progress monitoring data for 04/02/21, 06/10/21, 11/05/21, and 01/22/21 is included. The District documented that Student 12 was making good progress toward IEP goals.
  - e) The District also documented that Student 12 exhibited elopement behavior and fatigue throughout during the school day as justification for the continuance of the abbreviated school day of 2.5 hours.
  - f) The District’s supplementary response showed that Student 12 had goals in areas such as: expanding and applying knowledge of the alphabet, increasing independent writing skills, increasing academic skills, and demonstrating increased independence and self-direction at school.
- 22) Student 13 was an incoming kindergartener in the 2020-21 school year from one of the District’s ECI programs. The District formulated an IEP for Student 13 on 05/12/2020. Student 13 was found eligible for special education under the category of ASD. It was noted in Student 13’s IEP that they required safety monitoring.
- a) The District determined that Student 13 would begin school on an abbreviated school day. The District based this decision on, “...significant and pervasive

behavioral and sensory needs, as well as the need for modified curriculum in order to meet the goals of [Student 13's] IEP." These specific needs are not described in Student 13's IEP. Student 13's IEP provided goals in six areas, one of which was a social emotional goal. This goal focused on Student 13's "...ability to follow a classroom routine and transitions with increasing independence. We will know that [Student 13] can do this when [they are] able to respond to a 'check schedule' icon by walking to [their] schedule, placing the 'check schedule' icon in a box, pulling off the next schedule items, and traveling to the next scheduled location to 'match' the item with less than 2 prompts. We will know that the student has met this goal when [they] can demonstrate this skill in 75% of opportunities across a given school day."

- b) The Student's IEP team reviewed and continued Student 13's abbreviated day schedule on 09/14/2020, 10/30/2020, 04/12/2021 and 09/03/2021. On each occasion, the team determined that continuing the abbreviated day schedule was appropriate. The District documented that Student 13 made progress toward their goals over the course of this period. During that time, their instructional time was only increased by 30 minutes.
  - c) Student 13's IEP team met on 01/29/2021 to review Student 13's progress. Student 13 showed progress toward IEP goals at this meeting. Progress data gathered on 11/02/2020 and 01/22/2021 was reviewed.
  - d) Student 13's 02/10/2021 IEP documents that Student 13 continued to be on an abbreviated school day to "meet behavior and academic needs." While Student 13's IEP provides details regarding present levels in academic areas, these descriptions do not evidence significant behavior concerns.
  - e) For Student 13, the District's Supplementary Response included reports from their daycare provider attesting to an increase in Student 13's behavior challenges in the spring of 2021. The District also tracked the number of minutes per day that Student 13 engaged in behaviors such as refusing to following instruction. Also included in the Supplementary Response were goals for the student and how the goals would be tracked. These documents showed that Student 13 had goals in areas such as: increasing stamina and tolerance for adult directed tasks at school, demonstrating independence in completing academic work at school, demonstrating increased social engagement with adults and peers, and demonstrating the ability to follow a classroom routine and transitions with increasing independence. Behavior data for Student 13 was to be measured by a reduction in elopement and tantrum behavior.
- 23) Student 14 was in the second grade during the 2018-19 school year. The first IEP in the Student's records provided as part of this matter is a 01/20/2019 IEP. Student 14 was eligible for special education under the category of ASD. The present levels in this IEP indicate that Student 14 needs highly vigilant adult supervision, can become aggressive and will perseverate/fixate on items or activities, and can become agitated if they do not receive the item. Student 14's IEP included goals in the areas of reading, mathematics, written language, social/emotional (with an aim toward demonstrating pro-social behaviors in four of five instances), and communication.
- a) Student 14 was previously placed on an abbreviated day schedule in first grade, during 2018. Student 14 often engaged in kicking and hitting other students and adults. No FBA existed for Student 14 at this time, nor was there

- a behavior plan.
- b) Following the District placing Student 14 on abbreviated school days, the District reviewed the justification for this decision on the following dates during 2018: 02/12/2018, 04/06/2018, and 10/11/2018.
  - c) During 2019, the abbreviated school day was reviewed on the following dates: 01/28/2019, 01/30/2019, 02/28/2019, 03/21/2019, 09/16/2019, 10/30/2019, and 11/05/2019. These forms indicated that Student 14 was not making progress toward IEP goals during this time.
  - d) On 01/28/2019 the District provided Student 14's family with an "Abbreviated School Day Notice and Acknowledgment, Notice to Parent/Guardian" form. This form outlines the specific legal disclosures required by the State of Oregon for abbreviated school days. Student 14's Parents signed this form.
  - e) On 04/01/2019, the District conducted an FBA for Student 14 that resulted in recommendations for the creation of a BSP. No separate BSP was provided by the District.
  - f) On 04/14/2019, Student 14's IEP team provided Student 14's family with another "Abbreviated School Day Notice and Acknowledgment, Notice to Parent/Guardian" form.
  - g) On 09/16/2019, Student 14's IEP team reviewed the abbreviated school day and the behavior supports then in place. The team documented that Student 14 was "not successful in working on [their] IEP goals or maintaining a safe body at school." Student 14 was displaying "dangerous behaviors" lasting 10-60 minutes in duration occurring daily, which presents an "imminent threat to others during those outbursts."
  - h) On 11/5/2019, 10/30/2020, and 03/21/2021, Student 14's IEP team reviewed the abbreviated school day and behavior supports then in place. Student 14 continued to display concerning behaviors over this time and was unsuccessful in meeting goals to increase the length of their school day.
  - i) On 01/27/2020, the District conducted a threat assessment for Student 14.
  - j) On 04/09/2021, and 11/17/2021, Student 14's IEP team reviewed the abbreviated school day and behavior supports then in place. Student 14 continued to display concerning behaviors over this time and was unsuccessful in meeting goals to increase the length of their school day.
  - k) For Student 14, the District's Supplementary Response showed that Student 14 had goals in areas such as: read two high-frequency sight words, write a sentence with appropriate letter size/spacing, perform mathematical computations, maintain personal safety, and access a safe "calm down" strategy when upset.
- 24) Student 15 was in the first grade during the 2020-21 school year when their 12/02/2020 IEP was developed. Student 15 was found eligible for special education under the categories of ASD and Other Health Impairment (OHI). Beginning in kindergarten, Student 15 was placed on an abbreviated school day of one hour per day.
- a) Student 15's IEP goals were focused on addressing elopement and tantrums. Services included speech/language therapy, OT, ASD consultations, behavior consultations, and nurse consultations.
  - b) On 09/04/2019, when Student 15 was in kindergarten, Student 15's IEP team reviewed the abbreviated school day schedule, which provided two hours of

- instruction per day due to Student 15's "significant needs." These needs were not described in Student 15's IEP.
- c) Through the 2020-21 school year, when Student 15 was in the first grade, Student 15's IEP team reviewed the abbreviated school day schedule on 10/30/2020 and 04/12/2021. Student 15 was provided one hour of instruction per day during this period. The team documented that this schedule was due in part to high level of COVID-19 transmission in the local community.
  - d) During the 2021-22 school year when Student 15 was in the second grade, Student 15's IEP team has reviewed the abbreviated school day schedule on two occasions thus far, 10/25/2021 and 11/29/2021. Student 15 was provided 30 minutes of instruction per day during this period.
  - e) In a Supplementary Response, the District provided documentation it maintains in the classroom. The working files for Student 15 contained an Individual Behavior Plan dated 12/11/2019, provided by a community behavior specialist, with recommendations for addressing behavior exhibited by Student 15.
  - f) The District's Supplementary Response showed that Student 15 had a single goal during the 2020-21 school year, "[Student 15] will begin to demonstrate personal management skills by responding to a visual schedule. We will know that [Student 15] has met this goal when [they] can follow the steps of a visual schedule (travel, scan schedule, match correct icon) with 70% accuracy across 4 consecutive school days."
- 25) Student 16 was in kindergarten when, on 04/20/2021, the District formulated their initial IEP. Student 16 was found eligible for special education under the category of ASD. At the time the IEP was formulated, the team documented that they were working on mask tolerance to increase instructional time for Student 16.
- a) Student 16 displayed some aggression toward staff. Student 16's IEP team included a goal around the functional routine of arrive to school with minimal physical and/or verbal adult support.
  - b) Student 16's abbreviated school day plan was reviewed following the creation of the 04/20/2021 IEP on 04/30/2021, 09/27/2021, 10/04/2021, and 12/01/2021. During this time Student 16's abbreviated school day was continued in part due to high rates of COVID-19 transmission in the community. Student 16 saw their instructional time increased from one hour per day to two hours per day by 12/01/2021.
  - c) For Student 16 the District's supplementary response showed that Student 14 had goals in areas such as: matching an object to the corresponding picture; showing an increase in independence in the functional routine of arrival with minimal physical and/or verbal adult support 80% of the time in 3 out of 4 opportunities; transitioning in at least 5 minutes between task, classroom centers, and/or activities 80% of the time; and other social and academic goals.
- 26) The District formulated the IEP for Student 17 when they were an incoming kindergartener. Student 17 is eligible for special education under the categories of DD and CD. Student 17's IEP team determined that placement in the RISE classroom was appropriate. Student 17's initial IEP had a goal to develop cognitive skills as well as goals in the areas of mathematics, written language, and social

emotional. Student 17's IEP documented that they had "made huge growth with transitions, less aggression and sensory." Student 17 was placed in the RISE classroom due to their behaviors interfering with their education.

- a) Student 17's 02/08/2021 IEP documented that Student 17's eligibility for special education was changed to ASD. Student 17 was then in the first grade and attending school on an abbreviated day schedule with some in-person instruction for behavior, sensory, and academic needs. Student 17's IEP noted that all elementary school students were then attending half days due to the COVID-19 pandemic.
- b) Student 17's 02/08/2021 IEP includes the justification for the abbreviated school days as Student 17 requiring "small group setting, higher staff support ratio, and modified curriculum in order to meet the goals of [their] IEP." Student 17's IEP included four goals:
  1. "Reading: [Student 17] will expand and apply [their] alphabet knowledge..."
  2. "Writing: [Student 17] will increase [their] independent writing skills...demonstrate mastery of [their] IEP by independently...producing work...with 80% accuracy..."
  3. "Math: [Student 17] will increase [their] academic skills in the area of math computation..."; and
  4. Social Emotional: [Student 17] will begin to demonstrate increased independence and self-direction at school...We will know that [they] can do this when [they] independently...complete a self-management task...with 80% accuracy across 6/6 data collection opportunities.
- c) On 12/03/2019, the Student 17's IEP team met to review the abbreviated school day schedule. Student 17's schedule was shortened to three hours per day. At that time, the team documented that there was no FBA for Student 17 but that the District was providing some behavioral interventions.
- d) On 10/30/2020 and 4/12/2021, Student 17's abbreviated school day was reviewed by their IEP team. The same schedule of three hours per day was continued during this time, with the IEP team referencing the COVID-19 pandemic and CDL as the primary reasons for the schedule.
- e) In the fall of 2021, the Complainant began to represent Student 17. On 11/19/2021, the District conducted an FBA for Student 17.
- f) For Student 17, the District's Supplementary Response evidenced goals for the student and how the goals would be tracked. The Supplementary Response shows tracking data for the goals outlined in Student 17's IEP.

27) Student 18 began kindergarten during the 2020-21 school year. The District formulated an IEP for them on 04/30/2021. Student 18 is eligible for special education under the category of ASD. Student 18 was placed in the RISE classroom. Starting on 09/30/2021, Student 18 was placed on home instruction due to their inability to tolerate wearing a face mask. Student 18's IEP indicated that the primary goal for the Student was increasing their ability to tolerate a face mask to allow them access to in-person education. Student 18 was placed on an abbreviated day schedule with 30 minutes of in-person instruction when other students were not present. The remainder of Student 18's education was provided through distance learning.

- a) Student 18's 04/30/2021 IEP documents the decision to place them on an

- abbreviated day schedule was “due to significant and pervasive behavioral and sensory needs, as well as the need for modified curriculum in order to meet the goals of [their] IEP.” These needs are not described in the present levels statement of Student 18’s IEP.
- b) Student 18 began receiving three hours a day of instruction in kindergarten. Student 18’s abbreviated day schedule was reviewed by the IEP team on 04/30/2021, 10/08/2021, and 12/06/2021. During this period, instruction time was reduced to 1.5 hours per day on 12/06/2021, with a goal of increasing instruction time by half an hour as Student 18 demonstrated the ability to tolerate wearing face masks. The “Abbreviated Day Planning and Review” forms for Student 18 indicate that, as of 04/30/2021, an FBA was conducted, but that no BSP was in place.
  - c) On 11/19/2021, the Complainant and the Parents of Student 18 requested that the District conduct another FBA.
  - d) In a Supplementary Response, the District provided documentation it maintains in the classroom. This included a single document, an “ABC (Antecedent, Behavior, Consequence) Chart Form”. Said form included data for two dates and observations of Student for those two days.
- 28) Student 19 was an incoming kindergartener when the District formulated their IEP on 05/19/2019. Student 19 is eligible for special education under the category of ASD. Student 19’s present levels statements indicate that their disability impacts their educational performance through delays in cognitive, adaptive, and communication skills that impacts their ability to explore and learn age-appropriate skills.
- a) Student 19’s IEP has goals in communication, written language, mathematics, reading, and social/emotional. Student 19’s social/emotional goal indicates that Student 19 “will engage in group activities demonstrating pro-social behaviors 4 out of 5 occurrences or 80% accuracy.”
  - b) Student 19’s 05/01/2020 IEP documents that Student 19’s eligibility was updated to include both ASD and DD. The 05/01/2020 IEP also states that Student 19 is “sometimes not able to access [their] academic environment due to [their] sensory regulation needs and significant avoidance behaviors. [Student 19] attends school on an abbreviated day schedule to reduce fatigue. [They] attend most of [their] abbreviated day in a self-contained classroom that helps [them] to meet [their] behavioral, sensory, and academic needs.” The abbreviated day schedule was implemented to help Student 19 “reduce [their] fatigue and increase [their] academic success when at school.”
  - c) Documentation in the file indicated that data collection for IEP goals was limited due to school closures brought on by the COVID-19 pandemic.
- 29) Student 20 was an incoming kindergartener when the District formulated their IEP on 04/23/2021. Student 20 is eligible for special education under the category of ASD. Student 20 was initially assigned to home instruction due to their inability to tolerate wearing a face mask.
- a) Student 20’s 04/23/2021 IEP also indicates that they have an abbreviated day schedule. The justification for the abbreviated day schedule is “due to significant and pervasive behavioral and sensory needs, as well as the need of modified curriculum in order to meet the goals of [their] IEP. [They] need a

- small group setting, frequent breaks, significant behavior supports, and higher staff support ratio.”
- b) Student 20’s 11/05/2021 IEP further documents that “due to attendance and changes in staff, we do not have enough data to report on [Student 20’s] progress toward [their] goals at this time.” Student 20’s IEP team hoped that their ability to tolerate seated work would improve by April 2022, enabling them to increase their school day.
- 30) Student 21 was an incoming kindergartener when the District formulated their IEP on 04/30/2021. Student 21 is eligible for special education under the category of ASD and DD. Student 21 was placed on an abbreviated day schedule. Student 21’s IEP does not indicate why an abbreviated day is required.
- a) Student 21’s 04/30/2021 IEP includes goals for demonstrating “independence by staying on task during class and completing the assigned activity with less than three verbal prompts being required by the teacher or paraprofessional on any given day.” Student 21 also had goals in the areas of communication, reading, and speech.
- 31) Student 22 was a first-grade student when the District formulated their 03/09/2020 IEP. Student 22 is eligible for special education under the category of ASD. The IEP provided extensive documentation regarding the student’s present levels in all areas with observations from multiple teachers. Student 22 attends an abbreviated school day because they “fatigue during a prolonged school day, which sometimes leads to severe behaviors at home...[Student 22] needs mild to moderate adult prompting to begin and finish academic tasks.” The IEP goes on to describe additional ways in which Student 22 is impacted by their disability and a full school day schedule.
- a) The IEP team described that Student 22 “fatigues during prolonged school day, which sometimes leads to severe behaviors at home (per report from [Parent] of child). [Student 22] needs mild to moderate adult prompting to begin and finish academic tasks. [They need] more significant prompting when [they are] asked to complete difficult academic work that is *perceived* as non-preferred to [them]. [Student 22] demonstrates some difficulty in understanding social situations. [Student 22] needs adult assistance in order to process and respond to negatively-perceived interactions. [Student 22] responds well to structured and straight-forward explanations.”
- b) Student 22’s IEP lists goals in reading, math, written language, communication-receptive language, and communication-expressive language. The IEP also contains a goal for social-emotional needs, “...[Student 22] will improve their ability to enter social opportunities and accept rejection from [their] peers.”
- c) Progress data for these IEP goals was largely not available either due to lack of attendance, attending school online, or the COVID-19 pandemic. **(D1630)**
- d) On 03/01/2021, the IEP team reviewed and revised the IEP. Student 22 previously attended school for 2.5 hours per day during CDL. After the District returned to full day school, the District proposed a full day of school for Student 22. The IEP indicates that the Parent preferred the abbreviated day schedule. The Student’s schedule was changed to 10:00 a.m. to 3:00 p.m. as of April 19, 2021.

- e) A review of the Student's files indicated that progress data for the Student's IEP goals from April 2021 through November 2021 was largely missing due to the Student's attendance.
- 32) Student 23 was an incoming kindergartener when the District formulated their 05/10/2019 IEP. Student 23 is eligible for special education under the categories of ASD and DD. Student 23 was placed in the RISE self-contained classroom. Student 23's IEP does not mention any concerns regarding behavior, dysregulation, or stamina.
- a) Student 23's 05/10/2019 IEP has goals in the following areas: cognitive, mathematics, written language, social/emotional (engaging in group activities), and communication.
  - b) Student 23's 05/04/2020 IEP documents that the Student was placed on an abbreviated school day, the Parents' concern with the resulting instruction time, and their concern about potential academic impact it may have on Student 23. Parents requested a full day in the general education environment with an aide. Student 23's present levels statement included the observation that "behavior dysregulation, need for frequent breaks, and overall work stamina have impacted [their] ability to make more significant progress in [their] academic goals this school year."
  - c) IEP progress monitoring data collected on 06/03/2020, 10/30/2020, 01/22/2021, and 04/02/2021, indicate that Student 23 was making progress toward goals. The progress data does not mention behavior dysregulation, stamina, or need for breaks.
- 33) Student 24 transferred into the District during the 2020-21 school year. Student 24 was attending school on an abbreviated school day in their prior out of state school district.
- a) The District formulated an IEP for Student 24 on 05/07/2021. Student 24 is eligible for special education under the category of ASD. Student 24 was then in the fourth grade. Due to the COVID-19 pandemic, Student 24 attended via CDL. Student 24's IEP indicated that they were placed on an abbreviated day schedule due to their "consistent and pervasive behavioral and sensory needs." However, no such needs or concerns are documented in Student 24's IEP. The IEP also contains no goals to address behavior.
  - b) IEP progress monitoring data collected on 06/10/2021 and 11/5/2021 indicated that Student 24 was making progress toward IEP goals.
  - c) The abbreviated day schedule for Student 24 was reviewed on 01/08/2021, 04/15/2021, 04/26/2021, 09/21/2021, and 11/29/2021. These documents indicated that Student 24 was making progress toward goals, but that their Parents preferred that they continue with CDL due to fear concerning the COVID-19 pandemic.
- 34) In March 2020, the District transitioned to distance learning for all students due to the COVID-19 pandemic. Between mid-March 2020, and early May 2020, for those students then enrolled in the RISE classroom, the District provided a PWN documenting that the District was ceasing all in-person instruction due to the COVID-19 pandemic. The PWN noted that the Student's IEP would only partially be implemented as a result. Student IEP's reviewed were not amended to reflect this

change.

- 35) The District noted in its Response, and in many of the abbreviated day review forms, that, following the District's transition to CDL brought on by the COVID-19 pandemic, no elementary school student in the District received more than 2.5 hours of instruction per day.
- 36) Many of the student records comment on the Student's "stamina" for school or for completing tasks. This term is not defined either in student IEPs or in District policy or guidance.
- 37) At least four PWNs from the District for students placed on abbreviated school days included the following language: "An abbreviated day will allow for more individualized program planning. [Student's] stamina for learning is inhibited by [their] inability to attend to task for extended periods of time. This schedule will be more concentrated on learning at [their] level in order to accelerate learning and school success while building capacity in the general education classroom."
- 38) In other cases, the PWN from that time read, "An abbreviated day will allow for more individualized program planning. This will be more concentrated on learning at the student's level in order to accelerate learning and school success."
- 39) On February 2, 2022, the Complaint Investigator interviewed the Complainant. The Complainant explained that, from their review of student records, it was their contention that the information contained in the District's "Abbreviated Day Planning/Checking-In" forms was insufficient to support or describe the rationale for the abbreviated school day.
- 40) On February 14, 2022, the Complaint Investigator interviewed the District's Director of Special Education, and the District's Autism Consultant. District staff provided additional details regarding assistive technology, behavior interventions, student goals, and how goals and behavior were tracked and documented.
- 41) The Complaint Investigator inquired with the District about the continuum of alternative placement options available to the District. The District explained that, while it is within the service area of the regional education service district, it is too remote to be serviced by, or have access to, alternative classrooms or placements for students. Given the District's location, the District must create all of its own placement options.
- 42) In reviewing extended school year (ESY) services, the District reported that decisions were largely made based on the observations and professional opinion of the classroom teacher. Given the impact of the COVID-19 pandemic, the District had adjusted expectations around student progress and how it assessed need.
- 43) Following the interviews with District staff, the District provided additional documents relevant to some of the students who are part of this Complaint. The files included goals for these students and how those goals would be measured. During interviews with District staff, it was explained that goals and data were

contained in a classroom working file, rather than incorporated into the Students' IEPs.

- 44) Included with this information were forms titled, "Multiple Goal Data Sheet." These forms documented the specific goal a student may have and provided space for progress monitoring in the form. Progress was to be tracked according to a key offering the following options: verbal prompt, visual prompt, physical prompt, no response, incorrect, or correct response.
- 45) These additional files for students also contained data tracking forms for toileting, behavior tracking antecedents, elopement, and other concerns.
- 46) Part of the information provided by the District was a letter from the District's Behavior Analyst, who is also the District's Autism Specialist. The Behavior Analyst described that the RISE classroom provides tier 1 and tier 2 supports. Support is provided by the Behavior Analyst and the District's Speech Language Pathologist (SLP) who is also certified in applied behavior analysis (ABA). The letter explained that, "Tier 1 and 2 supports are implemented by the teacher and can include, but are not limited to: environmental adjustments, calming/break spaces, changes to adult behavior, positive supports: sticker charts, earned breaks/reinforcers, expectations taught and re-taught, rapport, use of break rooms, check in/check out, daily behavior charts, communication to parents, timeout/partner rooms, and coaching support to the teacher and staff. It is imperative to make sure these supports are in place, with data, before moving on to individual behavior plans and functional behavior assessments."
- 47) The Behavior Specialist's letter went on to explain that the District was in the process of obtaining consent to conduct behavior observations on students in the fall of 2019. Due to the onset of the COVID-19 pandemic, the District was unable to conduct such observations or formulate individual BIPs for students.
- 48) Following interviews with District staff, the District provided additional information relevant to this case. This included photos of the RISE classroom and the various assistive technology available inside of the classroom. Among the items visible in the photos were laptops, sight word cards, interactive screens, manipulatives, graphic organizers, and photos of faces or picture cards to help students identify their moods, emotions, and needs. Some of these assistive technology supports were individualized to specific students.
- 49) The Behavior Specialist explained that, given the behavior needs of students in the RISE classroom, class-wide supports were developed and put into place. Such supports included visual schedules for the classroom and individuals, timed breaks, various visual supports, picture exchange communication system (PECS), strategies for teaching based on autism research (STAR) curriculum, and pivotal response training (PRT). The Behavior Specialist further indicated that "academics were individualized to each student's needs and goals. Preference assessments were started for some individual student's [sic] reinforcers. A token economy was being used to earn pennies for a student selected choice of break/reward."

- 50) From review of the relevant files, there is evidence that the District provided copies of the Notice of Procedural Safeguards to parents when the District held IEP team meetings.

#### **IV. DISCUSSION RELEVANT TO THE DISTRICT**

##### **Placement of the Child**

The Complainant alleged that the District placed students on reduced day schedules in lieu of providing appropriate behavioral services and support when the students struggled with behavioral issues in the educational setting, doing so through a programmatic manner summarized in “Abbreviated Day Planning/Check In” documents.

The educational placement of a child with a disability is to be determined by a group of persons, including the parents, and those knowledgeable about the child and relevant evaluation data. Placement decisions should be made in conformity with the Least Restrictive Environment considerations. The placement decisions should also be based on the student’s current IEP.<sup>3</sup>

The District explained in its Response that beginning in October 2019, all students attending the RISE classroom were placed on abbreviated school day schedules. Some students in the program were attending on abbreviated day schedules prior to this shift. Some of the IEPs reviewed as part of this matter were formulated following the District’s fall 2019 decision to move all students to abbreviated school days. The District reports making this decision to address the number of students requiring a high degree of support, as the program as a whole was overwhelmed and incapable of providing an appropriate education to the students in the program.

In this case, the placement decision of at least five students was determined based on the limitations of staff and programs rather than the Students’ individual needs and IEPs. In all of the student files reviewed, for students still enrolled in the District, the District had not yet made individual placement determinations based on student need, but rather continued throughout the Complaint period with abbreviated day schedules.

The Department substantiates this allegation.

##### **Alternative Placements and Supplementary Aids and Services**

The Complainant alleged that the District violated the IDEA when it did not consider a full continuum of alternative placement options as possibilities when it decided to shorten the Student’s school days. Instead, it is alleged that the District presented a single placement option as the lone choice suitable for students.

Districts must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. Such a

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<sup>3</sup> OAR 581-015-2250(1)(a)—(1)(c)

continuum should include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. In addition to these placement options, Districts should consider the provision of supplementary aids and services in conjunction with regular place placement.<sup>4</sup>

As part of this Investigation, the District was questioned about the various placement options in the District. Due to the District's remote location from other school districts and service areas, alternative placement options are relatively limited. The District explained that, in the fall of 2019, the only viable option was an abbreviated school day in order to reconfigure the RISE classroom to appropriately accommodate the students then in the program.

The District reports that abbreviated school days were the only option at the time of their selection given the lack of resources. However, rather than to meet the needs of the students in the program, abbreviated school days were chosen in response to the District's program having insufficient placement options. In all of the student files reviewed, for students still enrolled in the District, students' IEP teams have not yet considered alternatives to abbreviated school days for students in the RISE classroom.

The Department substantiates this allegation.

### **Content of the IEP—Present Levels**

The Complainant alleged that the District violated the IDEA by providing a justification for a reduced school day that was not individualized, but rather a common general justification for the Students' school schedule.

The individualized education program (IEP) must include a statement of the child's present levels of academic achievement and functional performance. This individualized statement must include how the child's disability affects the child's involvement and progress in the general education curriculum. The IEP must also include a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability. These goals should also enable the child to be involved in and make progress in the general education curriculum. Such goals derived from the child's present level statement should also describe how the child's progress toward meeting these annual goals will be measured, and when periodic reports on the progress the child is making toward meeting those goals will be provided.<sup>5</sup>

In conversation with District staff and in review of the supplementary documents, it appears that certain District staff understood student needs and have documented these supports to some degree in a working file contained in the RISE classroom. This information is not contained in the Students' IEPs to the degree required by the IDEA. During interviews with the Complaint Investigator, District staff agreed that reading a student's IEP alone would not provide an accurate understanding of the Student's

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<sup>4</sup> OAR 581-015-2245(1)—(3)

<sup>5</sup> OAR 581-015-2200(1)(a)—(1)(c)

present levels. As an example, the District documents that Student 12 requires an abbreviated school day due to "...significant and pervasive behavioral and sensory needs..." but the IEP does not contain goals relevant to those needs, nor describe the required interventions to address those needs.

In Student 12's case, their goals are primarily focused on academic skills, while their abbreviated day justification highlights other areas of concern. Handwritten notes in Student 12's file, and the files of other students, suggest other needs and interventions occur in the classroom. Similarly, Student 18's IEP lists behavior concerns justifying the abbreviated school day that are not reflected in the present level statement. For most of the files reviewed, IEPs from the current school year continue to display incomplete descriptions of the Students' present levels.

The Department substantiates this allegation.

### **Assistive Technology**

The Complainant alleged that District violated the IDEA by not providing required assistive technology for students in the RISE classroom, resulting in their inability to access their education.

Assistive technology devices are those items, pieces of equipment, or product systems, whether acquired commercially off the shelf, modified, or customized, that are used to increase, maintain, or improve the functional capabilities of a child with a disability.<sup>6</sup> Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment.<sup>7</sup>

School districts must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as part of the child's special education, related services, or supplementary aids and services.<sup>8</sup> In developing, reviewing, and revising IEPs, the IEP team must consider whether the child needs assistive technology devices and services.<sup>9</sup> If the IEP team determines that a child need a particular device, service, intervention, accommodation, or program modification for the child to receive a free appropriate public education, the IEP team must include a statement to that effect in the child's IEP.<sup>10</sup>

District staff explained during interviews that the RISE classroom has assistive technology available for student use. The District provided photos from the classroom showing a variety of assistive technology in the classroom and in use by students. District staff interviewed discussed the use of this technology with students. In review of

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<sup>6</sup> OAR 581-015-2000(2)

<sup>7</sup> OAR 581-015-2000(3)

<sup>8</sup> OAR 581-015-2055(1)—(2)

<sup>9</sup> OAR 581-015-2205(2)(b)

<sup>10</sup> OAR 581-015-2205(4)

the IEPs for the students in the RISE classroom, specific assistive technology is not described for students in their IEPs. Rather, District staff maintained a working file in the classroom with goal data sheets that provide some description of the use of devices, services, and assistive technology. The Behavior Analyst provided a detailed description of the assistive technology available and used with students in the RISE classroom. The specific rationale for the assistive technology, and the need or behavior that it addressed for the specific child, were not described in students' IEPs. For most of the files reviewed, IEPs continued through the current school year to lack this information.

While the District provided assistive technology to students in the RISE program, it has not documented in those Students' IEPs their need for the assistive technology or how it assists these Students to access their education.

The Department substantiates this allegation.

### **Functional Behavioral Assessments**

The Complainant alleged that the District violated IDEA by not assessing and formulating appropriate behavioral interventions for students to assist and support them in accessing their education and the school environment.

Functional behavioral assessments are individualized assessments of students that result in a hypothesis about the function of a student's behavior and, as appropriate, recommendations for a behavior intervention plan. Behavior intervention plans are individualized plans that include positive interventions designed to assist a student to decrease inappropriate behavior. They may also be focused on increasing or teaching appropriate behavior.<sup>11</sup>

One FBA was found in the files reviewed. A review of the IEPs and student data in this matter finds that the District has recently begun reaching out to families to obtain consent to conduct observations for the purpose of conducting FBAs. The District reports that it had not initiated the process between the fall of 2019 and the time of the filing of this Complaint due to the strains on the program and the COVID-19 pandemic. The District does have "multiple goal data sheets" that track behavior goals. However, student IEPs largely do not document the behavior concerns and the rationale for the behavior goals on these sheets.

The case of Student 13 shares similarities with the lack of documentation for other students in the RISE program. The District documents that Student 13's behavior is the reason for the abbreviated school day and information in the file demonstrates an increase in behavior concerns outside of school. Here the District relied upon written statements from Student 13's daycare provider's description of Student 13's behavior concerns and undiagnosed learning disability. However, neither Student 13's IEP nor the working file documents contain information on how that behavior is to be addressed, or at what threshold Student 13's instructional time would be increased. These

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<sup>11</sup> OAR 581-015-2181(1)—(3)

documents only contain a goal that Student 13 should reduce elopement and tantrum behavior without having documented antecedents or specific interventions to assist Student 13 in obtaining that goal.

Student 18's files indicated that an FBA was conducted, but no behavior support plan was created as a result. Copies of Student 18's working file from the classroom show that the District did not have the data the IEP indicated should be collected to track whether interventions were effective. For most of the files reviewed, IEPs continued to lack FBAs, despite the District citing significant behavior concerns as a major justification for abbreviated school days through to the current school year.

While the RISE program provides targeted behavior interventions to students through specially trained staff, these interventions are not specifically documented. Behavior support is provided to the RISE classroom teacher by the District's Autism Specialist with support from the District's SLP, who is also ABA certified. While staff likely have collaborated to address student behaviors, the District has not documented the specific concerns and the corresponding interventions for students. As of the date this Complaint was filed, this trend continued in the IEPs of students in the RISE classroom.

The Department substantiates this allegation.

### **Parent Participation**

The Complainant alleged that the District violated the IDEA by failing to provide parents with a meaningful opportunity to participate in such decisions as the educational placement of their children.

A school district 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.<sup>12</sup> A school district 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.<sup>13</sup> The district must consider the concerns of the parents among other indicators of the student's academic, developmental, and functional needs.<sup>14</sup> "Predetermination occurs when an educational agency has made a determination prior to the IEP meeting, including when it presents one educational placement option at the meeting and is unwilling to consider other alternatives...A school district violates the IDEA if it predetermines placement for a student before the IEP is developed or steers the IEP to the predetermined placement...Predetermination violates the IDEA because the Act requires that the placement be based on the IEP, and not vice versa."<sup>15</sup>

A review of the educational files for the students in the RISE classroom shows that parents were provided written notice of meetings in the fall of 2019 to discuss placement. At these meetings, the District explained to parents that students would be

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<sup>12</sup> OAR 581-015-2190(1)

<sup>13</sup> OAR 581-015-2190(2)(a)

<sup>14</sup> OAR 581-015-2205(1)(a)—(d)

<sup>15</sup> Smith v. Cheyenne Mountain School District 12 and the Colorado Department of Education, 71 EDEL 185 (2019)

moved to an abbreviated school day to allow the District's program to readjust to accommodate student needs. These decisions were not based on student's IEPs individually, but rather because the District's program was overwhelmed. As the District documented in its response, "...the District made the decision to take a step back in order to move forward." During interviews with the Complaint Investigator, District staff acknowledged that these meetings were to present the decision to move to abbreviated school days rather than discuss a range of placement options for each student individually. During the time period for this Complaint, none of the students so effected have had their IEPs and educational placements reconsidered.

The Department substantiates this allegation.

### **IEP Team Considerations and Special Factors**

The Complainant alleged that the District violated the IDEA when it failed to consider and accommodate special factors such as the student's ability to tolerate face masks due to their disability as a reason for shortening the student's school day or limiting access to in-person instruction.

In developing, reviewing, and revising a child's IEP, the IEP team must consider the strengths of the child, and the concerns of the parent for enhancing the education of their child. Districts should also consider the results of the most recent evaluation of the child, including their academic, developmental, and functional needs. If the IEP team determines that a child need a particular device, service, accommodation, or other program modification for the child to receive a free appropriate public education, the IEP team must include a statement to that effect in the child's IEP.<sup>16</sup>

The District employs a variety of assistive devices, technology, and behavior interventions in the RISE classroom. These are provided through the expertise, and in consultation with, the Autism Specialist and a certified behavior therapist. The District maintains a working file in the classroom where some of the observations regarding student behavior and needs reside. However, those working observations and interventions are not generally distilled into student IEPs; rather they are left in the working files. As such, they largely require the expertise of specific staff members to decipher or interpret. During the time period for this Complaint, this trend continued in the IEPs reviewed of students in the RISE classroom.

The Department substantiates this allegation.

### **Content of the IEP—Measurable Annual Goals**

The Complainant alleged that the District violated the IDEA by not creating measurable IEP goals or collecting appropriate data to determine the student's progress in their IEPs.

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<sup>16</sup> OAR 581-015-2205(1)—(4)

A student's individualized education program (IEP) should include a statement of measurable annual goals, including academic and functional goals designed to meet the student's needs resulting from the student's disability to enable the child to be involved in and make progress in the general education curriculum. The IEP should also include a description of how the student'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 will be provided. It should also contain a statement of the specific special education, related services, and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, and a statement of the program modifications or supports for school personnel.<sup>17</sup>

Said services, aids, and program modifications should be designed to allow the student to advance appropriately toward attaining the annual goals. Furthermore, they should assist students to be involved in and make progress in the general education curriculum; participate in extracurricular and other nonacademic activities; and be educated and participate with other children with disabilities and children without disabilities within the general education curriculum, extracurricular activities, and other nonacademic activities. The IEP should also include the projected dates for initiation of services and modifications and the anticipated frequency, amount, location, and duration of the services and modifications.<sup>18</sup>

Following the Complaint Investigator's interview with District staff, the District provided additional information relevant to student goals. Included with these documents were forms titled "Multiple Goal Data Sheets." These forms listed the goals for the students in the RISE classroom and provided space for District staff to track student data relevant to each goal. Many of the IEPs reviewed did not list the goals contained in the working file documents. In most of the files reviewed, student goals and data were better described in the documents contained in the District working files than in the IEPs, and were not uniformly documented in Students' IEPs.

By way of example, Students 18, 19, and 20 had little to no data regarding IEP goals either in their IEPs or the District working files. Student IEPs generally made reference to pervasive behavior concerns necessitating abbreviated school days but did not include analysis of the antecedents to behavior, or how behavior interventions would address those concerns. Furthermore, IEP goals were not designed in a manner that allowed measurement of improvement toward increasing student instruction time. As of the date of filing this complaint, this trend continued in the IEPs reviewed of students in the RISE classroom.

The Department substantiates this allegation.

### **Prior Written Notice**

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<sup>17</sup> OAR 581-015-2200(1)(a)—(1)(d)

<sup>18</sup> OAR 581-015-2200(1)(c)—(1)(e)

The Complainant alleges that the District failed to provide parents with prior written notice (PWN) after it changed placement and/or refused a parent's request to change placement.

PWN must be given to the parent of a child within a reasonable period before a school district proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE. The PWN must include a description of the action proposed or refused by the district. The notice must also provide an explanation of why the district proposes or refuses to take the actions. The notice must also include a description of the evaluation procedure, assessment, test, record, or report the district used as a basis of the proposed or refused action.<sup>19</sup>

Educational records for 24 students in the District's RISE program were reviewed during this Investigation. PWNs were present for all changes in educational placement. PWN was also provided when, as in the case of Student 23, the Parents requested a change in the Student's schedule or placement, but the Student's IEP team disagreed. Where there is evidence in the records that parents disagreed with the IEP team, or advocated for a change in placement, the District provided PWN.

However, many of the PWNs for students contained the same rationale for the proposed action, that the Student's "...stamina for learning is inhibited by [their] inability to attend to task for extended periods of time. This schedule will be more concentrated on learning at [their] level in order to accelerate learning and school success while building capacity in the general education classroom." The same language is used for Student 5, Student 6, Student 7, and Student 10. Similar language is used in the PWNs for other students, without information regarding how "stamina" is defined or determined. During interviews with District staff, it was acknowledged that, while staff have a shared understanding of their usage of the term "stamina," it is not specifically defined. During the time period for this Complaint, this trend continued in the IEPs reviewed of students in the RISE classroom.

The Department substantiates this allegation.

### **Disciplinary Removals of More than 10 School Days: Manifestation Determination**

The Complainant alleges that the District did not conduct manifestation determinations following disciplinary removals for students in the RISE classroom.

A disciplinary removal is considered a change in placement requiring the district to follow special education procedures if the removal will be more than 10 consecutive days. Such special procedures must also be followed if the child will be removed for more than 10 cumulative school days from their current educational placement in a school year. 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 district must determine whether the child's behavior is a manifestation of the student's disability.<sup>20</sup>

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<sup>19</sup> OAR 581-015-2310(1)—(3)

<sup>20</sup> OAR 581-015-2415(1)—(3)

From a review of the student records in this matter, few disciplinary referrals were found for students in the RISE classroom. Of these, none resulted in a disciplinary removal or change in placement. One student demonstrated behavior which triggered the District's threat assessment procedure. District staff reported during interviews with the Complaint Investigator that because of the high level of need and frequent behaviors in the RISE classroom, the District accepted different levels of behavior in the class. As a matter of practice, no disciplinary removals were made within that student population. Staff reported that, given the relatively young age of students in the class, behaviors could generally be controlled by staff or with the assistance of parents coming to the school to retrieve children. There is no documentation available to determine the frequency with which parents were called to retrieve their children.

The Department does not substantiate this allegation.

### **Notice of Procedural Safeguards**

The Complainant alleges that the District failed to provide parents a copy of the Notice of Procedural Safeguards and/or that the Notice of Procedural Safeguards was deficient.

School districts must give parents a copy of the Notice of Procedural Safeguards at a minimum one time per year in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. A copy must also be given to parents upon initial referral or parent request for evaluation. A copy must be provided upon request by a parent. The notice must be compliant with the guidelines set by the Department and be written in language understandable to the general public.<sup>21</sup>

In review of the student records in this matter, each student file documents that procedural safeguards were provided to parents at least yearly. Copies of those procedural safeguards were not made part of the student file. However, during their interviews with the Complaint Investigator, District staff reported that following the transition to CDL brought on by the COVID-19 pandemic, the District provided copies of procedural safeguards electronically. Staff were able to provide documents to parents ahead of or during virtual meetings.

The Department does not substantiate this allegation.

### **Extended School Year Services**

The Complainant alleged that the District violated the IDEA when it did not consider extended school year (ESY) services for students in the RISE classroom without collecting or considering data on an individualized basis.

School districts must ensure that ESY services are available as necessary to provide a free appropriate public education to children with disabilities. ESY services must be

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<sup>21</sup> OAR 581-015-2315(1)—(5)

provided only if the child's IEP team determines, on an individual basis, that the services are necessary for the provision of a free appropriate public education to the child. Districts may not limit ESY services to categories of disability, or their type, amount, or duration. Districts must develop criteria for determining the need for ESY services. Criteria must include regression and recoupment time based on documented evidence or, if no documented evidence exists, on predictions according to the professional judgment of the team. The purpose of ESY services is the maintenance of the child's learning skills or behavior.<sup>22</sup>

The IEPs of students placed in the RISE classroom uniformly indicate that students do "not display significant regression at this time." None of these students were provided ESY services. The Director of Special Education reported that ESY services were determined based on the professional observation of the classroom teacher and based on the progress data collected for students rather than by the IEP team.

The Director of Special Education also related that, during the COVID-19 pandemic, what constituted progress and loss of skills was different than in times prior to distance learning. Data regarding student progress, upon which determinations about ESY services were made, was contained in the classroom and interpretable largely only by the classroom teacher. ESY determinations were then largely made by a single person, rather than Students' IEP teams. There was no recoupment or regression data in these files. Regardless of the degree of progress or lack thereof, the District did not provide ESY to any student in the RISE program. There is evidence of this practice beginning in the fall of 2019, and extending through the time period for this Complaint.

The classroom teacher was not available to participate in the Department's investigation. Due to the way data was collected on students and largely not included or summarized in student IEPs, the Department cannot determine the degree to which students may have required ESY services. However, the District relied upon one person to make the determinations regarding ESY services, rather than students' IEP teams.

The Department substantiates this allegation.

### **Specially Designed Instruction, Related Services, and Supplementary Aids and Services**

The Complainant alleged that the District violated the IDEA when it failed to include additional specially designed instruction (SDI), related services, and supplementary aids and services in the IEPs of the students in the RISE classroom that might have supported students to the extent that students were able to attend for a full day of school.

SDI is instruction with the content, methodology, or delivery adapted, as appropriate, to address the child's unique needs that result from their disability and to ensure the child can access the general curriculum and meet the state's educational standards. Related services are services required to assist a child with a disability to benefit from special education. Supplementary aids and services are those aids, services, and other

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<sup>22</sup> OAR 581-015-2065(1)—(6)

supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate. Student's IEPs must include 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 student. These aids and services should be provided to the student to support them advancing appropriately toward attaining annual goals and allow them to be involved in and make progress in the general education curriculum.<sup>23</sup>

Most of the IEPs for students in the RISE classroom include a description of SDI and related services; however, they do not include detailed descriptions of supplementary aids and services. During interviews with the Complaint Investigator, District staff reported that the classroom utilizes a host of supplementary aids and services. The District provided photos of the classroom and the various supplementary aids provided to students. The District's Autism Consultant acknowledged that the aids and technology used with students are not well documented in Students' IEPs. Rather, staff have a working knowledge of the required aids based on their experience with students and have a variety of options within the classroom. The additional information provided by District staff during the course of this investigation regarding supplementary aids and services was not included in the Students' IEPs. Furthermore, while the District did provide photos and description of the supplementary aids to the Complaint Investigator, such statements are largely not included in student IEPs. This practice continued through the year prior to the filing of this Complaint.

The Department substantiates this allegation in part.

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

The Complainant alleges that the District "systemically" violated the IDEA in the ways alleged above. It is alleged that because of these violations, students identified in the complaint, largely those with a special education identification of autism spectrum disorder and receiving services through the District RISE classroom, were denied a FAPE.

School districts are required to provide a free appropriate public education to all school aged children with disabilities for whom the district is responsible.<sup>24</sup> In determining whether a District has denied a Student a FAPE, there is a two-part test. First, the District must comply with the procedures set forth in the IDEA, and second the student's IEP must be reasonably calculated to enable the student to receive educational benefits.<sup>25</sup> While harmless procedural errors do not constitute a denial of FAPE,<sup>26</sup> "...procedural inadequacies that result in the loss of educational opportunity...clearly result in the denial of FAPE."<sup>27</sup>

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<sup>23</sup> OAR 581-015-2000(37); OAR 581-015-2000(29); OAR 581-015-2000(38); OAR 581-015-2200(1)(a)—(1)(e), and (1)(d)(A)—(B)

<sup>24</sup> OAR 581-015-2040(1)

<sup>25</sup> *Bd. of Educ. v. Rowley*, 458 U.S. 176, 206-07 (U.S. 1982)

<sup>26</sup> *L.M. v Capistrano Unified Sch. Dist.*, 556 F3d 900, 910 (9<sup>th</sup> Cir. 2008)

<sup>27</sup> *Shapiro v. Paradise Valley Unified Sch. Dist. No. 69*, 317 F.3d 1072, 1079 (9<sup>th</sup> Cir. Ariz. 2003)

FAPE is provided when the unique circumstances of the child are considered, and the IEP is appropriately ambitious and reasonably calculated to permit advancement through the general curriculum.<sup>28</sup> Districts generally provide an offer of FAPE through the student's IEP. To "meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."<sup>29</sup> Not every procedural error is sufficient to rise to a denial of FAPE.<sup>30</sup> The procedural test is an "either/or" test that consists of three pivotal procedural errors: (1) whether the Student suffers a loss of educational opportunity;<sup>31</sup> (2) whether the Parent's right to participate in the IEP process was infringed; or (3) whether the procedural error caused a "deprivation of educational benefit."<sup>32</sup> Procedural errors rise to the level of a denial of FAPE where, absent the errors, there is a "strong likelihood" that alternative educational possibilities for the student "would have been better considered."<sup>33</sup>

The District decided to place all students in the RISE classroom on abbreviated school days as a group. This determination was presented to parents as the only available option for each student. This decision was made without considering whether the students individually would benefit from such an educational placement and deprived parents an opportunity to participate in the formulation of IEPs and the educational placement of their children. While the District utilized assistive technology in the RISE classroom, this use was not documented in IEPs in an individualized manner. Similarly, the District did not document in IEPs the behavior interventions used with students, the specially designed instruction and related services required by students, or assistive technology required by students. IEP goals for students in the classroom were not appropriately documented in the IEP, generally lacking detail as to how they were measured or how they would assist the student to access their education. Much of this data was left in working files in the classroom.

While the District provided PWN to parents regarding placement determinations, it did not meet the IDEA's requirements for the content of those notices, namely the basis for the District's decisions. These procedural and substantive errors further denied parents an opportunity for meaningful participation and the information needed to determine whether students were making progress in their educational programs. Consequently, neither parents nor IEP teams as a whole had sufficient information to determine whether abbreviated school day schedules were appropriate for students. Similarly, this lack of information in student IEPs resulted in the District to relying on a single person's professional judgment, rather than on the IEP team, to determine whether students required ESY services.

The Department substantiates this allegation.

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<sup>28</sup> *Id.* (slip op., at 13)

<sup>29</sup> *Andrew F., v Douglas County School District Re-1*, 137 S. Ct. 988, 999 (2017)

<sup>30</sup> *Amanda J. v. Clark Co. Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001) (citing *Roland M. v. Concord* 13684 Sch. Comm., 910 F.2d 983, 994 (1st Cir. 1990))

<sup>31</sup> *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992)

<sup>32</sup> *Amanda J.*, 267 F.3d at 892 (citing *Roland M.*, F.2d at 994)

<sup>33</sup> *Doug C. v. Hawaii Dep't of Educ.*, 720 F.3d 1038, 1047 (9th Cir. 2013)

## V. DISCUSSION RELEVANT TO THE DEPARTMENT

### State General Supervision

The Complainant alleged that the Department violated the IDEA and therefore did not guarantee a free appropriate education (FAPE) to students in the Klamath Falls City School District as illustrated by allegations toward the District above. Specifically, the Complainant alleged that the Department did not provide the necessary supervision and monitoring to ensure that students in the District received FAPE, even though students evidenced behavioral and other challenges in the school setting. It was also alleged that the Department did not maintain a complaint system capable of addressing “systemic” complaints, rather requiring parents and their advocates to file separate complaints alleging specific violation of the IDEA, Section 504, and/or the ADA.

The IDEA requires that each state education agency (SEA) exercise responsibility for general supervision of certain provisions of the IDEA. Part of that requirement is that each SEA must have in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency. Local education agencies (LEA) are responsible for providing a free appropriate public education to all school-age children with disabilities for which the district is responsible.<sup>34</sup> This responsibility includes the requirement that local districts ensure a continuum of alternative placement options to meet the needs of children with disabilities.<sup>35</sup>

The IDEA places supervision responsibility with the SEA. As part of that responsibility, each SEA must adopt written procedures for resolving complaints, including remedying failures through corrective action.<sup>36</sup> An individual or organization may file with the SEA a complaint alleging substantive and/or procedural violations of the IDEA.<sup>37</sup> If the complainant alleges violations outside of the scope of the IDEA, the SEA will direct the complainant to alternative procedures to address their allegations.<sup>38</sup> The SEA will investigate the allegations raised, directing the LEA to respond to the allegations and provide documentation in the course of the investigation.<sup>39</sup>

In support of local district responsibilities, the Department has issued advice to local education agencies (LEAs) regarding Oregon law relevant to the use of abbreviated school days.<sup>40</sup> The Department has also issued guidance to districts that recognizing the various disruptions caused by the COVID-19 pandemic and that, despite such challenges as workforce shortages, “...school districts and programs must continue to meet all federal and state requirements, including...that FAPE is provided to each

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<sup>34</sup> OAR 581-015-2040(1)

<sup>35</sup> OAR 581-015-2005(1)(a)

<sup>36</sup> OAR 581-015-2030; and 34 CFR § 300.149, 300.150, 300.151, 300.152

<sup>37</sup> OAR 581-015-2030(1)

<sup>38</sup> OAR 581-015-2030(4)

<sup>39</sup> OAR 581-015-2030(5)—(10)

<sup>40</sup> Executive Numbered Memorandum 009-2015-16 – Reduced School Days

eligible student.”<sup>41</sup> Specific to abbreviated school days, the Department also provides guidance and a sample form for use by districts. <sup>42</sup>

The various concerns raised in this Complaint arose from the District’s inability to meet the needs of students with disabilities within the program created. The District acknowledged altering the educational placement of students with disabilities to serve the needs of the program. While initially intended to be temporary, the District acknowledged that the program was overwhelmed leading to the deficiencies observed above. The District did not seek the Department’s guidance in making these decisions. This Complaint is the first related to this District regarding this population of students. As such the Department has had no prior opportunity to address the concerns raised in this complaint with the District. Concerning any allegations raised by the Complainant falling outside the scope of the IDEA, the Department would advise the Complainant of alternative procedures available to address those concerns.

The Department does not substantiate this allegation.

## VI. CORRECTIVE ACTION<sup>43</sup>

*In the Matter of the Oregon Department of Education and the Klamath Falls City School District  
Case No. 021-054-038*

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

<b>Action Required</b>	<b>Submissions</b>	<b>Due Date</b>
1. The District must develop a plan to ensure appropriate compensatory education is provided for the twenty-three students in the RISE program for whom the District has implemented an abbreviated (shortened) school day. This plan must be based on an individual review of each student’s records and include, by student:	Submit to ODE copy of compensatory education plan.	<b>May 9, 2022</b>

<sup>41</sup> Department Policy Letter November 30, 2021, to Oregon school districts.

<sup>42</sup> <https://www.oregon.gov/ode/students-and-family/SpecialEducation/publications/Pages/abbreviatedschday.aspx>, (last visited February 23, 2022)

<sup>43</sup> The Department’s order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).

Action Required	Submissions	Due Date
<ul style="list-style-type: none"> <li>• A description of the compensatory education service(s) to be provided;</li> <li>• The total amount of each compensatory education service to be provided;</li> <li>• Individualized rationale used to determine type and amount of compensatory education needed;</li> <li>• The anticipated initiation and completion dates of compensatory education;</li> <li>• Where compensatory education will be provided;</li> <li>• Who, by role/position, will be responsible for providing compensatory education;</li> <li>• Who, by role/position, will be responsible for ensuring compensatory education occurs; and</li> <li>• Evidence that will be maintained to ensure completion of compensatory education.</li> </ul>		
<p>2. The District must secure ODE approval of its compensatory education plan.</p>	<p>Submit to ODE copy of compensatory education plan.</p>	<p><b>June 9, 2022</b></p>
<p>3. The District must implement the approved compensatory education plan with fidelity.</p>	<p>Evidence of completion of required compensatory education.</p>	<p><b>Within seven (7) work days of Completion Date identified in approved plan</b></p>
<p>4. ODE will conduct an onsite</p>		<p><b>June 9, 2022</b></p>

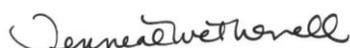
Action Required	Submissions	Due Date
<p>visit to review the files of the twenty-three students in the RISE Program.</p> <p>After receiving the onsite visit report, the District will convene an IEP team meeting for any student whose file review indicates the school day was inappropriately shortened. In convening, reviewing, and revising each IEP, the District will ensure special attention to the areas of noncompliance. Each IEP meeting will be followed by a meeting to review, and revise, as necessary, the placement decision.</p>	<p>For each IEP and placement meeting conducted, submit to ODE and the Parent or Adult Student, a copy of the IEP and placement team meeting notice(s), contact log regarding the individual student's meetings, a complete copy of the IEP, and separate placement determination, any meeting notes or minutes, and copies of any prior written notices.</p>	<p><b>As soon as possible but not later than September 1, 2022</b></p>
<p>5. The District will convene an IEP team meeting for each student served within the District's RISE Program:</p> <ul style="list-style-type: none"> <li>• To consider whether the child's behavior impedes their learning or that of others;</li> <li>• If so, to consider whether a new or revised FBA is required;</li> <li>• If so, to seek consent for a reevaluation to conduct an FBA, and for any other purposes the IEP team determines necessary, if any.</li> </ul> <p>The District must complete each reevaluation determined necessary as a result of these meetings, and reconvene in each of those instances to review the results of the FBA and determine the need for a BIP. The District must ensure</p>	<p>For each student served within the District's RISE Program, submit to ODE evidence sufficient to demonstrate this action has been completed, including but not limited to, a copy of the IEP and placement team meeting notice(s), contact log regarding the individual student's meetings, a complete copy of the IEP, and separate placement determination, any meeting notes or minutes, copies of consents for reevaluation, copies of any prior written notices.</p> <p>For each student for whom a reevaluation was determined necessary, the District shall submit the completed FBA and any BIPs developed as a result of these meetings.</p>	<p><b>As soon as possible but not later than June 16, 2022</b></p> <p><b>Reevaluations must be completed as soon as possible but not later than 60 school days from written parent</b></p>

Action Required	Submissions	Due Date
development of an appropriate BIP in each instance where the IEP team determines it necessary.		<b>consent. FBAs and, if appropriate, BIPs must be submitted to ODE within seven (7) work days of completion of the reevaluation.</b>
<p>6. The District must develop a plan for a series of high quality district-wide special education trainings to occur for all building and program administrators, special education staff, and related services providers employed by the district, with at least one training session related to at least each of the following areas:</p> <ul style="list-style-type: none"> <li>• Procedural Safeguards, including parent participation requirements;</li> <li>• Coordinating the sequential processes and parent involvement from pre-referral to evaluation/re-evaluation to IEP implementation and placement, including revisions between annual meetings;</li> <li>• Special considerations in IEP development and implementation for students with complex needs, including students who may meet criteria for more than one disability;</li> <li>• Provision of FAPE in the Least Restrictive Environment (LRE), the relationship of non-participation justification, placement decisions; and the requirements of SB 263;</li> <li>• Strategies for identifying and</li> </ul>	<p>Submit to ODE copies of training plan for the training series, including at least the following:</p> <ul style="list-style-type: none"> <li>• Date, start time, and end time for each session;</li> <li>• General topic of each session;</li> <li>• Specific learning outcomes for each session;</li> <li>• Agenda for each session;</li> <li>• Instructional plan for each session; and</li> <li>• Assessment plan for each session.</li> </ul>	<b>September 9, 2022</b>

Action Required	Submissions	Due Date
<p>implementing appropriate supports (accommodations, modifications, supplementary aids and services, and supports, including behavior) for students with disabilities, and supports to personnel;</p> <ul style="list-style-type: none"> <li>• Discipline requirements, related parent involvement, and record-keeping; and;</li> <li>• Review and revision of IEPs.</li> </ul>		
<p>7. The District must secure ODE approval of the training plan prior to implementation.</p>	<p>Submit to ODE copy of training plan.</p>	<p><b>October 9, 2022</b></p>
<p>8. The District must implement the approved training plan with fidelity.</p>	<p>Submit evidence of completion of each training session, including a signed attendee list, which must include the name and position/role of each attendee, presenter(s), materials used, assessment results, and any meeting notes or minutes.</p>	<p><b>Within seven (7) work days of each scheduled session</b></p> <p><b>All sessions must be completed no later than March 8, 2023.</b></p>
<p>9. With ODE assistance, the District must review existing District Special Education Policies, Administrative Regulations (AR), and District implementing procedures, forms, and materials to determine the need for revisions, with special attention to areas of noncompliance identified in this order.</p>	<p>Email confirming mutually agreed upon date/time scheduled to review these items with ODE.</p> <p>Submit to ODE copies of reviewed documents, with proposed edits showing.</p> <p>Submit to ODE a copy of Klamath Falls City School Board procedures and timelines for amending Board-adopted policies.</p>	<p><b>November 1, 2022</b></p> <p><b>December 1, 2022</b></p> <p><b>December 1, 2022</b></p>
<p>10. Upon approval of proposed special education policy/procedure edits, the District must initiate the change processes within the District,</p>	<p>Provide evidence of referral to District Board.</p> <p>Upon completion of Board process, submit copy of</p>	<p><b>January 6, 2023</b></p> <p><b>March 8, 2023</b></p>

Action Required	Submissions	Due Date
referring Board-adopted information to the Board for consideration.	Board Agenda(s) and official minutes of meeting in which the Board acted upon the proposed revisions.	
<p>11. The District will meet each month with staff working within the RISE Program, District administrators, ODE, and any other appropriate parties as determined by District or ODE, to review:</p> <ul style="list-style-type: none"> <li>• Progress related to any needed policy revisions;</li> <li>• Status of required training;</li> <li>• Status of required IEP meetings and resulting reevaluations; and</li> <li>• Any required compensatory education.</li> </ul>	For each meeting, submit evidence of completion, including copies of Agenda, attendee list, including name and position/role of each attendee, status updates for each required corrective action, and any additional meeting notes or minutes.	<p><b>Meetings to be held monthly until all required corrective action has been completed. Evidence to be submitted within seven (7) work days of each meeting.</b></p>

Dated: March 9, 2022



Tenneal Wetherell  
Assistant Superintendent  
Office of Enhancing Student Opportunities

E-mailing Date: March 9, 2022

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