

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Three Rivers School District)
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FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 10-054-014

I. BACKGROUND

On May 12, 2010, the Oregon Department of Education (Department) received a letter of complaint from the parent of a student residing and attending school in the Three Rivers School District (District). The complaint requested that the Department conduct a special education investigation under OAR 581-015-2030 (2010). On May 14, 2010, the Department assigned a complaint investigator to the case.

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 May 20, 2010, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. On June 7, 2010 the District submitted a narrative *Response* with supporting documents. The District provided a copy of the narrative response and supporting documents to the parent.

On June 2, 2010, the Department re-assigned the complaint to a second complaint investigator who undertook an expedited on-site investigation. The change of investigators was required in order to ensure that District staff could be interviewed before the District’s summer vacation. The investigator reviewed the District’s *Response* and scheduled on-site interviews for June 10 and 11, 2010. On June 10, 2010, the investigator interviewed District staff, including three special education teachers, an assistant principal, a speech language pathologist (SLP), and the District’s director of student services. The investigator also conducted a brief telephone interview of a former regular education teacher of the student. On June 11, 2010, the investigator interviewed a special education coordinator, two principals and an occupational therapist (OT). On June 9, 2010, the parent provided a *Reply* to the District’s *Response* by e-mail. Following the parent’s return from a brief vacation, the investigator interviewed the parent by telephone, on June 23, 2010. The Department’s investigator reviewed and considered all of the documents and interviews.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR §§ 300.151-153. The allegations and the Department’s conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact (Section III) and the Discussion (Section IV).

¹ OAR 581-015-2030 (12); 34 CFR §§ 300.151-153 (2009).

No.	Allegations	Conclusions
(1)	<p>Parent Participation</p> <p>(a) The District failed to provide adequate notice of who would be in attendance at the May 14, 2009 IEP team meeting.</p> <p>(b) The District failed to provide the parent with opportunities to participate in IEP and placement decisions. Specifically, the District did not meaningfully consider parental input in making placement determinations and did not attempt to schedule a February 18, 2010 meeting at a mutually agreeable time.</p>	<p><u>Not Substantiated</u></p> <p>(a) The District's notice of the IEP Team meeting inaccurately included a staff member who was unexpectedly unable to attend. Because the District reasonably believed that the staff member would attend the meeting, the Department does not substantiate this allegation.</p> <p>(b) The Department finds that the parent meaningfully participated in IEP Team decisions and that the District took reasonable measures to schedule IEP Team meetings. The Department does not substantiate these allegations.</p>
(2)	<p>IEP Team</p> <p>The District failed to include all required IEP Team members at the May 14, 2009 IEP Team meeting. Specifically, a regular education teacher of the student did not attend the meeting, and the representative of the district and the special education teacher only attended a portion of the meeting.</p>	<p><u>Not Disputed</u></p> <p>The District does not dispute that some required members of the IEP Team were not in attendance for the entirety of the May 14, 2009 team meeting. See <i>Corrective Action</i>.</p>
(3)	<p>Oregon Standard IEP</p> <p>The District failed to appropriately use the Oregon Standard IEP. Specifically, the District failed to accurately list the IEP Team meeting participants on the May 14, 2009 IEP and failed to accurately record the extent of the student's nonparticipation on the May 2009 and April 2010 IEPs.</p>	<p><u>Not Substantiated</u></p> <p>The Department finds that any errors by the District in completing the student's IEPs were inadvertent clerical errors that had no impact on the student's ability to receive a free appropriate education. The Department does not substantiate these allegations.</p>

No.	Allegations	Conclusions
(4)	<p>Content of IEP</p> <p>The District failed to include the required content in the student's IEP. Specifically, the student's IEP did not include adequate provisions concerning tracking the student's progress towards annual goals</p>	<p><u>Not Disputed</u></p> <p>The District does not dispute the allegation that the District failed to provide adequate progress monitoring procedures in the student's IEP. See <i>Corrective Action</i>.</p>
(5)	<p>When IEPs Must Be In Effect</p> <p>The District failed to implement the student's IEP as written. Specifically, the District failed to utilize the computer writing software identified in the student's IEP and failed to monitor the student's progress consistent with the requirements of the student's IEP.</p>	<p><u>Not Substantiated</u></p> <p>The Department finds that, at all times relevant to this complaint, the District provided the student with access to the software or a comparable accommodation in conformity with the student's IEP. The Department does not substantiate these allegations</p>
(6)	<p>Placement of the Child</p> <p>The District failed to place the student in the least restrictive environment. Specifically, the placement determinations made on May 14, 2009, December 2, 2009, and April 2, 2010 did not conform to the requirements of Least Restrictive Environment (LRE).</p>	<p><u>Not Substantiated</u></p> <p>The Department finds that the placement determinations in question were reasonable based on the circumstances and consistent with the requirements of LRE.</p>
(7)	<p>Criteria for Approving School District Special Education Program</p> <p>The district failed to extend the student the same rights and privileges that are available to nondisabled students. Specifically, the District wrongfully denied the parents' request for an inter-district transfer and wrongfully terminated the student's placement in the Oregon Connections Academy.</p>	<p><u>Not Substantiated</u></p> <p>The Department finds that the student was afforded the same rights and privileges as nondisabled students with regard to the request for an inter-district transfer and the student's change of placement from the virtual charter school to an in-district placement.</p>

No.	Allegations	Conclusions
	<p>The parent requests the following corrective action:</p> <ol style="list-style-type: none"> 1. Track data related to the student's progress on IEP goals; 2. Provide adequate notice of who will attend IEP meetings; 3. Provide access to a program capable of implementing the student's IEP that offers more support than a regular education classroom but is less restrictive than a self-contained classroom which primarily serves students with behavioral issues; and 4. Consider parental concerns in determining whether the District could provide FAPE to the student without removing the student from the Oregon Connections Academy. 	<p>The Department concludes that training of District staff is appropriate as concerns allegations (2) and (4), above. No further corrective action is ordered. See <i>Corrective Action</i>.</p>

III. FINDINGS OF FACT

Background:

1. The student is presently 12 years old and completed sixth grade in the 2009-10 school year. The student is eligible for special education as a child with an orthopedic impairment and a communication disorder. The child initially began receiving special education services through an early intervention program beginning in March of 1998, when the child was less than a year old.

2. The Present Levels of Academic Achievement and Functional Performance (PLAAFP) in the student's last annual IEP (dated December 2, 2009) includes a statement identifying the "Present Level of Academic Performance Test Results" as follows:

"Woodcock Test of Achievement (10-5-09): Letter Word ID 1.2, Calculation K.3, Passage Comprehension K.9, Applied Problems <K.0, Writing Samples K.3, Word Attack. 1.0." Brigance Comprehensive Inventory of Basic Skills-Revised: Academic skills are considered 'Readiness Level'."

3. The PLAAFP in the annual IEP dated December 2, 2009, identifies the "Present Level of Developmental/Functional Performance Test Results" as follows:

"Vineland adaptive Behavior Scale (10-19-09): Receptive Communication 3 yrs. 0 mo., Expressive Communication 4 yrs 2mo., Written Communication 5 yrs 8 mo., Personal Skills <3 yrs 0 mo., Academic Skills 5 yrs 4 mo., School Community Skills <3 yrs 0 mo., Interpersonal Relationships <3 yrs 0 mo., Play and Leisure Time >3 yrs 0 mo., Coping Skills < 3 yrs 0 mo. All domain scores

and the adaptive behavior composite fell at or below the first percentile. Test of Nonverbal Intelligence -3 (TONI-3): Standard score of 76. PPVT-III: Standard score of 58.”

4. The PLAAFP in the annual IEP dated December 2, 2009 further identifies “How Student’s Disability Affects Involvement and Progress in the General Education Curriculum” as follows:

“[The student] has cerebral palsy. [The student] is currently identified under the eligibility categories of Orthopedic Impaired (Primary) and Communication Disorder (Secondary). [The student] has made tremendous growth towards independent walking in the classroom. Outside walking requires assistance. Functionally, [the student] is working on beginning readiness skills. [The student] is able to read sight words from Edmark Sight Word Program. [The student’s] retention of vocabulary words varies. Some days [the student] recalls them easily; other days [the student’s] focus, attention and ability are less than expected. [The student’s] participation in the regular education classroom is successful because of an assistant, peer or classroom teacher.”

5. The PLAAFP in the annual IEP dated December 2, 2009 addresses “Communication: 11/2009” as follows:

“[The student] has been attending an online charter academic program and has not been in the regular school system during the 2009/2010 school year. The parent requested no communication testing to update [the student’s] skill abilities. Proposed goals are reflective of the past IEP, previous standardized testing measures, and in collaboration with the former Speech-Language Pathologist who has working knowledge of [the student] and [the student’s] language abilities.”

6. By way of background, the student repeated kindergarten at a District elementary school. Beginning with the student’s second year of kindergarten, the same teacher taught the student in the Educational Resource Center (ERC) classroom through the student’s fifth grade year (the 2008-09 school year). The student and a group of four or five other students needing similar services were taught in the ERC, where the District developed a life skills program along with an academic-focused ERC. Initially, the life skills and ERC class were in different classrooms, but eventually both were taught in the same classroom to better accommodate the group of students needing similar services. This mixing of life skills and academics is an unusual occurrence within the District, due to both the size of the group of similar students and the particular teacher’s willingness and ability to modify the usual ERC program.

7. The last IEP meeting held before the student’s transition to middle school occurred on May 14, 2009. At that meeting the parent asked that the student attend a middle school ERC program at the middle school closest to the student’s home. The teacher of that middle school ERC program, who had observed the student and reviewed the student’s curriculum just prior to the May 14, 2009 IEP meeting, noted that the student’s curriculum, which was at a beginning first-grade level, was significantly below the curriculum in the middle school ERC classroom, and noted that the student could not work independently, would require significantly modified instruction and would not be part of any group in the middle school ERC program due to the comparably lower level of the student’s curriculum. The ERC teacher noted that the student would require 1:1 support in the ERC and would thus be

isolated from other student's in the ERC most of the day during the delivery of instruction. The ERC teacher also noted that the student needed a life-skill oriented program, with functional academics. The middle school ERC teacher believed that the student should appropriately be placed in the District's "multi-handicapped" (MH) program, located at another District middle school, with integration when appropriate into that middle school's ERC program.

8. The parent expressed concern with the distance between the middle school housing the MH program from the student's neighborhood school; the parent expressed particular concern with the approximately one hour bus ride each way. The parent also expressed concern with the behavior of some of the other students who would be in the MH program, of whom the parent had knowledge due to the parent's employment as an educational assistant in the District's elementary school MH program.
9. At the May 14, 2009 IEP meeting, one of the District staff members did not agree with the placement into the MH program. The special education director and all other District staff at the meeting agreed that the placement should be in the MH program, so the divided IEP team adopted placement into the MH program. This is documented in the May 14, 2009 IEP as "Separate class with opportunity for participation in appropriate regular education settings". The nonparticipation justification statement in the May 14, 2009 IEP states the extent of removal as "special ed setting 70% of day to receive specialized instruction." The student's participation in regular education classes during fifth grade (2008-09 school year) included science, art and music. However, the student was not able to perform academic tasks in those classes and participated on a social level.
10. The Service Summary in the May 14, 2009 IEP includes specially designed instruction (SDI) in (1) "academics 600 minutes per week" in the "Special Ed Setting;" (2) "Gross Motor 175 minutes per week" in "All School Settings;" (3) "Social Skills 400 minutes per week" in "All School Settings" and (4) "Fine Motor/Writing 100 minutes weekly" in "Special Ed Setting." The related services include "Speech-language minimum 60 min. per month" in "Speech Room;" "PT 30 minutes 2x's a month" in "All School Settings;" and "Transportation daily to and from school".
11. After the May 14, 2009 IEP meeting, the District and the parent pursued mediation to resolve a disagreement concerning the student's placement in the District's MH program. The District and parent agreed to further evaluations to determine if the student's ability levels were higher than previous evaluations had indicated and that, if the student's ability levels were higher, the District would consider a trial placement at the home middle school ERC program. The student underwent a psychological evaluation by a clinical psychologist in July of 2009, and the IEP team met again on August 20, 2009 to discuss that evaluation. The psychological evaluation did not reveal higher ability levels and one of the tests revealed, "educationally", an IQ of 58 which indicates "mild mental retardation."
12. The meeting minutes of the August 20, 2009 IEP meeting reveal that the teacher of the student's neighborhood ERC again explained that program. The teacher of the middle school MH program also described that program. The team discussed the decision that would be made between the ERC and the MH placement. Specifically, the team discussed that the student would no longer be able to interact with the same regular education peers with whom the student had interacted at the student's home elementary school if placed in the MH program. The team also noted that the level of services that the student received would be greatly reduced if the student were placed in the ERC program. The special

education director acknowledged the lack of consensus and concluded that the appropriate placement for the student was the MH program. The August 20, 2009 “addendum” to the student’s IEP states the same placement as the May 14, 2009 IEP. The Prior Written Notice (PWN) issued on August 20, 2009, states “It was determined by the Special Education district Representative that [the student’s] placement in the site-based program will be maintained. The level of service and support, in the self-contained setting, is appropriate for academic benefit.” The PWN also states that “the results of a current psychological evaluation support the placement decision made by the district.”

13. The student did not attend the middle school MH program at all during the 2009-10 school year, despite the fact that the student’s placement required it. On September 15, 2009, the District wrote a letter to the parent reminding the parent that “special education services continue to be available” for the student and that, if the student is “now attending either a private school or is taught at home, [the student] still qualifies for services.” The letter also indicated that “all services would be provided at [the MH program].” On September 2, 2009, the parent requested an inter-district transfer. During the on-site investigation, the parent stated that the student enrolled in an online charter school in late September of 2009, while awaiting word on the inter-district transfer request.
14. On November 16, 2009, the District’s school psychologist performed a psycho-educational evaluation of the student. On November 19, 2009, the District issued a notice of a meeting, and the team met on December 2, 2009. Concerning the inter-district transfer request, the meeting minutes of the December 2, 2009 IEP meeting state that the superintendent would look at the student’s IEP goals and see if the District can or cannot meet the goals and that the District would inform the parent of the decision on the transfer request.
15. At the December 2, 2009 meeting, the IEP team discussed the student’s enrollment in the online charter school and that, in conjunction with that enrollment, the District would need to provide specially designed instruction (SDI) to the student at the MH program, 2.5 hours per day for two days a week. Ultimately, the District changed the student’s placement to “Charter School On-line program for regular education courses and site based self-contained program with specially designed instruction.” The nonparticipation justification was adjusted and states the extent of nonparticipation as “special ed setting 20% of week to receive specialized designed instruction.” The Service Summary shows SDI as follows: (1) “Functional Math 60 minutes per week”, (2) “Functional Reading 60 minutes per week”, (3) “Functional Writing 60 minutes per week”, (4) “Computer Writing 60 minutes per week”, (5) “Social Skills 30 minutes per week” and (6) “Routine Development 30 minutes per week”. The PWN dated December 2, 2009 states that the parent “took no action on opting-out of special education services.” The team also decided that “a placement combining an On-line regular education program with curriculum modifications combined with specially designed instruction at [the middle school MH program] is in the best interest of [the student].”
16. After the December 2, 2009 IEP meeting, the parent did not make the child available to the MH program despite the District’s contacts with the parent by e-mail. In light of this, on March 18, 2010 the District issued a notice of team meeting for a meeting on April 2, 2010 “[t]o reconsider the placement decision of [the student] due to a lack of attendance and FAPE.” On April 2, 2010, the team met and discussed the student’s placement. The parent stated that the student has not been attending the middle school MH program because of the long bus ride. The online charter school representative at the IEP meeting stated that if the student requires 70% SDI and 30% regular education the student would be less than a half-time student and the online charter school’s charter does not allow enrollment of a part-

time student. The online charter school representative also stated that they could not provide SDI and that the District is responsible for FAPE and agreed that the placement needed to be revisited. District staff unanimously recommended that the student return to the placement before the December 2, 2009 IEP addendum, a “site based, self-contained program with specially designed instruction,” and that the nonparticipation justification extent of removal from regular education should be an 84% removal. The parent expressed no opinion about the placement. The PWN dated April 2, 2010 states, “The team met and decided that a Free, Appropriate Education (FAPE) was being negatively impacted, and therefore, the placement was changed back to the previous site based, self-contained placement (8-20-09) with specially designed instruction.” The PWN also states that other options “do not provide enough special education support and small group instruction; nor do they provide enough functional skills and application to benefit [the student]. Additionally, due to lack of enrollment and attendance at [the student’s] site based middle school program, the district was unable to provide any specially designed instruction or related services.”

Parent Participation

17. The parent attended all IEP meetings, and the District provided the parent the opportunity to participate in the IEP meetings on May 14, 2009, August 20, 2009, December 2, 2009 and April 2, 2010. The parent clearly stated her preference at all IEP meetings. On occasion, District staff disagreed with the parent’s placement preference. Concerning the February 18, 2010 “meeting”, the Department finds that the District did not schedule an IEP team meeting for February 18, 2010, but presented it only as a possible meeting date. The online charter school inaccurately believed that the District scheduled an IEP team meeting for February 18, 2010. However, the District did not schedule an IEP team meeting for that date.
18. The notice of the May 14, 2009 IEP team meeting, issued by the District on May 7, 2009, indicates by name the regular education teacher that would be attending the May 14, 2009 IEP team meeting.

IEP Team

19. The weight of the evidence reveals that the regular education teacher scheduled to attend the May 14, 2009 IEP meeting was aware of the team meeting but could not attend because of a personal issue that arose unexpectedly. The evidence also reveals that it was mentioned at the May 14, 2009 IEP meeting that the particular regular education teacher could not attend the meeting and that the parent expressed no objection. However, the District does not dispute that it did not have the parent sign a written waiver of attendance of a regular education teacher prior to or on the day of the meeting. The parent felt she was forced to sign the written waiver after the May 14, 2009 IEP meeting, but the ERC teacher reported that on May 15, 2009 she told the parent that the failure to have the form signed was an oversight; the parent signed the form and dated it May 15, 2009. This form stated that the regular education teacher was excused because the “member’s area of the curriculum or related service is not being modified or discussed in the meeting.”
20. The weight of the evidence indicates that the May 14, 2009 IEP meeting began no more than ten minutes after the scheduled starting time because the special education director had not yet arrived. The special education director arrived 20 to 60 minutes late. Upon arrival, the other District representative in attendance summarized the progress during the

Oregon Standard IEP

21. The May 14, 2009 addendum to the student's IEP does not include an elementary principal's signature on the meeting participants section of the form, but this principal did sign the placement page of the May 14, 2009 addendum to the IEP. The May 14, 2009 IEP mistakenly used the elementary weekly class time of 1,815 minutes rather than the middle school weekly class time of 1,865, so the nonparticipation justification percentage is inaccurately stated as 70% when it should be 68%. The April 2, 2010 IEP accurately states the nonparticipation percentage as 84% (1,575 minutes) of the middle school weekly class time (1,865 minutes). The District's formula, which compares time dedicated to the provision of SDI and other special education services to total class time, is a rational method of calculating the nonparticipation percentage.

Content of IEP/When IEPs Must Be In Effect

22. The District does not dispute that some of the goal pages in the student's May 14, 2009, August 20, 2009, December 2, 2009 and April 2, 2010 IEPs do not state who is to track the student's progress and when the progress will be reported to the parents. The student's teacher from kindergarten through fifth grade reported that she faithfully tracked the student's progress initially using data tracking sheets and later, during at least the year preceding the filing of this complaint, the teacher based the student's progress on daily observations. The teacher reported the student's progress on that IEP in a report card during the 2008-09 school year and progress reports written on the goal sheets attached to the student's IEP showing progress as of March of 2009 and June of 2009. Following completion of the student's fifth grade (2008-09 school year), the student never attended class at a District site, so no progress reports were possible.

23. The student's December 4, 2008 IEP, in effect during the 2008-09 school year, includes a goal that "Using a computer program, as well as pencil/paper, [the student] will be able to write a simple sentence, 4/5 opportunities." The Department may address this allegation alleging a failure to implement a particular goal in the student's IEP from May 13, 2009 through the end of the 2008-09 school year because the student did not attend school at a District site during the 2009-10 school year; therefore, the District did not have an opportunity to implement this goal during the 2009-10 school year. The student's IEP goal set forth above does not identify a specific computer program although the parent believes that the term "a computer program" refers to a program named "Clicker 5." The student's elementary ERC teacher reports that the student used the program during the 2008-09 school year until a severe winter storm caused a power outage in December of 2008. The outage impacted the District's computer system in such a way that the program was not available until approximately the last six weeks of the 2008-09 school year, when the student was again able to use the Clicker 5 program. During the time that the Clicker 5 program was unavailable, the teacher used two alternative computer programs as well as another, non-computerized program, to allow the student to work on this goal. In any event, the student did have access to and did use the Clicker 5 program for the last six weeks of

the 2008-09 school year, which would include the period from May 13, 2009 to the end of that school year.

Placement of the Child

24. On May 14, 2009, the student's IEP Team placed the student in the middle school MH program, determining that placement in the neighborhood ERC class would have resulted in more isolation from peers than the placement selected. The teacher of the student's home ERC program stated that the student would not be able to participate in any group instruction within that program or in the school at large; therefore, the student would spend most school time in 1:1 instruction isolated from other students in that program. Because the student did not enroll in a District school during the 2009-10 school year, the student never attended this placement.
25. On December 2, 2009, the IEP Team placed the student in an online charter school with special education and related services to be delivered at the District's MH program. This placement was made after the parent enrolled the student in a non-District virtual public charter school. This placement was based on the IEP Team's determination that the student's IEP could be implemented with the student receiving general education from the charter school and special education from the District.

Criteria for Approving School District Special Education Programs

26. On or around September 2, 2009, the parent requested that the District authorize an inter-district transfer so that the student could attend a suitable program in a neighboring district. The neighboring district's program was closer to the student's home than the MH program in which the student was placed.
27. On September 4, 2009, the District denied the parent's request for the inter-district transfer.
28. There is no evidence to support the allegation that the District failed to extend to the student the same rights and privileges available to nondisabled students by wrongfully denying the parent's request for an inter-district transfer. Additionally, the charter school's guidelines did not allow participation of a part-time student, which is what the student would be if the District provided the appropriate level of SDI to this student. The District did not terminate the student's placement in the online charter school, although that was the impact of the District affirming that the student's level of required SDI exceeded 50%.

IV. DISCUSSION

1. Parent Participation

The parent alleges that the District failed to provide adequate notice of who would be in attendance at the May 14, IEP meeting and that the District failed to provide the parent opportunities to participate in IEP and placement decisions, including scheduling a February 18, 2010 meeting at a mutually agreeable time.

OAR 581-015-2190 provides:

"Parent Participation - General

(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.”

The Department finds that the District provided the parent an opportunity to participate in IEP and placement decisions, beginning with the May 14, 2009 IEP meeting, approximately one year before the filing of the complaint in this case. The parent expressed her preferences at these IEP meetings. The fact that the District disagreed with the parent’s placement preference does not mean that the parent was not provided an opportunity for meaningful participation. Additionally, the District did not schedule an IEP meeting for February 18, 2010. Rather, the staff at the online charter school erroneously thought a meeting had been scheduled on that date. Finally, the notice of team meeting issued by the District on May 7, 2009 clearly stated who had been invited to attend the May 14, 2009 IEP meeting. The fact that a regular education teacher was unable to attend at the last minute does not constitute error by the District. The Department does not substantiate the allegation that the District failed to provide the parent opportunities to participate in IEP and placement decisions.

2. IEP Team

The parent alleges that the District failed to include a regular education teacher of the student at the May 14, 2009 meeting and that the representative of the District and the special education teacher attended only a portion of the meeting.

OAR 581-015-2210 provides:

“IEP Team

(1) School districts must ensure that the IEP Team for each child with a disability includes the following participants:

- (a) One or both of the child's parents, except as provided in OAR 581-015-2195;
- (b) The child where appropriate;
- (c) At least one regular education teacher of the child, if the child is or may be participating in the regular education environment, consistent with section (4) of this rule;
- (d) At least one special education teacher of the child or, if appropriate, at least one special education provider of the child;
- (e) A representative of the school district, who may also be another member of the team, who is:

* * *

(3) IEP team attendance:

- (a) A member of the IEP team described in subsection (1)(c) through (1)(f) is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the school district agree in writing that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting.

* * *

(4) The regular education teacher of the child must participate as a member of the IEP team, to the extent appropriate, in the development, review, and revision of the child's IEP, including assisting in the determination of:

(a) Supplementary aids and services, program modifications and supports for school personnel that will be provided for the child; and

(b) Appropriate positive behavioral interventions and supports, and other strategies for the child.”

The District does not dispute the allegation that a regular education teacher did not attend the May 14, 2009 IEP meeting. Although the Department finds that the regular education teacher invited to the meeting could not attend the meeting, the Department sustains the allegation that the District did not ensure the attendance of the regular education teacher and did not obtain, until the day after the IEP meeting, a written agreement that the regular education teacher was not necessary at the meeting. The Department concludes that the appropriate remedy is that suitable District staff receive training concerning who must attend IEP meetings and the narrow circumstances under the regulation justifying a written agreement excusing a required IEP team member from a meeting. *See Corrective Action.*

3. Oregon Standard IEP

The parent alleges that the District failed to accurately list the IEP team meeting participants on the May 14, 2009 IEP and failed to accurately record the extent of the student's nonparticipation on the May 2009 and April 2010 IEPs.

OAR 581-015-2215 requires the use of “the Oregon Standard IEP form” for documenting IEPs for Oregon students with disabilities. Concerning the alleged failure of the District to list all meeting participants on the May 14, 2009 IEP, the Department finds that although a particular attendee does not appear on the list of meeting participants on the first page of the May 14, 2009 IEP, this attendee's signature does appear on the associated placement page. The Department finds that, although the District should be careful to accurately list all attendees in the appropriate section of the IEP, the fact that the signature of this attendee appears on the placement page and in the meeting minutes sufficiently meets the intent of the requirement to use the standard form. The Department does not substantiate the allegation that the District materially violated the Oregon Standard IEP rule by failing to include a particular participant in the “IEP Meeting Participants” section of the May 14, 2009 IEP.

Concerning the allegation that the District failed to accurately record the extent of the student's nonparticipation on the May 2009 and April 2010 IEPs, the Department concludes that the April 2, 2010 IEP correctly states the nonparticipation percentage based on a rational formula. The Department also concludes that the District's mistake of using elementary school weekly class time (1,815 minutes) rather than middle school weekly class time (1,865) was simply that – a mistake in calculation. The fact that the District inadvertently reported the nonparticipation justification as 70% on the May 14, 2009 IEP when it should have been 68% does not constitute sufficient basis for finding a violation. Therefore, the Department does not substantiate the allegation that the District failed to accurately record the percentage of the student's nonparticipation.

4. Content of IEP

The parent alleges that the student's IEP did not include adequate provisions concerning tracking the student's progress towards annual goals. The District does not dispute that some of the goals pages in the May 14, 2009, August 20, 2009, December 2, 2009 and April 2, 2010 IEPs do not state who is to track the student's progress and when the progress is to be reported. However, each IEP is required to include a description of how the student's progress toward annual goals will be monitored and when the progress will be reported to parents.² The Department thus substantiates this allegation. The appropriate remedy is training to appropriate District staff concerning the development and documentation of adequate progress monitoring procedures with regard to District IEPs. See *Corrective Action*.

5. When IEPs Must Be In Effect

The parent alleges that the District failed to utilize the computer writing software identified in the student's IEP and failed to monitor the student's progress consistent with the requirements of the student's IEP.

Concerning the failure to use a particular computer program, the "Clicker 5", during the 2008-09 school year, the Department first notes that the student's IEP goal only generically refers to "a computer program" and does not specifically require the use of the "Clicker 5" program. The Department next notes that the relevant time period concerning this allegation runs from May 13, 2009 to the end of the 2008-09 school year. The Department finds that the "Clicker 5" software was used during approximately the last six weeks of the 2008-09 school year (following earlier unavailability of the Clicker 5 program due to the effects of a power outage in late 2008). To the extent that any unavailability of the "Clicker 5" software occurred during the calendar year prior to the filing of this complaint, the Department finds that the District provided the student with access to comparable accommodations. The Department does not substantiate the allegation that the District failed to utilize the computer writing software identified in the student's IEP.

Concerning the allegation that the District failed to track the student's progress, the Department finds that the only relevant time period is May 13, 2009 to the end of the 2008-09 school year. The documentation provided by the District in this case showed both a report card for the student for the 2008-09 school year and progress reports showing the student's progress as of March of 2009 and June of 2009. The Department does not substantiate the allegation that the District failed to track progress made by the student towards the student's goals from May 12, 2009 to the end of the 2008-09 school year. Of course, the parent's refusal of services from the District during the 2009-10 school year rendered impossible any District monitoring during that period.

6. Placement (LRE)

The parent alleges that the placement determinations made on May 14, 2009, December 2, 2009, and April 2, 2010 did not conform to the requirements of LRE. However, the Department concludes that the IEP Team's placement decisions with regard to this student conformed to the requirements of LRE. Prior to making the placement decisions, District members of the IEP Team indicated that the ERC program would be a more restrictive environment because the ERC placement would result in the student receiving one-to-one instruction in that program

² OAR 581-015-2200(1)(c)

apart from any other students. This removal would have been due mainly to the discrepancy between the student's academic level and the academic levels of the other students placed in the ERC at that time, which would have necessitated significant time in individual instruction.

At the May 14, 2009 meeting, the District reasonably concluded, based on the considerations above, that the MH program constituted the LRE for implementation of the student's May 2009 IEP. The placement determinations made at the December 2009 and April 2010 meetings were also reasonably based on the relative benefits of serving the student in the MH program instead of the ERC program or in conjunction with virtual charter schooling. Because the placement determinations were based on reasonable considerations aimed to facilitate the implementation of the student's IEP and minimize the student's removal from non-disabled peers, the Department does not substantiate the allegation that the MH program placement in the May 14, 2009, December 2, 2009, and April 2, 2010 placement determinations did not conform to the requirements of LRE.

7. Criteria for Approving School District Special Education Program

The parent alleges that the District failed to extend to the student the same rights and privileges that are available to nondisabled students when the District denied the parent's request for an inter-district transfer and terminated the student's placement in the Oregon Connections Academy.

OAR 581-015-2205 provides that Districts must provide instructional programs that include a continuum of services to meet the individual special education needs of all resident children with disabilities. In this case, the District denied the inter-district transfer request because the District provides a program that meets the student's needs for life skills and functional academics. There is no evidence to support the allegation that the District failed to extend to the student the same rights and privileges available to nondisabled students when the District considered and denied the transfer request. The Department does not substantiate the allegation that the District improperly denied the student's inter-district transfer request.

Concerning the allegation that the District wrongfully terminated the student's placement in the Oregon Connections Academy, the Department concludes that the District's decision that the student required a placement that allowed the delivery of significant amounts of SDI was supported by the student's needs related to life skills and functional academics. Though the IEP Team's determination that the MH placement was the least restrictive environment in which the student could receive a free and appropriate public education precluded the student from receiving special education and related services in conjunction with enrollment in the virtual charter school or at the student's neighborhood school, the decision did not deny the parent the right to enroll her child in either of those settings – charter or neighborhood school. The parent retains the right to revoke consent for the child to continue receiving special education services and to enroll the child in a charter or neighborhood public school. Therefore, the Department concludes that the District's decision to place the student back in the MH program in April 2010 did not deny the parent the same rights and privileges made available to all parents. The Department does not substantiate the allegation that the District wrongfully terminated the student's placement in the online charter school.

V. CORRECTIVE ACTION³

In the Matter of Three Rivers SD 1J
Case No. 10-054-014

#	Action Required	Submissions ⁴	Due Date
(1)	<u>Training:</u> The District will provide training to all special education staff, case managers and administrators concerning who must attend IEP meetings and the narrow circumstances under the regulation justifying a written agreement excusing a required IEP team member from a meeting, and concerning the development and documentation of appropriate measurable goals and progress monitoring procedures with regard to District IEPs.	A copy of the training materials, when presented, and an attendance roster must be provided to the Department.	October 1, 2010

Dated: July 12, 2010

Nancy J. Latini, Ph.D.
Assistant Superintendent
Office of Student Learning & Partnerships

Mailing Date: July 12, 2010

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.

³ 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).

⁴ Corrective action plans 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.