

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Lincoln County SD	)	
	)	FINDINGS OF FACT,
	)	CONCLUSIONS,
	)	AND FINAL ORDER
	)	Case No. 13-054-031

**I. BACKGROUND**

On October 24, 2013, the Oregon Department of Education (Department) received a letter of complaint from the parents (Parent(s)) of a student (Student) residing in the Lincoln School District (District). The complaint requested a special education investigation under OAR 581-015-2030. The Department provided a copy of the complaint letter to the District.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.<sup>1</sup> On November 5, 2013, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the complaint to be investigated. On November 19, 2013, the District submitted its *Response* to the *Request for Response*, with accompanying documentation (360 pages). The Parents did not submit a written *Reply* in this case. This order is timely.

The Department's contract complaint investigator (complaint investigator) interviewed by telephone the District's Special Education Director on December 11, 2013 and December 12, 2013; interviewed by telephone a Special Education Teacher on December 13, 2013; and interviewed by telephone one of the Parents on December 12, 2013. The complaint investigator reviewed and considered all of the interviews and documents in reaching the findings of fact and conclusions of law contained in this order.

**II. ALLEGATIONS AND CONCLUSIONS**

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR §§ 300.151-153. The complainant's allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from October 25, 2012, to the filing of this complaint on October 24, 2013.<sup>2</sup>

No.	Allegations	Conclusions
1.	<p><b><u>Parent participation - General</u></b></p> <p>The complaint alleges that the District violated the IDEA by removing the Student from "mainstream education" (to a "non-diploma track") without the</p>	<p><b><u>Not Substantiated</u></b></p> <p>The Student's IEP does not indicate the Student is on a "non-diploma track" as the Parent alleged. The fact that District staff indicated to the Parents that the Student's performance was</p>

<sup>1</sup> OAR 581-015-2030; 34 CFR §§ 300.151-153

<sup>2</sup> OAR 581-015-2030(5)

	<p>knowledge or consent of the Parents.</p> <p>Relevant Law: OAR 581-015-2190 and 34 CFR 300.500, 300.327, 300.501(b); OAR 581-015-2220 and 34 CFR 300.323.</p>	<p>sufficiently below grade level and it was not likely the Student would be able to earn a regular diploma. This does not equal placing the Student on a "non-diploma track." Additionally, the documents provided by the District demonstrate that the Parents participated in all IEP meetings concerning the Student. The Department does not substantiate the allegation.</p>
<p>2.</p>	<p><b><u>Least Restrictive Environment (LRE)</u></b></p> <p>The complaint alleges that the District violated the IDEA by failing to provide FAPE in the Least Restrictive Environment (LRE) despite the Parents' long-standing protests of placement in "segregated" special education classes.</p> <p>Relevant law: OAR 581-015-2240 and 34 CFR 300.114.</p>	<p><b><u>Not Substantiated</u></b></p> <p>The Student's placement, prior to the withdrawal of the Student from the District, represents a balance of both regular and special education classes based upon the Student's disabilities and the relevant IEP team placement determination. The Department does not substantiate the allegation that the Student's placement does not represent the least-restrictive environment for the Student. Additionally, the documents provided by the District demonstrate Parent participating in all IEP meetings concerning the Student. The Department does not substantiate the allegation.</p>
<p>3.</p>	<p><b><u>When IEPs Must Be in Effect/IEP Implementation</u></b></p> <p>a) The complaint alleges that the District violated the IDEA by failing to implement the requirements of the Student's IEP concerning "full inclusion" and that Student was removed from the mainstream classroom in violation of the IEP.</p> <p>b) The complaint alleges a failure to follow the IEP directions for the use of a calculator.</p>	<p><b><u>Not Substantiated</u></b></p> <p>a) Review of the Student's IEPs in this case does not reveal a placement in "mainstream" classrooms, but reveals a determination by the IEP team, including the Parents, that the appropriate placement required the provision of Specially Designed Instruction (SDI) in the special education classroom as well as instruction in the general education classroom to ensure adequate progress toward the Student's academic goals and objectives in light of the Student's disabilities. The Department does not substantiate this allegation.</p> <p>b) The District did implement this provision of the IEP by providing calculators with large displays for the Student's use in the special education classroom and the Student did use the calculator for math assignments in this classroom. The Department does not substantiate this allegation.</p>

	<p>c) The complaint alleges that the District violated the IDEA by failing to follow the IEP for "print-disabled technology."</p> <p>d) The complaint alleges that the District violated the IDEA by failing to properly educate regular education teachers and that the District did not provide trained teacher assistants for the delivery of services to the Student in the regular education classroom.</p> <p>Relevant law: OAR 581-015-2220 and 34 CFR 300.323.</p>	<p>c) The District provided accommodations and Assistive Technology (AT) designed to facilitate the Student's access to the Student's SDI and regular education through methods other than conventionally printed materials. The Department does not substantiate this allegation.</p> <p>d) The special education teacher did provide ongoing consultation with the Student's regular education teachers concerning the Student's disabilities as required by the IEP. The Student accessed the general education curriculum in the Student's regular education classes. The Department does not substantiate this allegation.</p>
4.	<p><b><u>Denial of FAPE</u></b></p> <p>The complaint alleges the District refused to provide the Student with a free appropriate public education (FAPE) by removing the Student from the mainstream classroom and not following the IEP.</p> <p>Relevant law: OAR 581-015-2040 and 34 CFR 300.101.</p>	<p><b><u>Not Substantiated</u></b></p> <p>In this case, the documents submitted by the District demonstrate that the Student was making progress toward the Student's IEP goals and objectives, despite the Student's numerous absences from school. The Department does not substantiate the allegation that the District failed to provide FAPE to the Student during the period beginning October 25, 2012 to the time of the Student's formal withdrawal on January 14, 2013.</p>

	<p><b><u>Proposed Corrective Action</u></b></p> <p>The complainant requests the following corrective action:</p> <p>Provision of 50 hours of remedial tutoring to the Student at the Student's public charter school, at the District's expense.</p>	<p>No Corrective Action is ordered in this case.</p>
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### III. FINDINGS OF FACT

#### Background

1. The Student in this case is presently 14 years old, and is eligible for special education under the categories of Orthopedic Impairment and Specific Learning Disability. The Parent states that after December 14, 2012, the Student did not attend school at the District except to take assessments.
2. The Student was absent from December 17, 2012 to January 14, 2013 and the Student last attended school in the District on January 15, 2013.
3. The Student formally withdrew from attendance in the District to be home schooled on or about January 14, 2013, and the Student enrolled in a charter school (Oregon Connections Academy) in early February of 2013. The District received a records request from the charter school dated February 6, 2013.
4. The Student missed 28 days of school from September 5, 2012 to January 15, 2013.
5. This complaint implicates the District for only the portion of the 2012-2013 school year beginning on October 25, 2012 (one year preceding the filing of the complaint in this case), when the Student attended seventh grade in the District.
6. The District provided to the Department an IEP for the Student dated February 6, 2013.<sup>3</sup> This IEP includes the modifications made to the Student's IEP on September 13, 2012 and on November 29, 2012. The Student's November 29, 2012 IEP included assistive technology, providing for use of the Student's personal iPad. This change was made pursuant to a mediation agreement entered into by the District and the Parents on November 28, 2012. The placement page of the Student's February 6, 2013 IEP states that the Parents "opted to home school."

#### Parent Participation – General; Least Restrictive Environment (LRE); FAPE

7. The Student's February 10, 2012 IEP does not state that the Student is on a "non-diploma track," and the District states the diploma track decision is a determination that is not made until a student is in high school. District staff indicated that the fact that the Student is several years behind grade level means that not obtaining a standard diploma is likely but would not be determined until the Student reaches high school.
8. The Student's February 10, 2012 and February 6, 2013 IEPs indicate that the Student is reading at a kindergarten to first grade level and is behind grade level in writing and mathematics.
9. The Student's February 10, 2012 IEP and the meeting minutes indicate that the Parents participated in the February 10, 2012 IEP meeting, "telephonically."
10. The meeting minutes state "Placement 40-79% of day in gen ed classroom," and that "All team members agree on IEP content." February 10, 2012 IEP selects the placement of "Regular class with resource room support; Regular class with 21-60% resource room or other special class (\*40-

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<sup>3</sup> Note that upon receiving notice that a parent will home school a child with a disability, the District shall offer, an opportunity for an IEP meeting to consider providing special education and related services to the child with a disability in conjunction with homeschooling. An IEP shall be developed only if the team determines that a FAPE can be provided in conjunction with homeschooling. See OAR 581-021-0029(5).

79% of day in regular class).” The Present Levels of Academic Achievement and Functional Performance indicate that the Student required SDI in a small group setting to ensure access to appropriate pacing and academic supports. The Student’s report cards and IEP goal progress reports indicate the Student was making progress toward the Student’s goals and objectives, prior to withdrawal of the Student.

#### **When IEPs Must Be in Effect/IEP Implementation**

11. The Student’s IEP dated February 10, 2012, the IEP in effect one year preceding the filing of the complaint in this case, selects the placement of “Regular class with resource room support; Regular class with 21-60% resource room or other special class (\*40-79% of day in regular class).” Additionally, the Nonparticipation Justification portion of the Student’s February 10, 2012 IEP states that the Student “will receive 100 minutes of specially designed instruction in academics a day in the special education classroom. The Student will receive 120 minutes of speech a month and 30 minutes of adaptive PE a week in other school settings.” This is consistent with the Service Summary and Present Levels of Academic Achievement and Functional Performance portions of the February 10, 2012 IEP.
12. The Student’s February 10, 2012 IEP provides, in the Supplementary Aids/Services; Modifications & Accommodations portion, for “Support tools: Calculator.” The Student’s math instruction occurred in the Functional Academics classroom, with the special education teacher; and this teacher did implement the IEP provision for use of a calculator by the Student. All students in the special education classroom had access to calculators with large displays and the Student did use the calculator in the special education classroom.
13. During the telephone interview with the Parent, the Parent clarified that his/her phrase “print-disabled technology” refers to assistive technology used to assist students who cannot access conventional printed materials.
14. The Student’s February 10, 2012 IEP includes, in the Supplementary Aids/Services; Modifications & Accommodations portion, “Auditory Materials: Books on tape/CD/Digital from TBABS” and “Instructional materials: Large print materials.”
15. The District agreed during mediation in November of 2012 to include Assistive Technology (AT) in the Student’s IEP, although the District had already been providing certain AT, including, books on tape, and enlarged print classroom handouts” when delivering instruction to the Student.
16. The Parents provided no details concerning the allegation that the District failed to properly educate regular education teachers, other than their perception that the Student did not participate in the regular education curriculum in the Student’s Science class. However, the District did not provide SDI to the Student in the regular education classes. The special education teacher did provide ongoing consultation with the Student’s regular education teachers concerning the Student’s disabilities.

### **IV. DISCUSSION**

#### **1. Parent Participation – General**

The complaint alleges the District violated the IDEA by removing the Student from “mainstream education” (to a “non-diploma track”) without the knowledge or consent of the Parents.

OAR 581-015-2190 lists general parent participation requirements under the IDEA. This rule notes that school districts must give parents an opportunity to participate in meetings with respect to the identification, evaluation, IEP, and educational placement of a child, and the provision of a free appropriate public education (FAPE).

The Student's IEP does not indicate the Student is on a "non-diploma track." The fact that District staff indicated to the Parents in informal conversations that the Student's performance was sufficiently below grade level, and that it is unlikely the Student will be able to earn a regular diploma. This does not equal placing the Student on a "non-diploma track." Additionally, the documents provided by the District in this case demonstrate that the Parents participated in all IEP meetings concerning the Student. The Department does not substantiate the allegation that the District placed the Student on a "non-diploma track," and further does not substantiate the allegation that any such decisions occurred without Parental knowledge or participation.

## **2. Least Restrictive Environment (LRE)**

The complaint alleges that the District violated the IDEA by failing to provide FAPE in the Least Restrictive Environment (LRE) despite the Parents' long-standing protests of placement in "segregated" special education classes; and that the District refused to provide the Student with a FAPE by removing the Student from the mainstream classroom and not following the IEP.

Oregon rules require that to the maximum extent appropriate, children with disabilities shall be educated with children who do not have a disability.<sup>4</sup> Special classes, separate schooling, or other removals of children with disabilities from a regular education classroom must occur only if the nature or severity of the student's disability is such that education in regular education classes with the use of supplementary aids and services cannot be achieved satisfactorily.<sup>5</sup>

The documents provided by the District do not bear out the allegation that the Parents have protested the Student's placement. Additionally, the Department finds nothing in the documents provided in this case that demonstrate that the placement of the Student is not in the least-restrictive environment. The IEP team decided how much time the Student should be removed from the general education classroom, based on the Student's need for specially designed instruction, and the Student's educational needs that could not be met in the general education classroom with the use of supplementary aids and services. The Department does not see a basis for concluding that the Student would continue to make progress if the Student were enrolled in only regular education classes without SDI in a special education classroom. The Student's placement, prior to the withdrawal of the Student from the District, represents a balance of regular and special education classes based upon the Student's disabilities as decided by the most recent IEP. The Department does not substantiate the allegation that the Student's placement does not represent the least-restrictive environment for the Student.

## **3. When IEPs Must Be in Effect/IEP Implementation**

The complaint makes numerous allegations regarding IEP implementation and when an IEP must be in effect. The Parents allege that the District failed to implement the requirements of the Student's IEP concerning "full inclusion" and that the Student was removed from the mainstream in violation of the IEP. The complaint also alleges the Student was not allowed to use a calculator in class and that the District did not provide the Student with access to "print disabled technology."

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<sup>4</sup> See OAR 581-015-2240

<sup>5</sup> OAR 581-015-2240(2)

OAR 581-015-2220 sets the standards for IEP implementation. At the beginning of each school year, a district must have in effect an IEP for each child with a disability within the district's jurisdiction. School districts must provide special education and related services to a child with a disability in accordance with an IEP.

Review of the Student's IEPs in this case does not reveal a placement determination of "mainstream" classrooms, but reveals a determination by the IEP team, including the Parents, that the appropriate placement for this Student required some SDI in the special education classroom in addition to some regular education classes to ensure adequate progress toward the Student's academic goals and objectives in light of the Student's disabilities. The Department does not substantiate the "full inclusion" portion of the allegation.

Next, the complaint also alleges that the District failed to follow the IEP concerning the use of a calculator. However, the District did implement this provision of the IEP by providing calculators with large displays for the Student's use in the special education classroom and the Student did use the calculator for math assignments in this classroom. The Department does not substantiate this portion of the allegation.

The complaint also alleges that the District failed to follow the IEP concerning "print-disabled technology". However, the District did provide accommodations and AT designed to facilitate the Student's access to the Student's SDI and regular education through the use of other than conventionally printed materials. The Department does not substantiate this portion of the allegation.

Finally, the complaint alleges that the District failed to properly educate regular education teachers and did not provide trained teacher assistants in the delivery of services to the Student in the regular education classroom. This is based upon the Parent's perception that the Student did not participate in the regular education curriculum in the Student's Science class. However, the special education teacher did provide ongoing consultation with the Student's regular education teachers concerning the Student's disabilities. Additionally, the District did not provide SDI in the regular education classes attended by the Student, so the Student was accessing the regular education curriculum in the Student's regular education classes. The Department does not substantiate this portion of the allegation.

#### **4. Denial of FAPE**

The complaint also alleges that the District failed to provide FAPE.

OAR 581-015-2040 provides that Districts must provide "special education and related services to all school-age children with disabilities," and defines "school age children" as "children who have not yet reached 21 years of age on or before September 1 of the current school year." Special education is defined as "specially designed instruction that is provided at no cost to parents to meet the unique needs of a child with a disability."<sup>6</sup> Additionally, FAPE is broadly defined in the 2006 Part B regulations as special education and related services that are provided at public expense, under public supervision and direction, without charge; meet the standards of the State Education Agency; include an appropriate preschool, elementary school, or secondary school education in the state involved, and are provided in conformity with an IEP that meets the

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<sup>6</sup> OAR 581-015-2000(34)

requirements of 34 CFR 300.320 through 34 CFR 300.324.<sup>7</sup> The contours of an appropriate education must be decided on a case-by-case basis, in light of an individualized consideration of the unique needs of each eligible student.<sup>8</sup> The Supreme Court has developed a two part test to determine the appropriateness of an educational program: 1) the procedural requirements of the IDEA must be met; and 2) the IEP must be developed and reasonably calculated to enable the child to receive educational benefit.<sup>9</sup> Districts are not required to maximize a student's educational performance to provide a FAPE.<sup>10</sup>

In this case, the documents submitted by the District demonstrate that the Student was making progress toward the Student's IEP goals and objectives, despite the Student's numerous absences from school. In addition the District also demonstrated compliance with the procedural requirements of the IDEA. The Department does not substantiate the allegation that the District failed to provide FAPE to the Student during the period beginning October 25, 2012 to the time of the Student's formal withdrawal on January 14, 2013.

### **CORRECTIVE ACTION**

*In the Matter of Lincoln County School District*  
Case No. 13-054-031

The Department does not order Corrective Action resulting from this investigation.

Dated this 18th Day of December 2013



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

Mailing Date: December 18, 2013

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<sup>7</sup> 34 CFR 300.17

<sup>8</sup> *Board of Educ. of the Hendrick Hudson Cent. Scho. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982).

<sup>9</sup> *Id.*

<sup>10</sup> *J.L. v. Mercer Island School District*, 55 IDELR 164 \*W.D. Wash. 2010).