

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Eugene 4J School)
District)
)
)

FINDINGS OF FACT,
CONCLUSIONS,
AND SECOND AMENDED FINAL
ORDER
Case No. 15-054-047

I. BACKGROUND

On December 21, 2015, the Oregon Department of Education (Department) received a written request for a Complaint Investigation (Investigation) from a Complainant (Complainant) on behalf of Students with Disabilities (Students) receiving services from the Eugene 4J School District (District). The Complainant requested that the Department conduct a Special Education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department confirmed receipt of the Complaint and forwarded the request to the District by email on December 22, 2015.

On December 23, 2015, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the Complaint that the Department would investigate. The District delivered its timely *Response* to the Department's Contract Complaint Investigator, which was received on January 8, 2016, and emailed a copy of its narrative statement to the Complainant. In addition to the twelve-page narrative *Response*, the District provided 1968 numbered pages of documents including student specific documents, District policies and procedures in support of its *Response* and pursuant to the requests contained in the RFR to the Department's Contract Complaint Investigator.

The District provided the following documentation:

Volume 1:	Sec. #1:	Student Schedules	Page 1-26
	Sec. #2:	Case Managers Case Load list	Page 27-30
	Sec. #3:	Menu Calendar	Page 31
		Nutrition Emails with ODE	Page 32-34
		GoogleMaps re: Transportation	Page 35-40
		4J Transportation Times	Page 41-44
	Sec #4:	4J District Policies	Page 45-136
	Sec #5:	4J District Special Education	
		Policies and Evaluation	
		Guidelines	Page 137-288
Volume 2:		Student Specific Documents	Page 1-476
Volume 3:		Student Specific Documents	Page 1-736

The Department’s Complaint Investigator determined that on-site interviews were required. On January 11, 19, and 22, 2016, the Department’s Investigator interviewed the Complainant. On January 21, 2016 the Department’s Investigator interviewed a District Educational Support Services (ESS) Administrator supervising the alternative education high schools, the District Interim Principal of the alternative education high school, a District School Psychologist, one Special Education Teacher, and one General Education Teacher (who also is the leader of student outreach). The District’s ESS Director exchanged email communications and was briefly interviewed on January 8, 26 and 28, 2016. On January 28, 2016, the District provided an additional 96 pages of documents in response to the Complaint Investigator’s request for progress reports on the annual goals contained in fourteen selected Students’ IEPs. The District also provided a six-page spreadsheet with data on students and a two-page email explaining the spreadsheet. The Department’s Complaint Investigator reviewed and considered all of these documents, exhibits, and interviews.

Under federal and state law, the Department must investigate written complaints that allege IDEA violations that occurred within the twelve months prior to the Department’s receipt of the complaint and issue a final order within 60 days of receiving the complaint.¹ The Department may extend the timeline if the District and the Complainant agree to an extension to participate in local resolution, mediation, or if requisite exceptional circumstances are present.² This Second Amended Order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The Complainant’s allegations and the Department’s conclusions are set out in the chart below. These conclusions are based on the Findings of Fact (Section III) and the Discussion (Section IV). This Complaint covers the one-year period from December 22, 2014 to the filing of this complaint on December 21, 2015.³

	Allegations	Conclusions
	The written complaint alleges that the District violated the IDEA in the following ways:	

¹ OAR 581-015-2030(5); 34 CFR §§ 300.151-153.
² OAR 581-015-2030(12).
³ See OAR 581-015-2030(5); 34 CFR § 300.153(c).

<p>1. <u>Placement of the Child</u></p> <p>Changing the Students' placements without:</p> <ul style="list-style-type: none"> A. Holding a meeting to determine placement; B. Placing the Students in the least restrictive environment; C. Basing the placement on the Students' current IEPs; D. Placing the Students in a location that is not as close as possible to the Students' homes; E. Considering the potential harmful effect on the Students or on the quality of services which the Students need; and F. Not providing needed modifications in the age-appropriate regular classrooms and instead removing the Students from their general education classrooms. <p>(Relevant Law and Regulations: OAR 581-015-2250; 34 CFR § 300.116; 34 CFR § 300.327)</p>	<p>Substantiated</p> <p>Each instance of transferring a student from a District school to the alternative school does not automatically constitute a change in placement and trigger associated requirements under the IDEA. Depending on the circumstances, some transfers may simply constitute a change in location.</p> <p>However, when the transfer of a student to the alternative School substantially or materially alters the Student's educational program, a change in placement occurs, and IDEA procedures such as the convening of the student's placement team and issuance of a prior written notice must be observed. The revision of the educational program set out in a student's IEP can represent a substantial or material alteration to a student's educational program.</p> <p>Here, the Students' placement teams did not make the decision to place Students at the alternative school. Rather, the decision to transfer Students to the alternative school is a general education decision made by a District-wide Case Management Team. No prior written notice is issued after the District-wide Case Management Team decides to transfer a Student to the alternative school.</p> <p>At least 10 students who were transferred to the alternative school had educational programs, memorialized in their respective IEPs, that required pull-out services in a Learning Center or Resource Room. The District concedes the alternative school did not offer or deliver pull-out services for these Students. This failure to offer or deliver previously agreed upon services constitutes a revision to the educational program set out in each Student's IEP, and substantially or materially alters the Student's educational program.</p>
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		<p>Under these circumstances, a change in placement occurred with respect to these Students, triggering requirements under IDEA such as the convening of the Students' placement team and issuance of a prior written notice. The District did not complete these required tasks.</p> <p>See Corrective Action</p>
2.	<p><u>Individualized Education Program (IEP)</u></p> <p>A. Not providing Special Education and related services to a Student with a disability in accordance with each Student's IEP; or, in the alternative,</p> <p>B. Not providing access to general education instruction, in lieu of the provision of specially designed instruction, due to the shortened day.</p> <p>(Relevant Law and Regulations: OAR 581-015-2220; 34 CFR § 300.323; 34 CFR § 300.324)</p>	<p>A. Substantiated</p> <p>The District's School uses an inclusive, embedded instructional model. While all students' instruction is individualized, there is no record of the amount of specially designed instruction the District provided to the Students. There are no written progress reports on the Students' annual goals.</p> <p>B. Not Substantiated</p> <p>All Students attend two ninety-minute periods of instruction; therefore, Students with IEPs receive the same access to general education instruction as all other students.</p> <p>See Corrective Action</p>
3.	<p><u>Nonacademic Settings</u></p> <p>A. Not ensuring that the Students with a disability participate with students who do not have a disability in extracurricular services and activities to the maximum extent appropriate to the needs of the child; and</p> <p>B. Not ensuring that the Students with a disability have the supplementary aides and services determined by the Students' IEP Teams to be appropriate and necessary for the Students to participate in nonacademic settings.</p>	<p>Not Substantiated</p> <p>A. and B.</p> <p>Students with disabilities are afforded opportunities to participate in extra-curricular activities, are afforded supplementary aides and services in extra-curricular settings and if transportation is a related service in a Student's IEP, the Student receives the transportation.</p>

	(Relevant Law and Regulations: OAR 581-015-2255; 34 CFR § 300.107; 34 CFR § 300.117)	
4.	<p><u>Evaluation Procedures</u></p> <p>A. Not assessing the Students in all areas of suspected disability;</p> <p>B. Not evaluating the Students with a sufficiently comprehensive evaluation to identify all of the Students' Special Education related service needs; and</p> <p>C. Not including assessment tools and strategies to provide relevant information that directly assists persons in determining the educational needs of the Students.</p> <p>(Relevant Law and Regulations: OAR 581-015-2110; 34 CFR § 300.304; 34 CFR § 300.305)</p>	<p>Not Substantiated</p> <p>There is no evidence that the District failed to complete all required evaluations in an appropriate fashion.</p>

	<p><u>Requested Corrective Action.</u></p> <p>The Complainant proposes that the District review and revise its evaluation processes for high school students eligible for Special Education services, and ensure that all students assigned to schools outside of their neighborhood schools receive a commensurate level of services as they would receive at the student's neighborhood school.</p>	<p>See Corrective Action Ordered</p>
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III. FINDINGS OF FACT

Background

1. The District has three District alternative education locations, two of which are located on the campus of the local community college (Lane Community College). The District describes its alternative education programs as a "multi-service

program that uses a variety of strategies to engage students who have found limited success in the traditional high school setting.”

2. One of the District’s alternative education schools (School), the subject of this Complaint, is described as “an alternative 4J high school. Class sizes are small and credit is accelerated, helping students who have dropped out or who have not experienced success in traditional programs. Our academic programs stress community, personal growth and social success. Instruction is largely individualized and students are encouraged to take responsibility for their own learning and discipline. A school-to-work and school-to-college transition program allows students to explore career opportunities or attend Lane Community College while they earn high school credit.” Career and Technical Education programs may be available at the community college level to students attending the School. Some of the students have been out of school for an extended time period (e.g., dropped out and returning or not attending school while raising a child).
3. The School operates on a traditional nine-month school calendar with three equal trimesters.⁴ While the number of students served at the School varies throughout the year, in January 2016 there were approximately 160 students enrolled. Of those students, 35 students were eligible for Special Education and each had an Individualized Education Program (IEP). The Students eligible for Special Education services ranged in age from 15-19.
4. Staffing at the School for the 2015-2016 school year includes 11 full-time equivalent teaching staff, which includes a full time Special Education Teacher/Case Manager. Staffing also includes a full time Counselor and a .20 full-time equivalent Nurse.
5. The School shares a large building with other community college departments and has seven classrooms, including a computer lab. The School does not offer traditional extracurricular activities (e.g., athletics, drama, etc.). District policy allows dual enrollment and participation in extracurricular activities at a student’s home school upon certain conditions and is available for both general education and Special Education students. Anecdotal references to students who have accessed their home school extracurricular activities included dance team, track and field, and drama.
6. Beginning with the 2015-2016 school year, the District’s process for potential enrollment at the School begins with a home school’s referral to a District-wide Case Management Team (CMT) that reviews data (attendance, grades, credit acquisition, discipline, etc.) for the particular student. Enrollment at the School does not occur until the School staff, in consultation with the attending school, has a meeting with the student and his/her parents to assess the student’s potential success at the School.

⁴ The District’s 2015-16 high school calendar identifies 57.5 instructional days in each trimester. <http://www.4j.lane.edu/calendars/secondary2015/>.

7. Previously, the comprehensive high school referred the student to the School and the School would interview the student and parent (if available) to discuss alternative education options operated by the District, or contracted through the District's private providers of alternative education services. If the student demonstrated a likelihood of success at the School, and expressed a desire to attend the School, the School would extend an invitation to enroll at the beginning of the next trimester.
8. The District asserts that the decision to attend the School is a general education decision, not a Special Education decision, which involves the attending school personnel, District administrative staff, staff from the alternative education high school, the parents (if involved) and the student. The District asserts that the Students' IEP Teams do not have the ability to place the Student at the School. In thirty-three of the thirty-five IEPs of Students who were placed at the School, the IEP Team did not choose the School as the Student's placement. The District asserts that the IEP Team did not have authority to make such a placement.
9. The School is not set up in the manner of a traditional high school, with multiple periods of various subjects through an approximately six-hour day. When a student is enrolled at the School, they first attend a twelve-week "cohort". The cohort trimester is intended to orient the student to the new school, build community within the cohort, identify the student's academic status and level, complete comprehensive assessments, including academic areas and post-secondary plans, as well as identify vocational interests. Each trimester, approximately two groups of thirty-six to forty students begin in the cohort group. Each group attends two ninety-minute periods, either in the morning (9:00 am to 12:00 pm) or afternoon (12:45 pm to 3:45 pm) Monday through Thursday (although one Student receiving Special Education services has a required Friday class). The Special Education Teacher co-teaches the cohort with another general education teacher.
10. If the student is successful in the cohort, he/she may advance to "core". The core schedule is also set up as a morning or afternoon session with two ninety-minute periods, Monday through Thursday. The student can take assessments (Work Keys and Accuplacer) that may satisfy the "essential skills" performance-based graduation requirements. Additional courses may provide accelerated credit acquisition. Following "core", a student may return to his or her home high school, transfer to a GED program, or take community college courses for up to one year if the student meets the required performance based prerequisites.
11. The School's instructional methodology is described as an "inclusive" or "embedded" instructional model for both general education students and Special Education eligible students. Staff asserts that every student is treated with an individually tailored education plan (although not documented in a standardized format such as an IEP). Students working toward a modified diploma have their curriculum modified to their ability level and have the essential skills "cut" scores

lowered. School staff reported that there is no “pull-out” for resource room instruction. There are no logs, schedules, or documents to verify that a precise number of minutes were devoted to specially designed instruction (SDI) listed in a Student’s IEP. This embedded instructional technique was reported as individualized for every student attending the School, regardless of whether the student has an IEP or not.

12. As a result of this methodology of instruction, calculation of the amount of SDI is not possible with any degree of accuracy. Staff was unable to identify data to calculate the number of minutes of SDI any particular Student receives. The School’s Special Education Teacher co-teaches for two periods a day in the cohort program, and has a case management and a preparation period Monday through Thursday. The Teacher is available to meet with Students or consult with other teachers during her preparation period or on Fridays. Staff asserts that the SDI minutes identified in a Student’s IEP are met, or exceeded, through this inclusive instructional model.
13. The District provided thirty-five IEPs and related documents of Students enrolled in the School who were eligible for Special Education services and had an IEP during the 2015-2016 school year. Twenty-four Students were eligible under Specific Learning Disability (SLD). Six were eligible under Other Health Impaired (OHI). Three were eligible under Emotional Disturbance (ED). Two were eligible under Autism Spectrum Disorder (ASD). Three had dual eligibility (SLD/Communication; OHI/ED; and ED/Traumatic Brain Injury (TBI)), and for the purposes of this Complaint were only counted under one eligibility. Nine Students’ IEPs identified that they were on a modified diploma track.
14. All of the IEPs were written on District IEP forms and virtually every section of the IEPs was completed. Staff admitted that the majority of the IEPs do not have specific dates when progress reports on annual goals are to be reported. Some of the IEPs were written at the home high school and forwarded to the School when the Student joined the cohort. Infrequently was the IEP revised upon enrollment at the School, unless the IEP had expired. If the Student remained enrolled at the School when the annual review of the IEP occurred, the IEP was reviewed and revised at the School.
15. Twenty-nine of the IEPs contained at least one academic goal in Math, Reading and/or Writing/Language Arts. Six of the IEPs had a social/behavioral or organizational goal along with a transition goal. Every IEP contained specially designed instruction (SDI) for every annual goal. The amount of SDI for the annual goals varied.
16. Ten of the IEPs—each of which were developed by District staff at District schools—required that the Student’s educational program include pull-out services, wherein the Student was to be removed from the regularly attended classroom and provided individualized support in a Learning Center or Resource Room.

17. The Department's Investigator requested progress reports on annual goals for fourteen selected Students, a portion of the thirty-five Students on IEPs at the School. The District did provide Student report cards to the Department's Investigator, but no written progress reports on annual goals for any of the Students for the time period the Students attended the School. No formal progress reports on annual goals were provided to the Students or their parents. The District explained that each Student has a twenty-minute conference to discuss his or her performance at the end of each trimester prior to scheduling classes for the next term. The conference includes information on essential skills data, credit acquisition and forecasting, and discussion of the transition goal. Conferences are also held if the Student missed five school days, was not making progress in classes, or earned less than two credits per term.
18. The District completed timely, three-year, re-eligibility evaluations for all Students whose three-year eligibility arose during the 2014-2015 and 2015-2016 school years. However, in virtually every case, the re-eligibility psycho-educational evaluation was done solely by a file review and, if required for ED eligibility, short observations.
19. As a part of the twelve-week initial cohort curriculum, a total of six formal assessments are administered to all of the students. Developing student resumes and completing scholarship applications are also part of the cohort curriculum. In addition, the cohort curriculum involves students in outside career investigation and development.⁵
20. In the thirty-five IEPs that were reviewed, there was a transition goal, which was based on an "informal assessment" of the Student's interest. There is no reference to any additional age appropriate assessments in the IEPs; although staff reported that post-secondary goals are a central outcome of the initial cohort curriculum. Examples of the description in the transition assessment portion of the IEP include: 1) "on an informal assessment", 2) "[Student] is talented and motivated to become a computer programmer"; and 3) "[Student] will be participating in transition assessments as part of the cohort and core program at [the School]".
21. Many of the placement descriptions for the IEPs do not accurately reflect the current placement of the Students. The placement descriptions for the thirty-five IEPs are:
 - "regular classroom 100%" (14);
 - "regular classroom more than 80%" (11); "regular classroom 40 to 79%" (2);
 - "alt ed" (7); and;
 - "community based placement 40-79%" (1).

⁵ See, <https://oregoncis.uoregon.edu/portal/org/AboutUs.aspx> and <http://roadtripnation.org/#programs>.

22. The Department initially issued an Order in this matter on February 19, 2016. The District has satisfactorily completed all Corrective Action included in the original version of this Order.
23. The District petitioned for review of that order on April 19, 2016 and filed an amended petition for review on July 5, 2016.
24. On June 27, 2017, the Marion County Circuit Court issued a letter decision in which it concluded that the Department erred in not considering the four factors described in *Letter to Fisher*, 21 IDELR 992 (OSEP 1994). The Court further found that the Department's requirement that the District convene an IEP Team meeting exceeded the Department's discretion. The Court therefore remanded the order "to ODE for further action under a correct interpretation of the provision of law and to narrow the scope of its corrective action."
25. On November 13, 2017, the Department issued an Amended Order in conformity with the Court's June 27, 2017 decision. On December 29, 2017, the District submitted to the Department a Petition for Reconsideration of the Amended Order. In response, the Department issues this Second Amended Order.

IV. DISCUSSION

Under the IDEA, school districts must develop and implement an IEP for each eligible child that is designed to ensure that the child receives a free appropriate public education (FAPE).⁶

FAPE is defined as "special education and related services" that are: provided at public expense; meet state standards; include an appropriate preschool, elementary or secondary education; and are provided in conformity with an IEP.⁷ A school district meets its obligation to provide FAPE for an eligible child by complying with the procedural requirements of the IDEA and implementing an IEP reasonably calculated to enable a child to receive educational benefits.⁸

A written IEP must be in effect for each eligible child at the beginning of each school year. School districts must implement the services, modifications and accommodations identified on each student's IEP.⁹

A. Placement of the Child

The Complaint alleges that the District changed the Students' placements by: not holding a meeting to determine placement; not placing the Students in the least restrictive environment; not basing the placement on the Students' current IEPs; placing

⁶ 34 CFR § 300.101.

⁷ See 34 § CFR 300.17

⁸ See *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 US 176, EHLR 553:656 (1982).

⁹ OAR 581-015-2220.

the Students in a location that is not as close as possible to the Students' homes; not considering the potential harmful effect on the Students or on the quality of services which the Students need; and not providing needed modifications in the age-appropriate regular classrooms and instead removing the Students from their general education classrooms.

Districts are required to place a student in the least restrictive environment,¹⁰ and offer a continuum of alternative placements.¹¹ School districts must ensure that the decision regarding placement of a child with a disability be: made by a group of persons knowledgeable about the child, including the parent (or adult student); based on the child's current IEP; determined at least annually; and be close to the child's home as possible.¹²

The definition of educational placement is not an exact one. In developing its regulations, the U.S. Department of Education did not define the term "educational placement," although the "Department's longstanding position is that placement refers to the provision of special education and related services *rather than a specific place, such as a specific classroom or specific school.*"¹³ The Ninth Circuit has concluded that "under the IDEA a change in educational placement relates to whether the student is moved from one type of program – i.e., regular class – to another type – i.e., home instruction. A change in the educational placement can also result when there is a significant change in the student's program even if the student remains in the same setting."¹⁴

In *Letter to Fisher*, the Office of Special Education Programs (OSEP) advises that a change in educational placement occurs when there is a substantial or material alteration to the student's educational program.¹⁵ OSEP identifies the following four factors that must be examined in determining whether there has been a substantial or material alteration to a student's educational program: (1) whether the child will be able to be educated with nondisabled children to the same extent; (2) whether the child will have the same opportunities to participate in nonacademic and extracurricular services; (3) whether the new placement option is the same option on the continuum of alternative placements; and (4) whether the educational program set out in the child's IEP has been revised.¹⁶ OSEP states that each of the foregoing are "factors" that must be considered. We now consider each of the *Fisher* factors.

First, students at the School are able to be educated with nondisabled students to the same extent as they were at their previous schools. When the Students are placed at the School, they no longer receive SDI through pull-out services, even if their operative IEPs require such services. There is no "pull-out" for Resource Room or Learning

¹⁰ OAR 581-015-2240.

¹¹ OAR 581-015-2245.

¹² OAR 581-015-2250.

¹³ *D.M. v. N.J. Dept. of Educ.*, 801 F3d 205, 216 (3rd Cir 2015) (Emphasis in Original).

¹⁴ *N.D. v. State Dept. of Educ.*, 600 F3d 1104, 1116. (9th Cir. 2010).

¹⁵ Letter to Fisher, 21 IDELR 992 (OSEP 1994)

¹⁶ Letter to Fisher, 21 IDELR 992 (OSEP 1994)

Center instruction offered or delivered at the School. Consequently, the Students remain with nondisabled students at all times.

Second, the Students attending the School have similar opportunities to participate in nonacademic and extracurricular services as they did at their previous schools. Although the School does not offer the same types of nonacademic and extracurricular opportunities as traditional schools, these Students have the right to participate in these activities at other District schools.

Third, although the School is an alternative school, it is not a "special school" as considered by OAR 581-015-2245, as it is a general high school. Therefore, the mere placement of the Students at the School does not constitute a change in placement.

The fourth *Fisher* factor directs us to consider whether the educational program in the Students' IEPs have been revised. Not every instance of transferring a student from a District school to the School automatically constitutes a change in placement. Depending on the circumstances some transfers may simply constitute a change in location.

However, a review of the the IEPs of the Students at the School reflects that at least ten Students underwent a change in placement because their educational programs were revised in a material, substantial, or significant manner. Upon transfer from a District school to the School, these ten Students' IEPs were not followed with respect to implementation of previously agreed upon pull-out instruction. Each of these ten Students had operative IEPs developed by District staff at their prior schools. Each IEP specifically called for pull-out from the regular classroom environment to allow the Students to work on academic subjects with trained staff in a Resource Room or Learning Center. Some of the IEPs described pull-out instruction as necessary for progress to occur for the Student's academics or behavioral support.

Some Students' IEPs called for 70 minutes per day of pull-out for academic instruction in Reading or Math; one IEP called for 330 minutes per week of pull-out from the regular classroom environment for Reading, Math, and development of other skills; still other IEPs called for pull-out on a class-period basis. School staff state that no Students at the School receive pull-out instruction. The District's departure from delivering pull-out instruction in conformity with each Student's operative IEP, by providing no pull-out services at all, revised each Student's educational program in a material way.

Further, although transfer of a student to the School did not itself automatically constitute a change in placement, the District nonetheless moved the Students from one physical location to another. As a result, the students shifted from a traditional full-day school schedule to a 3-hour school day, four days per week. In the aggregate, the revisions to each of the ten Student's respective educational programs after transfer to the School constitutes a change in placement under the fourth *Fisher* factor.

In sum, at least ten District Students underwent a change in placement without: (1) the convening of an IEP Team meeting; (2) a determination by the Student's placement team;¹⁷ or (3) the issuance of a prior written notice. The Department substantiates this allegation.

B. Individualized Education Program (IEP)

The Complaint alleges that the District did not provide the Students' Special Education and related services in accordance with each Student's IEP; or, in the alternative, not providing access to general education instruction, in lieu of the provision of specially designed instruction, due to the shortened day. As mentioned above, a District must implement those services, modifications and accommodations contained in the child's IEP.¹⁸ Each of the Students' IEPs contained specially designed instruction (SDI) to meet the needs that result from the Student's disability. SDI is defined as "adapting, as appropriate to the needs of the eligible child... the content, methodology or delivery of instruction".¹⁹

The District identifies the School as an "alternative school" and the School does not model a traditional, comprehensive high school. The embedded nature of the instruction, whether for a Special Education student or a general education student, occurs during the three hours of class time. As staff reported, every student is treated individually according to his or her individual needs. Basically, staff asserted that every student at the School has an individual education plan that addresses his or her needs, which essentially replaces the IEP.

However, the fact that the School is premised on a different instructional model does not relieve it from providing services identified in the Students' IEPs. The District does not have logs, schedules or the ability to identify when and where the SDI contained in a Student's IEP was delivered. The District asserts that the SDI was delivered in amounts in excess of the service summary amounts through the embedded instructional methodology.

A District must report progress on annual goals. This progress may be reported concurrently with regular report cards.²⁰ The Department requested progress reports on fourteen of the thirty-five Students who had IEPs. The District was unable to provide any progress reports for the Students during the time the Students attended the School.

The Department substantiates the allegation that the District did not provide the Students' Special Education services in accordance with the Students' IEPs. Since the

¹⁷ There is no indication that the District CMT fulfills the role of a Student's placement team. As a District-wide team, there is no indication that the team is comprised of persons knowledgeable about each Student. The evidence does not reflect that the District used any process to determine whether or not education services at the School were consistent with services included in the Students' IEPs pursuant to OAR 581-015-2250. Furthermore, the District asserts the conclusions of the CMT are general education decisions, not special education decisions, precluding the CMT from being characterized as a special education placement team.

¹⁸ OAR 581-015-2220.

¹⁹ OAR 581-015-2000(34).

²⁰ OAR 581-015-2200(1)(c).

School's inclusive model provides all instruction in the general education environment, the alternative allegation regarding not providing access to general education instruction is not substantiated.

C. Nonacademic Settings

The Complaint alleges that the District does not ensure that the Students with a disability participate with students who do not have a disability in extracurricular services and activities to the maximum extent appropriate to the needs of the child and that the District does not ensure that the Students with a disability have the supplementary aides and services determined by the Students' IEP Teams to be appropriate and necessary for the Student to participate in nonacademic settings. This allegation is basically a restatement of the IDEA regulation for non-academic settings.²¹

Schools must take steps to provide supplementary aides and services determined appropriate and necessary by the IEP Team to afford an equal opportunity to participate in those services and activities. Nonacademic and extracurricular activities may include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the school district and assistance in making outside employment available.²²

While the School does not have traditional comprehensive high school extracurricular activities, District policy allows students to dually enroll in his/her home school in order to participate in these activities. The types of classes available are more limited at the School (e.g., no shop or culinary classes, etc.), although some may be available at the community college. A counselor, part time nurse and other central District support staff are available to the School's staff and students. Food service is reported as provided similarly to the comprehensive high school. Those students with transportation listed as a related service receive their transportation service. The Department does not identify any specific instances that support the claim that the Students with disabilities are not afforded the same opportunities as general education students to non-academic settings and services.

The Department does not substantiate this allegation.

D. Evaluation Procedures

The Complaint alleges that the District does not assess the Students in all areas of suspected disability; does not evaluate the Students with sufficiently comprehensive evaluations to identify all of the Students' Special Education related service needs; and does not include assessment tools and strategies to provide relevant information that

²¹ OAR 581-015-2255

²² OAR 581-015-2070

directly assists persons in determining the educational needs of the Students. The District is required to satisfy this regulation for Special Education students.²³

The Department finds no evidence that the District failed to complete all required evaluations in an appropriate and timely fashion. Evaluations were performed by qualified personnel and parental consent was obtained.

The Department does not substantiate this allegation.

E. Additional Findings

The Department finds that many of the Students have IEPs that do not contain sufficient content as it relates to purposes of transition requirements. Specifically, many of the IEPs do not contain appropriate measurable post-secondary goals based on age-appropriate transition assessments, nor do they include transition services related to appropriate goals. These goals must be related to training, education, employment and, where appropriate, independent living skills. The IEPs must also include the transition services (including courses of study) needed to assist the Student in reaching those goals.²⁴

CORRECTIVE ACTION²⁵

*In the Matter of Eugene 4J School District
Case No. 15-054-047*

No.	Action Required	Submissions ²⁶	Due Date	Date Completed
1.	<p>Policies and Procedures-Placement</p> <p>Schedule a technical assistance meeting with ODE and the district administrators responsible for the alternative education and special education</p>	<p>Submit an email to ODE confirming the meeting arrangements and listing the District participants.</p>	<p>March 16, 2016</p>	<p>March 31, 2016</p>

²³ OAR 581-015-2110

²⁴ OAR 581-015-2200(2)


²⁵ 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)).

²⁶ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone — (503) 947-5722; e-mail: raeann.ray@state.or.us; fax number (503) 378-5156.

	<p>programs at Early College & Career Options and Eugene Education Options.</p> <p>Convene the technical assistance meeting. Other ODE participants will include the Special Education County Contact, Director of Education Programs.</p> <ul style="list-style-type: none"> ▪ Participants will determine any system changes needed to ensure that processes leading to enrollment of students with disabilities in alternative education within the District, and the educational services provided following enrollment are aligned with special education requirements. 	<p>Submit meeting agenda, dated, signed participant list, meeting notes, including timelines of next steps.</p>	<p>April 15, 2016</p>	<p>June 10, 2016</p>
2.	<p>Policy and Procedure Revision</p> <p>Following the TA meeting, review, and revise as necessary, district policies, administrative regulations, and implementing procedures for alternative education to ensure alignment with applicable special education requirements.</p>	<p>Submit the draft, and a copy of the School Board's processes and timelines for adopting revised policies to ODE for approval.</p> <p>If needed, complete School Board approval process.</p>	<p>May 15, 2016</p> <p>June 15, 2016</p>	<p>NA</p> <p>NA</p>

	appropriate transition assessments. ODE staff will also include the Secondary Transition Specialist.			
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Dated: this 9th Day of March, 2018



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

Mailing Date: March 9, 2018

APPEAL RIGHTS: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which you reside. Judicial review is pursuant to the provisions of ORS 183.484.