

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Lincoln County
School District

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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 16-054-022

I. BACKGROUND

On June 27, 2016, the Oregon Department of Education (Department) received a Letter of Complaint from the parents (Parents) of a student (Student) residing and attending school in the Eagle Point School District (District). The Complaint requested a Special Education investigation under OAR 581-015-2030. The Department provided a copy of the Complaint to the District by email on June 27, 2016.

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.¹ On June 30, 2016, the Department sent a *Request for Response* to the District identifying the specific IDEA allegations in the Complaint to be investigated. On July 21, 2016 (following a one-week extension), the District timely provided its narrative *Response* to the *Request for Response* and accompanying documentation. On August 4, 2016, the Parents provided a written *Reply* to the Department's Contract Complaint Investigator (Complaint Investigator), via email. The Complaint Investigator forwarded the Parent's *Reply* to the District on August 5, 2016.

The District provided the following documentation in its *Response*:

1. Eligibility statements 5/26/16
2. IEP 6/15/16
3. Notice of Team Meeting 6/9/16
4. Prior Written Notice 6/15/16
5. Meeting Notes 6/15/16
6. Notice of Transfer of Rights 6/15/16
7. Prior Written Notice 5/26/16
8. Occupational Therapy Screening Results 5/18/16
9. Medical Statement 5/10/16
10. Deaf & Hard of Hearing Services Annual Report 2005-2006
11. Medical Statement 10/23/08
12. Audiological Report 3/20/07
13. Summary of Assessments 4/13/16 – 5/25/16
14. Authorization re Educational and Protected Health Information (undated)
15. ESD Services Request 4/16/16
16. Prior Written Notice re Evaluation/Consent for Evaluation 4/27/16
17. Student Referral for special education 4/13/16
18. Medical Progress Notes 6/10/15
19. "Stand Ready" letter 11/19/14
20. Email communication 3/3/16 – 5/24/16

¹ OAR 581-015-2030; 34 CFR §§ 300.151-153

- 21. District policies re Charter School Special Education Services 7/2016
- 22. Staff List

The Parents did not provide additional documents with their written *Reply* in this case.

The Department's Complaint Investigator determined further investigation to be necessary in this case. On August 5, 2016, the Complaint Investigator interviewed by telephone one of the Parents and the representative of the Charter School who attended the Student's June 15, 2016 IEP Meeting. On August 8, 2016, the Complaint Investigator interviewed District staff by telephone, including a School Psychologist, the Student's Case Manager, a School Counselor, a Special Education Administrator and the Special Education Director. The Complaint Investigator reviewed and considered all of the documents received in reaching the Findings of Fact and Conclusions of Law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this Complaint under OAR 581-015-2030 and 34 CFR §§ 300.151-153. The Complainants' 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 June 28, 2015, to the filing of this complaint on June 27, 2016.²

No	Allegations	Conclusions
1.	<p><u>Free Appropriate Public Education (FAPE); Charter Schools; Parent Participation – General</u></p> <p>The Complaint alleges that the District violated the IDEA by refusing to provide Special Education services to the Student at a Public Charter School in which the Student is enrolled for the upcoming 2016-2017 school year, a Student for whom the District is obligated to provide a FAPE. The Complaint further alleges that the District determined, prior to a meeting attended by a representative of a Public Charter School and without Parent Participation that, if the Student does not attend the District's High School the Student would not receive Special Education services and will be "waiving" the Student's "rights to an IEP".</p> <p>Relevant Law: OAR 581-015-2040 and 34 CFR 300.101; OAR 581-015-2075 and 34 CFR 300.209; OAR 581-015-2190 and</p>	<p><u>Substantiated, in part</u></p> <p>The Department concludes that the District predetermined the Student's placement in this case, as is demonstrated by the fact that both the Parents and the District staff members present at the June 15, 2016 IEP Meeting agree that District staff announced at the beginning of the Student's June 15, 2016 IEP Meeting that the IEP could only be fully implemented at the High School. Therefore, the Parents had no meaningful opportunity to be involved in the placement decision for the Student.</p> <p>In light of the predetermination of the placement in this case, it is premature for the Department to address whether the placement offered complies with OAR 581-015-2075, which requires school districts to serve children with disabilities who attend a charter school in the District in the same manner as it services</p>

² OAR 581-015-2030(5)

34 CFR 300.500, 300.327, 300.501(b).	children with disabilities who attend other District schools.
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Proposed Corrective Action

The Parent requests the following solutions:

“We have great concerns about how the district is managing the special education program. Ultimately, we’d like to see [the Student’s] (and other’s) IEPs fully supported at [the Public Charter School].

III. FINDINGS OF FACT

1. The Student in this case is presently sixteen years old and has been home-schooled for the past several years.
2. In March of 2016, the Parents contacted the District to advise that the Student, to whom the District had previously provided Special Education services prior to the Student’s disenrollment with the District and participation in home schooling, would be enrolling in a local Charter School and wished to be provided Special Education services by the District.
3. Following evaluations, the IEP Team, including the Parents, determined that the Student is eligible for Special Education as a student with Hearing Impairment and Other Health Impairment (OHI) (“Congenital Anomaly, Unspecified).
4. In anticipation of the Student’s upcoming re-enrollment in a public school (a Charter School) at the beginning of the 2016-2017 school year, following the eligibility determination, the IEP Team, consisting of the School Psychologist, the Student’s Case Manager, two regular education teachers, a Speech Language Pathologist, a Hearing Impairment Specialist, one of the Parents, and the Student, developed an IEP for the Student. The Nonparticipation Justification statement in the Student’s June 15, 2016 IEP states that the “Student will be removed from general education setting for 992 minutes of school week. Receives 248 minutes of math, 124 minutes of reading, 124 minutes of written language, and 124 minutes of behavior/study skills, 124 minutes of daily living skills and 248 minutes of transition”, and that “Due to [the Student’s] disability, [the Student] needs a smaller class setting, small group instruction, one-on-one support, and individualized instruction in the areas of math, reading, written language, social skills, behavior, independent living skills, and transition.”
5. The Student’s June 15, 2016 IEP provides the following placement: “Regular class with resource room support; Regular class with 21-60% resource room or other special class (*40-79% of day in regular class.)”
6. The IEP Meeting Notes from June 15, 2016, state, in part, “The team agreed that [the Student] needs specially designed instruction in the areas of math, reading, written language, social skills, daily living skills, behavior, and transition.” The meeting notes also state that “If [the Student attends [the High School], [the Student] will be removed from [the Student’s] non-disabled peers for 21-60% of [the Student’s] day for the resource room or other special class. [The Student] will spend 40-79% of [the Student’s] day in regular classes. This is due to [the

Student's] need for a small group setting and focused specially designed instruction." The meeting notes state that the Parents' "primary focus is getting [the Student] ready for independent living skills. We have concerns about [the Student] going to a regular high school setting. We do not feel [the Student] is ready for this at this time." The IEP Meeting Notes also state the response to these concerns as "The team acknowledges the parent concerns. School Psychologist explained that these services could be provided at [the High School] and that they could not all be provided at [the Charter School]. Parent refuses to enroll [the Student] at [the High School]. IEP reflects services that can be provided at [the High School]. Parent will contact [one of District Special Education administrators] to discuss [the Charter School] and IEP Implementation at [the Charter School]."

7. The School Psychologist reported during the telephone interview with the Complaint Investigator that the District's Special Education Director advised the School Psychologist at some time prior to the June 15, 2016 IEP Meeting that the options of the Parents were to either enroll the Student at the High School and receive Special Education services, or to enroll the Student at the Charter School and receive no Special Education services.
8. Although the IEP Meeting Notes state that the School Psychologist told the Parents that "not all" services identified on the Student's IEP could be provided at the Charter School, the School Psychologist did not specify which Special Education services identified in the Student's June 15, 2016 IEP could be provided at the Charter School and which could not.
9. Both the School Psychologist and the Student's Case Manager reported to the Complaint Investigator that during the IEP Meeting, the Charter School representative brought up the option of providing Special Education services at both the Charter School and at the District's High School. However, this option was not fully discussed because District staff at the meeting did not know if that is an option that the District administration would allow, as the Case Manager was unaware of this being done in the past.
10. The Case Manager further reported that implementation of Special Education services to the Student at the Charter School would require a 1:1 aide or another Special Education instructor. The Case Manager also expressed concern that the Student might be subjected to predatory behavior by other students at the Charter School, some of whom had previously been in the custody of the Oregon Youth Authority. The Case Manager believed things were kind of left up in the air at the end of the June 15, 2016 IEP Meeting, with the District standing ready to provide Special Education services to the Student at the High School, and the Parent indicating that the Parent would think about this and that they were not sure where they would enroll the Student in the fall.
11. One of the Parents reported during a telephone interview with the Complaint Investigator that the Parents did not contact anyone in the District's administration following the June 15, 2016 IEP Meeting, but opted to file the Complaint in this case.
12. The District's Response states that "the district did offer a partial enrollment with both (regular high school) and (charter school) in which (Student) could access appropriate classes and services in both settings with full IEP implementation." However, this is inconsistent with what the Complaint Investigator was told during the interview process by multiple participants in the IEP Meeting. The IEP Meeting Notes also do not reflect such an offer.
13. The Student's Case Manager also told the Complaint Investigator that the Student is significantly below grade level in math (grade level 2-3), reading (approximate grade level 8), and writing (approximate grade level 4). The Case Manager reported that his/her

understanding of the Charter School program is that it is structured for independent students and that although the Charter School provides one or two teachers in the classroom, no direct instruction occurs and the curriculum is delivered "mostly" online and is not susceptible to modification to meet the Student's individual needs for Specially Designed Instruction (SDI). The Case Manager also reported, however, that another student enrolled at the Charter School receives approximately 30 minutes each week of SDI designed by the Case Manager and delivered at the Charter School by a District Educational Assistant.

14. The representative of the Charter School who attended the Student's June 15, 2016 IEP Meeting reported to the Complaint Investigator that the Charter School is located within the boundaries of the District, that the Charter School is a "workplace simulation" and that students are "hired" for a quarter at a time. The Charter School is approved for up to 80 students and last school year had approximately 50 students enrolled. Students generally attend class part time, either 8:00 to 11:00 a.m. or 1:00 p.m. to 4:00 p.m. on school days, and that there are usually around 25 students in each half-day classroom session.
15. The Charter School also provides work programs in varied areas including "Ecology/Science class", "Environmental Science/Farming/Sustainability", "Music Studio", "Art" and will be adding a "Culinary" program shortly. These work programs are available to Charter School students who apply to the individual programs "like a job", and generally occur one or two times each week. Stipends are paid to the students by most of the vocational programs.
16. The Charter School representative confirmed to the Complaint Investigator that the Student has completed an application for enrollment at the Charter School and that testing to determine where the Student is academically will be administered during the week beginning August 15, 2016.
17. During an interview with the Complaint Investigator, the District's Special Education Director related a telephone conversation between the Special Education Director and the School Psychologist that occurred just a few hours before the June 15, 2016 IEP Meeting. The Special Education Director recalled telling the School Psychologist that an option would be to provide some Special Education services at both the Charter School and at the District's Structured Living Center (SLC), located at the High School. The Director of Special Education referred to this as a "partial enrollment". When the School Psychologist asked the Special Education Director about what could be done if the Parents did not want the Student at the High School at all, the Special Education Director said that this would present a difficult situation because the District simply cannot and does not have to provide the level of services required by the Student at the Charter School and possibly the District would have to deny the Student enrollment or the Parents could refuse Special Education services.
18. The District's Special Education Administrator, when speaking with the Complaint Investigator, cited a 2013 Due Process decision in support of the proposition that the District need not provide Special Education services at the Charter School location, and that the decision of where to locate a program, in this instance the SLC, is up to the District.
19. The School Psychologist reported to the Complaint Investigator that he understood from conversations with the Parents prior to the meeting date that the Parents would not agree to receive any delivery of services at the District's High School program, much of this due to the perception of one of the Parents, who had actually taught at the High School program in a Special Education classroom, that behavioral students and students with severe disabilities would be in the functional living skills classroom with the Student.

20. Consistent with the School Psychologist's understanding, the Parent's mentioned in their written *Reply* that they believe the Student "will not thrive if [the Student] spends most of [the Student's] time in a functional living skills classroom with other students that have severe disabilities and/or behavior issues." Additionally, during a telephone interview with the Complaint Investigator, one of the Parents stated that the other Parent had taught in the Life Skills program at the High School, several years ago, and reiterated concerns about the presence of students with severe disabilities and students with severe behavioral issues in the functional living skills classroom; although the Parent added that they are "not sure it is still happening that way" at the High School.
21. The IEP Meeting Notes that "The team determined [the Student] is not eligible for Extended School Year (ESY) services. [One of the Parents] refused ESY services at the High School if [the Student] did require ESY."
22. The IEP Meeting Notes conclude with the following: "Parent refuses to enroll [the Student] at [the High School]. IEP reflects services that can be provided at [the High School]. Parent will contact [the Special Education Director] or [a Special Education Administrator] to discuss [the Charter School] and IEP implementation at [the Charter School]."
23. The Prior Written Notice (PWN) issued by the District dated June 15, 2016, describes the action taken by the IEP Team: "A new IEP was developed for [the Student]. Specifically, Present Levels, Goals, Accommodations, Specially Designed Instruction minutes, and Modifications were changed and/or updated. Placement code will change once [the Student] enrolls at [the Charter School] or [the High School] in September." The PWN states that the action is proposed because "A new IEP was required after eligibility was established."
24. Multiple District staff reported to the Complaint Investigator their understanding of the Charter School curriculum, primarily relating that the Charter School provided online instruction. However, District staff did not display a detailed understanding of the Charter School program.
25. The Student's Case Manager described the Special Education classroom (the SLC) at the regular High School in which the Special Education services and SDI would primarily be provided. The classroom is a small classroom, with approximately 12 students. Students are divided into small groups of students at similar academic levels and provided independent living and social skills. The Student's Case Manager reported that there "are no behavior kids" in the SLC, and that students with behavioral issues may occasionally receive Special Education in another classroom, the Resource Room at the High School.

IV. DISCUSSION

The Complaint alleges that the District violated the IDEA by refusing to provide Special Education services to the Student at a Public Charter School in which the Student is enrolled for the upcoming 2016-2017 school year; a Student for whom the District is obligated to provide a FAPE. The Complaint further alleges that the District determined, prior to a meeting attended by a representative of a Public Charter School and without Parent Participation that if the Student does not attend the District's High School the Student would not receive Special Education services and will be "waiving" the Student's "rights to an IEP".

OAR 581-015-2075(2) provides:

"In accordance with procedural safeguards for special education, a school district must serve resident children with disabilities attending public charter schools located in the

district in the same manner as the school district serves children with disabilities in other district schools, including but not limited to:

(a) Identifying, locating, and evaluating students, in accordance with OAR 581-015-2100 – 581-015-2180, to determine which children enrolled in a public charter school may be in need of special education and related services

(b) Implementing special education and related services according to each child's individual education programs (IEP) in accordance with OAR 581-015-2200 – 581-015-2230.

(c) Providing supplementary and related services on site at the public charter school to the same extent to which the school district has a policy or practice of providing such services on site to its other public schools.”

In this case, the regulation concerning parental participation is also part and parcel of the analysis. OAR 581-015-2190(1) provides:

“(1) School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child.”

Predetermination of a placement is defined as the District determining the placement ahead of the required meeting and then presenting only one placement at that meeting, in addition to being unwilling to consider other placement alternatives. In 2007, the Ninth Circuit Court of Appeals stated in *H.B. v. Las Virgenes*,³ “Predetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives.”

Due to an incomplete understanding of the conversation with the Special Education Director, the District's School Psychologist, at the very beginning of the June 15, 2016 IEP Meeting, expressed that the Student's IEP could not be implemented at the Charter School but could be implemented only at the High School; and did not present the option of partial enrollment (the provision of Special Education services at both the Charter School and at the High School), despite being advised of that option by the District's Special Education Director. The Parents were thus left with the decision of either enrolling the Student at the Charter School, where the District would provide no Special Education services, or enrolling the Student at the District's the High School, with the IEP fully implemented. The Student has not yet enrolled at the Charter School, but is in the process of doing so for the 2016-2017 school year.

The failure of District staff to communicate to the Parents the availability of partial enrollment with services provided at both the Charter School and at the District's High School curtailed any exploration or meaningful discussion of that option. Indeed, when the Charter School representative asked about the provision of Special Education services at both the Charter School and the High School as an option, District staff did not know if that was even a possibility, again, curtailing any meaningful discussion of this option.

The District stated in its *Response* that it has “the right to determine the setting in which services identified in the IEP can be provided if they cannot feasibly be provided in another setting.” The

³ *H.B. v. Las Virgenes*, 48 IDELR 3 (9th Cir. 2007), *on remand* 52 IDELR 163 (C.D. Ca. 2008) *aff'd* 54 IDELR 73 (9th Cir. 2010).

District cited *Silver Falls School District*, DP 13-113 (September 4, 2013) in support of this position. While districts can generally determine where Special Education services can be provided, this does not mean that districts can predetermine placement without parental input. In this case, the Parents were completely excluded from the placement decision, as it was determined prior to the IEP Meeting. The District did not provide a "partial enrollment" option and the District did indeed predetermine the Student's placement: the placement of regular class with resource room or other special class. There was no discussion regarding which services could feasibly be provided in which setting prior to the placement decision.

In light of the predetermination of the placement in this case, it is premature for the Department to address whether the placement offered complies with OAR 581-015-2075, which requires school districts to serve children with disabilities who attend a charter school in the District in the same manner as it services children with disabilities who attend other District schools.


The Department substantiates this allegation with respect to the predetermination allegation.

CORRECTIVE ACTION⁴
In the Matter of Lincoln County School District
 Case No. 16-054-022

The Department orders the following Corrective Action resulting from this investigation:

No.	Action Required	Submissions ⁵	Due Date
1.	Schedule an IEP Meeting for the Student, including all appropriate Team Members, to fully discuss placement options and the requirements of OAR 581-015-2075.	Submit to ODE: 1. the IEP Meeting invitation; 2. revised IEP with placement decision and; 3. Prior Written Notice describing the decisions/changes made at the IEP Meeting.	September 9, 2016

Dated this 24th Day of August 2016



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

Mailing Date: August 24, 2016

⁴ 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)).

⁵ 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.