

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of District A

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FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 12-054-011

I. BACKGROUND

On April 17, 2012, the Oregon Department of Education (Department) received a written request, via email, for a special education complaint investigation from the parent of a student (Student) formerly residing in the District A School District (District). The parent, on behalf of her adult student, requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint and forwarded the request to the District by email and by US mail on April 18, 2012.

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

On April 23, 2012, the Department's complaint investigator sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of May 7, 2012.

On May 5, 2012, the assigned complaint investigator informed the Department that he had major schedule conflicts with the timeline in the complaint, and asked that it be reassigned to a different investigator. On May 7, the Department reassigned the complaint and the second investigator completed the investigation.

Also on May 7, 2012, the District submitted a timely response indicating they disputed all of the allegations in the parent's complaint. The response packet contained IEP's, evaluation and eligibility reports; transcripts and progress reports; prior written notices, meeting notices and meeting minutes; and copies of correspondence between the District and the parent. The Department's complaint investigator determined that on-site interviews were needed. On May 17 – 18, 2012 the complaint investigator interviewed the District's Special Education Director, two school psychologists, two vision specialists, a speech and language therapist and the former special education manager from an out of district virtual charter school. On parts of these two days, the investigator interviewed the parent and the student. The parent gave the investigator some additional materials during the interview and the investigator shared these with the District. The investigator interviewed the parent and the student again on May 25, 2012; and the parent gave the investigator some materials at that interview. The investigator gave copies of these materials to the District. The investigator also interviewed general education (Science, Math, Social Studies) teachers; special education teachers and general education and special education administrators from Oregon Connections Academy (ORCA) on May

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)

² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

31, 2012 and June 7, 2012. The investigator interviewed a family friend who was present³ at most of the meetings in April—June 2012. The complaint investigator reviewed and considered all of these documents, interviews, and exhibits 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 34 CFR §§ 300.151-153 and OAR 581-015-2030. The parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from April 18, 2011 to the filing of this complaint on April 17, 2012.

	<u>Allegations</u>	<u>Conclusions</u>
	Allegations to be investigated. The written complaint alleges that the District violated the IDEA in the following ways:	
1.	<p><u>Special Education Evaluations:</u></p> <p>a. Not identifying and evaluating the Student for Special Education Eligibility when the District should have known that the Student was in need of special education services; (Allegation #1; OAR 581-015-2080 and OAR 581-015-2105 and 34 CFR 300.303 and 34 CFR 300.111).</p> <p>b. Not evaluating or assessing the Student in all areas of suspected disability eligibility, specifically Other Health Impairment and Visual Impairment; (Allegations #8, 9 & 19; OAR 581-015-2105, 2110, & 2120 and 34 CFR 300.304-300.306).</p> <p>c. Not evaluating or assessing the Student to obtain an accurate Present Level of Academic Achievement and Functional Performance; (Allegation #16; OAR 581-015-2110 & 2200 and 34 CFR 300.320).</p>	<p>a. and b. <u>Substantiated</u> Evaluations are to be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the child's disability category. The District conducted only one minimal evaluation in the area of Communication Disorder.</p> <p>c. <u>Substantiated</u> The team acknowledged that the student would need 20 hours of intense speech/language therapy to correct the articulation error.⁴ However, in making its determination that the student did not need special education /specially designed instruction, the team did not consider the substantial modifications in content and</p>

³ Many of the ORCA staff members and the family friend attended the meetings by telephone.

⁴ For a student identified as eligible under Communication Disorder, this therapy is considered specially designed instruction OAR 581-015-2000(34)(b).

	<p>d. Not evaluating the Student before terminating the Student's eligibility for special education. (Allegation #6; OAR 581-015-2105(5) and 34 CFR 300.305).</p>	<p>instructional methodology or the substantial hours of outside help and tutoring required by the student to access the curriculum.</p> <p>The team found that the student required substantial modifications in content, methodology, and delivery of instruction in many classes due to student's inability to read text and other visually complex materials. In addition, the team also found that the student required many hours of outside help and tutoring to maintain performance in other areas. Still, the team determined that the student was not in need of specially designed instruction in other areas. Both of these factors should have been considered in the eligibility discussion for Vision Impairment and Other Health Impairment but were not. The District instead simply stated that it was only mandated to help the student "access the general curriculum within the normal range of [student's] grade level to the extent possible with [student's] disability"; See Section V, Corrective Action</p> <p>d. <u>Substantiated</u> In accordance with IDEA, OAR 581-015-2105 requires a public agency to conduct an evaluation or reevaluation process before terminating eligibility as a child with a disability. The District terminated the student's eligibility for special education without the required reevaluation process.</p>
<p>2.</p>	<p><u>IEP Design/Content:</u></p> <p>a. Not accurately describing the Student's present levels of academic achievement and functional performance including how the Student's disability affects the Student's involvement and progress in the general education curriculum; (Allegation #16; OAR 581-015-2200 (1)(a) and 34 CFR 300.320).</p> <p>b. Not designing the Student's IEP to</p>	<p><u>Not Substantiated.</u></p> <p>a. <u>Not substantiated</u> The District wrote a complete Present Level of Academic Achievement and Functional Performance statement that reflected the student's perceived needs.</p> <p>b. <u>Not substantiated</u></p>

	<p>meet the Student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; (Allegation #17; OAR 581-015-2200 (1)(b)(A) and 34 CFR 300.320).</p> <p>c. Not designing the Student's IEP to include the specific special education in reading, writing and math the Student needed, related services and supplementary aids and services to be provided to the Student and not considering special factors related to a student who is blind or visually impaired; (Allegation # 9 & 18; OAR 581-015-2200 (1)(d) & (3)(c) and 34 CFR 300.320 and 34 CFR 300.324).</p> <p>d. Not designing a transition plan with appropriate measureable postsecondary goals based on age appropriate transition assessments related to training, education, employment, and independent living skills; (Allegation #3; OAR 581-015-2200 (2) and 34 CFR 300.324).</p>	<p>The Department finds that the District did not have sufficient information to consider the student's emerging visual issues at the time it developed the student's May 24, 2010 IEP, but did include program modifications and supports intended to enable the student's progress in the general curriculum.</p> <p>c. <u>Not substantiated</u> The Department finds that the District provided a number of supports for the range of the perceived student issues and did not have sufficient information to consider the student's special needs related to the alleged blindness or visual impairment at the time it wrote the student's IEP (due to the previously discussed evaluation allegations) and therefore does not substantiate the allegation.</p> <p>d. <u>Substantiated in part</u> The District did complete transition services requirements based on the information known at the May 24, 2010 IEP meeting, but did not include the post-secondary goals developed in accordance with OAR 581-015-2200.</p>
<p>3.</p>	<p><u>IEP Implementation:</u></p> <p>a. Not providing 30 minutes two times per month of speech language services, as specified in the Student's IEP; (Allegation #2; OAR 581-015-2220 and 34 CFR 300.320).</p> <p>b. Not providing appropriate adaptive and assistive technology (AT) to the Student in a manner that the Student could utilize such technology; (Allegation #5 & 15; OAR 581-015-2200, OAR 581-015-2205(2)(b) and 34 CFR 300.320, 34 CFR 300.324(2) and 34 CFR 300.6).</p>	<p>a. <u>Not Substantiated</u></p> <p>b. <u>Substantiated</u> The District should have kept the Assistive Technology Plan in the student's IEP even while the evaluations were going on, as there was no clear reason or student data provided to necessitate the removal of the AT plan or services, and the District should have provided staff support to the student in learning how to use the assistive and audio technology as part of the IEP. However, no instruction or introductions of</p>

	<p>c. Not implementing auditory access to reading and writing curriculum. (Allegation #9; OAR 581-015-2200 and 34 CFR 300.320).</p>	<p>the auditory technologies were ever given to the student; therefore, these services were rendered useless. The Department substantiates this allegation and orders Corrective Action.</p> <p>c. <u>Substantiated in conjunction with allegation b.</u> When the District removed the Assistive Technology plan, it ended the access to software for which it had not provided staff support or instruction, as described above and never provided staff support. While the May 24, 2011 IEP does not specifically mention auditory access to reading and writing curriculum to be implemented, it does reference a need for Assistive Technology devices or services, which as noted above were not provided in a manner the student could utilize.</p>
<p>4.</p>	<p><u>Parental Participation at IEP Meeting:</u></p> <p>a. Not providing the parent⁵ with the opportunity to participate in the May 5, 2011 IEP meeting by predetermining the outcome of the IEP meeting; (Allegation #7; OAR 581-015-2190 & 2195 and 34 CFR 300.501).</p>	<p>a. <u>Substantiated as per OAR 581-015-2190 (1)</u> A district is obligated to "provide one or both parents⁶ 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". Additionally, the IEP team must consider the concerns of the parent or adult student for enhancing the education, in developing, reviewing, and revising an IEP per OAR 581-015-2205(1)(b). In this case, the District's IEP team members, especially the District's Special Education Director, sent very clear preliminary messages about their opinions regarding the student's lack of potential eligibility before ever allowing the other team members to provide any input or meaningful participation or before viewing any student specific data. For this reason, the Department substantiates Part A of the allegation and orders Corrective Action.</p>

⁵ For adult students, the rights of a "parent" are transferred at the age of majority per OARs 581-015-2000(1) and 581-015-2325.

⁶ *Id.*

	<p>b. Not providing the parent or Student with a Meeting Notice identifying the individuals who would attend the meeting. (Allegation #11; OAR 581-015-2190 (2) and 34 CFR 300.503).</p>	<p>b. <u>Unsubstantiated</u> The District did notify the parent that the attorney would attend the meeting. Therefore the Department does not substantiate Part B of the allegation and orders no corrective action.</p>
<p>5.</p>	<p><u>Free and Appropriate Public Education:</u></p> <p>a. Not providing AT and vision impairment skill training session in the home environment, or in the alternative, providing transportation for the Student to the training sessions; (Allegation # 12; OAR 581-015-2040 and 34 CFR 300.101).</p> <p>b. Not providing the Student with access to, or the ability to access, the Student’s curriculum; (Allegation # 4; OAR 581-015-2040 and 34 CFR 300.101).</p>	<p>a. and b. <u>Substantiated</u> A partial effort to provide FAPE does not meet the standards set forth in IDEA. The District provided some assistive technology materials to the student but no instructions on how to use them even though the parent and child said they did not know how to use the technology and told the District this repeatedly. It did not allow the parent and student to engage in any problem solving with vision and assistive technology specialists in order to find ways for the student to use the technology, or offer any instructions for use, nor did the IEP team consider Assistive Technology and Assistive Technology services as a special factor in providing the child with FAPE. Instead of providing any assistance or guidance on how to use the assistive technology, the District merely referred the parent and student to the upcoming eligibility meeting, even though the student had an active IEP. For these reasons, the District substantiates the allegations and orders corrective action.</p>
<p>6.</p>	<p><u>Access to Educational Records:</u></p> <p>a. Not providing the parent of the Student with access to the Student’s educational records before any meeting regarding an IEP and in no case more than 45 days after receiving the request. (Allegation 10; OAR 581-021-0270 (2)).</p>	<p>a. <u>Not Substantiated</u> There are multiple instances when the student or parent or both informed the District that the student could not read text, computer materials, Power Point presentations, etc. However, there is little evidence to indicate that the parent or student sent any concrete requests for the special education paperwork to be sent to the student in a different format. Therefore the Department does not substantiate the</p>

		allegation and orders no corrective action.
	<p><u>Proposed Corrective Actions:</u></p> <ol style="list-style-type: none"> 1. The District pay for the student's living expenses (including rent, utilities, phone, travel and health insurance) for eighteen months while the student attends an out of state facility; 2. The District provide one year of one hour, three times per week, private speech-language therapy by a provider of Student's choice; 3. The District pay for tuition and living expenses for the Student to complete 36 units (three semesters) of remedial college credits; 4. If the 36 units of remedial college credits are not sufficient, the District shall pay for additional math, reading and writing instruction from appropriate agencies and highly qualified individuals in the area that the Student is located at the time such instruction is needed; and 5. Reimburse parent for attorney fees incurred. 6. The parent's monetary request totals \$71,764.00, but does not include a claim for compensatory damages related to: <ol style="list-style-type: none"> (a) Lack of access to the curriculum and limited choice of classes, and (b) Lack of access to National Honor Society. 	See Section V, Corrective Action.

Issues Outside of the Scope of this Investigation

The parent alleges that the District did not permit a non-attorney advocate to accompany the parent and the Student to a settlement meeting. IDEA does not address settlement meetings. Rather, IDEA does address the ability for members of the IEP team to be invited by the parent or adult student if they have knowledge or special expertise regarding the student.⁷ Likewise, IDEA does address a

⁷ OAR 581-015-2210 (1)(g)(A)

Resolution meeting following the filing of a due process hearing request.⁸ Neither of these situations relate to a “settlement meeting” as referenced in the complaint, and therefore the Department will not investigate this allegation.

The parent includes a proposed solution to correct the Student’s educational records (Allegation 16, page 9 of Complaint). The appropriate method of requesting correction or amendment of a student’s education records, including the right to a hearing, is found in 34 CFR 99.20 and 99.21, the regulations for the Family Rights and Privacy Act (FERPA) and in the District A School District Policies found at [] See Policy JO-AR.

The parent includes an allegation that the district did not provide the Student with a curriculum that would allow student to complete credit acquisition fulfilling the District’s graduation requirements. The Oregon Standard IEP document requires the IEP team to identify the type of diploma and date of graduation. Issues related to IEP content and the appropriate supplementary aids, services, accommodations and modifications of curriculum and instruction are addressed within the Final Order. For other diploma issues, including the appeal procedures, see the following: Diploma Requirements, See OAR 581-022-1130, et seq. For Complaint Procedures, See OAR 581-022-1941. For Appeal Procedures, See OAR 581-022-1940.

The parent includes an allegation that “the providers of service were not qualified.” To the extent that the parent is referring to lack of teacher licensure, the Department refers the parent to the Teachers Standards and Practices Commission (503) 378-3586 (<http://www.oregon.gov/TSPC/>).

III. FINDINGS OF FACT

- 1) The student and parent physically resided in the District A School District during the time period under investigation: April 18, 2011 – April 18, 2012.
- 2) The student attended Oregon Connections Academy (ORCA), a virtual charter school during this time period.
- 3) During this time period and effective July 1, 2011, State law changed residency for school purposes and responsibility for FAPE from the parental resident district⁹ (District A) to the district in which the charter school attended by the student is located (Scio).
- 4) Currently, the student is 20 years old, and attends an out of state private residential center which serves individuals with blindness and low vision. The student is receiving instruction services in orientation and mobility, independent living, Braille, recreation, financial management and adaptive and assistive technology skills.
- 5) The student was never enrolled in District A High School; but rather began attending the virtual charter school in the fall of 2009.
- 6) On June 9, 2009, the District found the student eligible for special education as a student with a communication disorder in the area of articulation. On the same date, the District sent the parent a prior written notice to explain the action the District had taken, and noted that the student’s “articulation was below age level expectations” and that the student self-reported interference with communicating with others. The District also noted that the student was motivated to correct the articulation difficulty.
- 7) A psychological evaluation completed on April 30, 2006 indicated that the student scored in the very superior range; that working memory was average, and that the student scored in the low average range in processing speed.

⁸ OAR 581-015-2355

⁹ OAR 581-015-2040, OAR 581-015-2075, and ORS Chapter 338

- 8) On February 1, 2009, as a 10th grader, the student took the Oregon Writing Assessment. The student told the investigator that it took four hours to finish the test, and that the teachers administering the test read much of it to student. The student scored a 40 (Meets) the State Standard for the CIM. On April 17, 2009, the student took the Oregon Reading and Literature, Mathematics, and Science Assessments. The student was given additional time and support¹⁰ during the testing situation because staff agreed that student had reading and writing problems due to student's vision issues. The student achieved a score of 253 (Exceeds) in Reading and Literature; 239 (Meets) in Mathematics; and 253(Exceeds) in Science.
- 9) On September 3, 2009, the District IEP team developed an IEP for the student, and, at the same time, advised the student of the Part B rights that would transfer to the student at the student's 18th birthday.
- 10) The September 3, 2009 IEP was revised in December, 2009 and again rewritten on May 24, 2010. The May 24, 2010 IEP was in effect until April 19, 2011, when the District terminated the student's eligibility for special education. The student turned 18 on September 10, 2010.
- 11) The IEP written on May 24, 2010 described the student in the Present Levels of Academic Achievement and Functional Performance (PLAAFP) as a friendly, formal individual who expressed ideas in a way clearly understood by others—"although speech is noticeably in error". The student likes to take challenging courses such as German and Honors courses; however, the student spends an inordinate amount of time trying to get assignments completed. The student has strong ability to process information auditorially and to explain aloud thinking processes. Staff also noted that the student was judged to be fully intelligible at 98% accuracy in a three minute language sample; but that the student continues to misarticulate the r-controlled vowels in most contexts. The student reported that others misunderstand the student's speech when the speech consists of a few word response which does not have contextual support. Staff also noted that the student had been evaluated for a Specific Learning Disability in November, 2009, and that the student was found not eligible as a child with a specific learning disability who needed special education and related services. However, at that time the staff wrote in the PLAAFP that "based on dysgraphia, the student needs accommodations for writing tasks." Staff recommended the use of assistive technology methods of both paper based and computer graphic organizers for preparing to write and live scribe on the May 24, 2010 IEP. The staff noted that voice recognition software use holds "some promise" for the student; but that the student might need improved speech in order for the software to recognize the verbal messages. In the PLAAFP of this IEP the parent expressed concerns about the student's needs for assistive technology, about the noisiness of the Resource Room, and the ineffectiveness of the instruction in writing that the student received in the Resource Room, and the lack of help for the student in Algebra 2. The parent also reported that the student experiences problems with visual tracking when completing forms and also experiences double vision at times. Additionally the parent noted that the student has "delicate health that deteriorates when the student is stressed." Finally, in the May 24, 2010 IEP the Staff reported that academically the student had met or exceeded the state benchmarks in Reading, Math, Writing, and Science.
- 12) The other components of the May 24, 2010 IEP are outlined in the table below:

Consideration of Special Factors	<ul style="list-style-type: none"> • Needs assistive technology devices • Has communication needs
Transition ¹¹	<ul style="list-style-type: none"> • Taking on-line courses at ORCA to complete high school requirements for graduation • Has not been able to complete all of the coursework on a

¹⁰ Annually the Oregon Department of Education provides a Test Administration Manual (TAM) that includes allowable accommodations for these tests.

¹¹ The May 24, 2010 IEP did not contain post-secondary goals.

	<p>typical timeline because it takes extra time to get the required work done</p> <ul style="list-style-type: none"> • Will have speech therapy to assist with articulation of r-controlled vowels • Would like to improve speaking skills for future career opportunities.
Assessment	<ul style="list-style-type: none"> • No state or district testing conducted at the student's grade level
Goals	<ul style="list-style-type: none"> • Will discriminate all vowels in the medial and final positions of words • Will discriminate the r-controlled vowels in the medial and final positions of words • Will produce the /air/, /ire/, and /er/, in the medial and final positions of words.
Specially Designed Instruction in Communication	<ul style="list-style-type: none"> • 60 minutes per month in a special education setting.
Supplementary Aids and Services; Modifications and Accommodations	<ul style="list-style-type: none"> • Extended time on assignments for all writing and math • Student views syllabus before selecting class • Sample of assignments on request for all projects • Alternate format on request for all content area written work • Exempt from "assignments in order" in all classes • Oral response on request in content tests with written responses • Re-do option on ORCA work that is less than 75% correct allowed one time for each assignment • Direct circle of answers or enlarged bubble sheets on all multiple choice tests • Student sends multiple choice tests to teacher on all multiple choice tests • Double time on normed writing tests only • Quiet area for testing for all tests • Shorten assignments when possible upon request of student as approved by teacher in all classes • No grade reduction for spelling errors in all assignments including math and chemistry • Access to keyboard for normed assessments when available • Access to Resource room weekly • Assistive Technology plan for 15 hours per year.
Non-participation justification	<ul style="list-style-type: none"> • The student needs to be removed from participating with nondisabled students in the regular classroom for 60 minutes per month in the speech office.

Based on the IEP, the IEP team separately completed the placement determination page in this manner:

Placement Determination	The team considered and selected only placement option: Regular education with less than 20% of pull-out special education services for speech therapy.
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- 13) At the beginning of the 2010-2011 school year, the parent expressed concerns to the speech and language specialist (the student's case manager) that the student was not making progress. The parent asked the specialist to arrange a meeting for the team to consider evaluating the student for special education eligibility as a student with an Other Health Impairment (OHI). This began a discussion which continued between the District, ORCA staff and the parent over a period of months. The individuals exchanged many emails and attended several meetings. For purposes of brevity, the complaint investigator has included highlights and important points of these discussions and meetings in this Finding of Fact.
- 14) The speech language specialist wrote back to the parent on October 13, 2010 stating, "based on the student's academic achievement, the student would not qualify since we cannot establish educational impact...this is the reason we were unable to find the student eligible under Specific Learning Disability (SLD)."¹²
- 15) The parent replied on October 14, 2010, confirming a desire to have the student evaluated for OHI, and adding a request that the team review the student's transition plan.
- 16) The District Special Education Director wrote an email to the parent on October 14, 2010 informing the parent that the requirements for eligibility as a student with OHI "include the same academic impact we already considered for eligibility under SLD, so 'the student' would not be likely to qualify". In the same email the Director suggested that the team could discuss stress and time management; but acknowledged that the parent and student had not previously been interested in this discussion. Finally, the Director suggested that the team consider "support in looking at post-secondary programs that the student can attend while coping with health concerns."
- 17) On November 1, 2010, the parent wrote again to the Special Education Director and expressed concern that the Assistive Technology staff member from the local education service district would not attend the team meeting that was being planned. In this email the parent requested that the student's IEP include postsecondary goals based on transition assessments.
- 18) In November, 2010, the parent asked the student's primary physician to refer the student for a vision examination because the student was experiencing increasing bouts of blurred and double vision. The doctor referred the family to the Oregon Health and Science University and the student was examined on December 6, 2010 by a neuro-ophthalmologist. This doctor found that the student was having "intermittent episodes of severe diplopia—related to a spasm of accommodation." The doctor also suggested that the vision issues "might have psychological roots." The doctor recommended plus lenses for near work.
- 19) The Special Education Director emailed the parent on January 3, 2011 and provided information to the parent on the possibility that the student (if qualified) could obtain text from the Recordings for the Blind and Dyslexic.¹³ The Director asked the parent if the parent wanted to consider OHI eligibility formally at an IEP team meeting set for January 20, 2011; and if the parent and student wanted to participate in a PATH¹⁴ planning process.
- 20) On January 5, 2011, the parent sent a specific list of questions to the Special Education Director and asked for the answers to be sent in writing two days before the next IEP team meeting at that time scheduled for January 20, 2011. The parent also restated some comments the Director had

¹² The team had evaluated the student for a Specific Learning Disability (Written Expression); but found the student not eligible on November 23, 2009. In the Prior Written Notice of that date, the team stated the reason for no eligibility was that the student had demonstrated ability to meet Oregon standards at grade level in written expression.

¹³ Founded in 1948 as Recording for the Blind, Learning Ally serves more than 300,000 K-12, college and graduate students, veterans and lifelong learners – all of whom cannot read standard print due to blindness, visual impairment, dyslexia, or other learning or print disabilities. <http://www.learningally.org/>

¹⁴ **Person-centered planning (PCP)** is a set of approaches designed to assist someone to plan their life and supports. It is used most often as a life planning model to enable individuals with disabilities or otherwise requiring support to increase their personal self-determination and improve their own independence. While there are many different styles of person-centered planning; all focus on helping an individual with a disability make plans for his or her future in all areas of life.

made at a meeting in December; and asked if the restatements of the Director's comments were correct. The questions were:

- a) What [does] current differential diagnosis means to you?
- b) What you mean by the specific nature of [the student's] visual disability?
- c) What it means to be unable to meet with school staff outside of the home for medical reasons?
- d) What you consider to be adverse impact?
- e) What it means to need special education services?
- f) What you consider as grade/age appropriate with regards to gifted students?
- g) What you require for a finding of adverse [educational] impact?

21) The restatements were:

- a) You believe that the student does not qualify for special education and/or as specific learning disabled because the student met state standards (the CIM).
- b) You believe the student does not qualify for special education because the student is more advanced than students in a special education setting.
- c) That the student will not be eligible for speech therapy services after May 2011.

22) Also, on January 5, 2011, the parent sent the Director a preliminary copy of a vision report from a local optometrist and asked that the Director make a formal referral to the education service district's vision specialist for a functional vision assessment.

23) The Special Education Director replied to the parent on January 14, 2011 and answered the parent's questions. The answers (summarized) are listed below:

- a) "Medical diagnosis derived after consideration of the symptoms and potential issues that could explain them."
- b) "Double vision or blurred vision are symptoms of some eye disorders...also possible symptoms of various other types of disorders not necessarily connected to an anatomical problem with the eyes."
- c) "Being served at home is considered a restricted environment and is reserved for those students who cannot access special education and related services in another setting.....the student is clearly able to attend some classes outside of the home."
- d) "For the purpose of special education eligibility...an adverse impact is one that must be measured against a student's ability to achieve commensurate with [student's] peers when given necessary accommodations. While the student may experience some adverse impact on education from the neurological and visual issues you've described, the impact is not of sufficient level to have kept the student from learning at a rate within the normal range of the peer group."
- e) "Complex question...whether or not a student can access (learn) the general curriculum...in this case the student is able to access the general curriculum with accommodations."
- f) "From an IEP point of perspective, this question is not relevant. The obligation of an IEP for twice exceptional students is the same as it is for other IEP students—to get them to a place where they can access the general curriculum within the normal range of their grade level to the extent possible with their disability."
- g) "Need to demonstrate that the student is not able to produce work at standard...unless the student has been cheating in some inventive manner uncharacteristic of the student's projected nature, I don't know how the student could demonstrate an adverse impact sufficient to warrant identification."

24) In response to the restatements the parent had written, the Director responded as follows:

- a) "The team that met last year and reviewed the student's history, classroom performance, state assessment performance, individualized assessments and progress monitoring of curriculum based measures and determined that the student is able to access the general curriculum with accommodations...passing the CIM was only one piece of evidence."
- b) "There are a number of students that qualify for special education that demonstrate advanced skills in some areas...the student has demonstrated ability to access the general curriculum. I

have suggested that the student's issues may involve stress management and mental health issues. Several teachers have identified 'perfectionism' I have offered social skills assessments or mental health assessments and you have declined them since you are adamant that the challenges are neurological."

- c) "The student has demonstrated intelligibility and that articulation does not appear to be adversely impacting education...many districts no longer provide articulation support for this type of speech impediment...for this reason the District wants to reexamine eligibility."
- 25)** On January 18, 2011 the parent requested that the District conduct a functional vision evaluation prior to the IEP meeting scheduled for January 31, 2011. The District refused this request in an email sent on the same day.¹⁵
- 26)** On January 31, 2011, the team met to consider a wide variety of issues, including an eligibility evaluation for OHI; the provision of an Assistive Technology evaluation in the student's home; and a review of a request to conduct a functional vision evaluation in order to consider eligibility for Vision Impairment. The parent and student attended the meeting (as well as the parent's friend¹⁶ who attended by phone). Others present by telephone included the advisory, social studies and language arts teachers from ORCA; and the special education coordinator and case manager from ORCA. A vision specialist, the speech and language specialist and the special education Director from the District were also present.
- 27)** As a result of the meeting, the District agreed to conduct evaluations to determine the student's eligibility and instructional needs in functional vision, assistive technology and communications. The District also amended the current IEP by removing the Assistive Technology plan, pending the new evaluation. The District summarized these decisions in a Prior Written Notice sent to the parent after the IEP meeting. At the meeting, the student signed consent for the evaluations. On the consent form, the case manager noted that this was a reevaluation to be used to decide continued eligibility. The case manager outlined the evaluation procedures as Functional Vision Assessment; file review of AT report; speech therapy progress notes; review of prior articulation testing (Goldman Fristoe Test of Articulation 2) and speech sample; and an assistive technology evaluation.
- 28)** At the same meeting, the team suggested consideration of a PATH transition evaluation. The student had written a Future Goals document previously (date and context unknown) and sometime in December the student shared this document with the vocational specialist. The document outlines the student's desire to become either a physician or an Episcopal priest, and is well-organized and specific. In the document, the student refers to student's struggle to advocate for self and student's disability. Student states, "As a student who is 'twice exceptional' (gifted and learning disabled), I have first had to discover then struggle to understand my unique learning style. Often times, because of my learning challenges, the 'easiest' assignments are the hardest for me. This tends to baffle teachers and administrators. I must conquer the struggles of the assignment, discover strategies, tools, and technologies to help me and educate others (often teacher and staff) about academic challenges and realities for students like myself. This has always been difficult but became incredibly so my tenth grade year." After reading this document the specialist wrote to the Special Education Director and stated "it appears that a PATH Plan will not benefit the student...the student is clear about the direction and has written a clear plan which far exceeds the services I would offer in writing a PATH."
- 29)** The recommendations from the ophthalmologist at OHSU did not help the student's vision and so the family asked for another recommendation and was referred to an optometrist in the local area for an evaluation. This optometrist examined the student on February 11, 2011. In his report, the optometrist stated that his "evaluations concur with accommodative and convergence spasms

¹⁵ The District did not send a Prior Written Notice refusing this request; and the contents of the email the District sent did not meet the PWN requirements.

¹⁶ This individual has known the student since birth, and has provided tutoring to the student in science, writing and organizational skills.

diagnosis cited by previous examiners.” In addition, the optometrist noted that the student’s vision declines to 20/400 or worse in the response state...eyes blur out and cross in an involuntary and uncontrollable fashion. Baseline measurement before inducing the event and measurements during the event document a shift from 0.00 D(pre-event) to -6.50 of Myopia during the episodes, thus accounting for the blur...eyes also cross to variable 16 t 35 prism diopters, creating double vision in the absence of suppression. The student reports a full blur out, precluding a definitive measurement of residual field. In the affected state the residual field is functionally nil, by subjective report.” Finally, the optometrist states that the student has a “visual impairment that has transient manifestations to the level of functional blindness during academic work. If this condition were not transient, the student would be legally blind.”¹⁷

- 30) On February 17, 2011, the ESD Specialist in Vision Impairment conducted a Functional Vision Assessment with the student. The specialist evaluated the student in the student’s home and assessed the student’s ability to read, write and move about the environment when the student’s vision was not impaired and after it was impaired when the student tried to read a chart with many numbers. The Vision Specialist concluded that the student (when not impaired) has good near and distance visual acuity. However, when the student’s vision is “set off”, the student could not identify simple pictures in the Near Vision Picture Symbol Test until the pictures were only 3 inches away, and had visual acuity of 20/2000. The Vision Specialist recommended that the student receive services from the Program for the Visually Impaired; “the student needs the skills and strategies taught to visually impaired student to help as an independent adult; and that the student access textbooks auditorially.”
- 31) The Assistive Technology Specialist assessed the student during several sessions at the student’s home in February 2011.¹⁸ In the report, the AT specialist noted that “the student with learning difficulties displays a cluster of characteristics over time, in various intensities, which interfere with overall development and achievement...this lifelong disability interferes with acquisition of academic and other basic skills necessary for survival as an independent adult.” The specialist noted the student’s inability to read graphically intense and complex materials and also observed that the student is primarily self-taught on the computer and not as efficient as needed—since this is the primary tool for access and learning. The AT specialist then recommended a number of operating tools the student could learn to use Microsoft Word more efficiently. The specialists commented that the student has a subscription with Recording for the Blind and Dyslexic, now named Learning Ally, but that the system was not operable at the time, and that the student would need considerable practice learning how to use the materials. In addition, one of the books sent from Learning Ally was the wrong textbook. The specialist recommended the student be taught how to use additional technology such as a tape recorder, talking work processing software, talking calculator, electronic organizer, etc. In conclusion the specialist noted that the “student needs assistance organizing, sequencing and prioritizing assignments, projects, homework and other independent activities as well as assistance with time management.”
- 32) The speech language specialist wrote a summary report and presented it when the team met on April 18, 2011 to consider the student’s eligibility for special education as a student with a Communication Disorder. The speech language specialist did not reevaluate the student using a speech language assessment, but rather referred to the Goldman Fristoe Test of Articulation conducted on May 5, 2009. In the interview, the speech/language specialist stated that there “wasn’t much point in re-administering the test as the student had not gotten to the word level, and was not generalizing the skill from single sounds to words.” Additionally, the speech language specialist referred to the hearing acuity screening and evaluation of student’s oral mechanism both completed in May, 2009. The only new information provided during the team meeting was that provided by the general education teachers from ORCA, and a summation of speech therapy

¹⁷ Dr. Douglas G. Smith, O.D. Report, 4/8/2011

¹⁸ No specific dates given in the report.

notes provided by the speech language specialist. In the summary report, the specialist noted that the student had only attended speech language therapy sessions 50% of the time since September of 2010; and that the student would need at least 20 hours of intensive therapy with sessions provided twice a week and lots of daily independent practice to have the possibility of correcting the articulation error. The specialist also noted that “in public school we do not provide that intensity of speech therapy for older students.” The ORCA general education teachers all noted they had little difficulty understanding the student’s speech.

- 33) The team found that the student was no longer eligible for special education as a student with a Communication Disorder on April 18, 2011. All team members, except the parent, student, and two family friends, agreed with the decision.
- 34) On April 19, 2011, the District sent the student and parent a Prior Written Notice informing them that the student was now ineligible for special education, because the student’s “speech pattern does not have an adverse impact on performance in school.”
- 35) On May 6, 2011, the team met again to consider the student’s eligibility for special education as a student with either a Vision Impairment or Other Health Impairment. The parent and student attended the meeting (as well as the parent’s friend¹⁹ who attended by phone). Others present by telephone included: the advisory, science, social studies and language arts teachers from ORCA; and the special education coordinator, case manager, counselor and assistant principal from ORCA. Two vision specialists, the speech and language specialist and the special education Director from the District were also present. At this meeting, the team reached a conclusion, which was outlined in a Prior Written Notice sent to the parent on the same day.
 - a) The team wrote that the student was not eligible for special education as a student with a Vision Impairment or an Other Health Impairment because the “medical and optometric reports indicate that the student has episodic blurred vision related to neurological stress and triggered by graphically intense material; that the educational impact of the disabilities appears limited based on numerous factors including student’s current transcript indicating more than 23 of 24 required graduation credits completed, mostly with A’s, as well as passing scores on the state high school assessments; and, that the student has a prolonged history of academic success with accommodations and there is no need for specially designed instruction.”
- 36) Because not all of the team members agreed with the conclusion, the Special Education Director asked them to send emails to confirm their opinion. During the interviews many of the general education teachers stated that they didn’t remember much about the meeting, but stated they knew the student had vision problems and many health issues. They also stated that the disagreements between the two vision experts raised additional questions.
- 37) During interviews the parent, student and family friend expressed disappointment that the team did not consider all of the additional outside help the student received from them as well as from teachers over the years. The student described using a verbal interview system with the teachers to complete assignments and the parent described reading text aloud to the student every day. Additionally, they both noted that ORCA teachers, as well as other teachers in previous schools had given the student many hours of individual instruction in order to help the student complete assignments.²⁰ They described many ways in which they saw an adverse impact of the student’s disability on the student’s educational program such as:
 - a) The student took Algebra 2 for three years in a row in order to complete the class;
 - b) The student is now 40% of the way through Algebra 2B but the parent is paying a tutor to help the student learn and complete the assignments;

¹⁹ This individual has known the student since birth, and has provided tutoring to the student in science, writing and organizational skills.

²⁰ In fact, the student was asked to leave a private school at the end of the 8th grade because administrators told the parent the teachers had to spend too much time adapting the student’s instruction and creating special materials for the student to use.

- c) The student cannot read PowerPoint presentations used as part of ORCA learning tools, or participate in the “live classroom” sessions as the student cannot see the icons on the computer screen well enough to manipulate them;
 - d) The student is unable to distinguish numbers and units (letter labels) in math problems, and cannot do even simple mathematical manipulations;
 - e) The student cannot use calendars in the traditional format, cannot see or access forms to register to vote, read bank statements, apply for classes or credit, etc.; and,
 - f) The student cannot read standard textbooks and has not had enough individualized instruction to learn how to use screen reading software programs.
- 38) On May 11, 2011, the District offered to have the student examined by Dr. J.P. Lowery, ophthalmologist, who conducts the Statewide Lions Low Vision Clinic. The District suggested that a second opinion might be helpful, and that staff would like to have Dr. Lowery reflect on the medical criteria for Vision eligibility based on his examination of the student’s vision. The student and parent refused the offer.
- 39) Having found the student not eligible under IDEA, the District decided to consider the student’s need for a plan under Section 504 of the Rehabilitation Act, also known as a Section 504 plan. The team reconvened on May 11, 2011 to begin re-writing the student’s Section 504 plan,²¹ which was developed originally in February 2009; as part of the Section 504 plan, the District offered to provide two hours a week of time with the vision specialist to help the student learn to use assistive technology to access curriculum along with other skills important for those with visual impairments.
- 40) From September, 2010 through April 18, 2011, the student attended the speech/language therapy sessions approximately 50% of the time. The student told the speech/language specialist that the lists of words to read often disrupted the student’s vision. Once disrupted, the student often needs to rest in a quiet dark room and sleep for up to 24 hours for the vision to recover. In addition, during this time period, the student was having difficulty accessing other academic materials as well.
- 41) The student’s primary care physician noted in a letter written on April 14, 2011 that “Several documents mention ‘stress’ as a possible contributor to the student’s health and vision problems. Some recommend psychological testing or counseling as possible solutions. It is important to distinguish neurological stress caused by real physical and/or neurological differences from everyday psychological/emotional stress, as most of us know it. The student is, neurologically speaking, highly atypical; and it’s likely that resulting neurological stress has impacted overall health and affected vision, among other things. If the student had the tools and skills to effectively compensate for neurological differences and reduce related neurological stress, it is likely, in my opinion, that overall health would improve, as likely would [student’s] attendance at school and [student’s] academic performance.”
- 42) During the 2010-2011 school year, the student was often ill with sinusitis attacks, in addition to the times when student needed to rest quietly and sleep due to the blurred and double vision episodes. ORCA staff cautioned the student that student needed to keep making “progress” and completing assignments, or student would be withdrawn from the school.²²
- 43) The student’s IEP outlined a wide variety of supplementary aids and services and modifications and accommodations (See Fact #8) designed to support the student when the student had writing

²¹ A 504 plan was written for the student on February 13, 2009. Copies of this plan were not available for the investigator to review, and all staff agreed the plan had been dormant after the student was found eligible for special education in June, 2009. Additionally, this investigation will not cover 504 issues pursuant to OAR 581-015-2030.

²² It was reported to the investigator that the virtual charter school handles attendance somewhat differently than a bricks and mortar school; students at ORCA must demonstrate their progress on computer assignments. If a student shows no progress over 10 consecutive school days, the student is dropped. Since this statement, Scio administration has informed the Department in a separate communication that students must access the virtual instruction consistently and, if they do not, will be dropped from attendance accounting roles after ten days, a process similar to that of traditional schools.

difficulties. Some of these were also supports which gave the student extra time, due to student's health situation and which modified instruction for the emerging vision issues. The following were regularly implemented over the course of the 2010—2011 year, and they continued even after the student was no longer eligible for special education based on school and teacher approval.

- a) Extended time on assignments for all writing and math
 - b) Student views syllabus before selecting class
 - c) Sample of assignments on request for all projects
 - d) Alternate format on request for all content area written work
 - e) Exempt from assignments in order in all classes
 - f) Oral response on request in content tests with written responses
 - g) Re-do option on ORCA work that is less than 75% correct allowed one time for each assignment
 - h) Direct circle of answers or enlarged bubble sheets on all multiple choice tests
 - i) Student sends Multiple choice tests to teacher on all multiple choice tests
 - j) Double time on normed writing tests only
 - k) Quiet area for testing for all tests
 - l) Shorten assignments when possible upon request of student as approved by teacher in all classes
 - m) No grade reduction for spelling errors in all assignments including math and chemistry
 - n) Access to keyboard for normed assessments when available
- 44) Another component of the student's May 2010 IEP was an Assistive Technology Plan,²³ to be provided for 15 hours per year. This plan was removed from the student's IEP when the IEP was revised on January 31, 2011. However, in late December, 2010 or January, 2011,²⁴ the District agreed to order subject area text from Learning Ally that could be used with software on the student's computer so that the student could listen to the text. Three of the books arrived on February 8, 2011 (Chemistry, Algebra 2, and History). The special education Director notified the student by email and instructed the student to download the Learning Ally manager and to call Learning Ally for support if needed. The Director also noted that the books were in Windows Media Player format.
- 45) On February 11, 2011, the parent wrote to the special education Director on the student's behalf and stated that if the CD's which contained the audio text were "Daisy Audio CD's" the student needed a special software or playback device. The parent also asked for personal help at the student's home to train student on how to use the audio books. The Director replied on February 14, 2011 and informed the parent that the books were usable on any PC with Windows Media Player or iTunes; and again suggested the student call Learning Ally for support. The student did call the given Learning Ally support number, but the customer service agent at the company could only provide the student with instructions on the computer screen which also set off the student's vision condition. The Director also suggested that the student read the text concurrently with the audio book; and that a "reading window"²⁵ might help the student focus on a column of text and avoid more visually intense materials. In the email, the Director also suggested some strategies the student might use to isolate math problems, such as making copies of a math homework page, cutting the individual problems out of the page and pasting them individually on a white page with a glue stick. The Director invited the student to come to the District Office and show him what might work with the math problems.

²³ The investigator never located nor was given a written copy of the plan; although all of the staff interviewed alluded to the use of Assistive Technology.

²⁴ Specific date unknown

²⁵ A reading window is generally two right angle 'L' shaped cards that are used together to create a small window of text or a math problem to read. The window blocks all other text or material on the page.

- 46) The student talked directly with the Director several days later and specified that 1—2 math problems of each kind, excluding graphics (except necessary ones), printed on ¼" graph paper if graphing is needed and three lines of white space between rows would be helpful.
- 47) On February 15, 2011, the Director wrote back and attached some sample pages with the modifications the student recommended. The Director had included the ORCA math teacher in the email exchanges, and the math teacher responded on March 15, 2011. In the email, the teacher stated that since the student had not seen complex fractions before, the student did not know how to suggest what would make them readable; and that each time a new concept was presented the student had to go through a trial and error process to find a readable solution. The math teacher asked if someone could sit down with the student face to face and work through a trial and error process to eliminate the back and forth electronic communications.
- 48) On March 18, 2011, the Director replied to the math teacher and suggested that the student share these concerns with the vision specialist who was conducting the functional vision assessment; and that the team could review this when the team met in April to consider Vision Impairment eligibility for the student. The Director also suggested the student go to the Resource Room at the high school for help and noted that the ORCA special education case manager was working on access to the course material electronically.
- 49) The parent replied to the Director on the same day and stated the District and the family must be having a huge "disconnect"; as the family understood they were not to contact the vision specialist for day to day problems. The parent also noted that going to the Resource Room was not workable because if the student's vision went awry when working on the complex text, there was no where the student could lie and rest as long as needed to restore student's vision. In addition, the parent noted that the family lives many miles out of town, with no access to public transportation.
- 50) The Director replied the same day and apologized for the "disconnect", stating the family did not have access to the vision specialist for day to day problems. Instead, the Director again suggested the Resource Room, and suggested that if transportation was a medical need the District could transport the student to and from the Resource Room.
- 51) The parent replied on March 28, 2011. In the email the parent asked a clarifying question: "Do I understand you as saying that the student needs to wait nearly another month in order to receive any assistance? Under the IEP [student] is already qualified for any of [student's] needs?" The parent also provided information about how close the school bus drives to the parent's home—12.5 miles—and noted that when the student has a vision episode student gets very carsick.
- 52) The Director replied later that day. In the email, the Director told the parent: "We can review accommodations and related services for an IEP on the 18th if the student qualifies for services under IDEA. The student may continue to access the services currently described in the IEP until that date. I have not yet viewed the vision and second adaptive technology reports, but it is difficult to demonstrate academic impact with the student's record, or to identify needs for specially designed instruction. Historically, the student has demonstrated that with appropriate accommodations student can make successful academic progress to the extent that student has demonstrated mastery of high school standards."
- 53) On March 31, 2011, the parent sent an email to the ORCA case manager and counselor, notifying them that the student still needed to have the Government text in audio format and that the student still could not listen to the other texts successfully. In addition, the parent noted that the student still did not have accessible materials and was getting through classes on prior knowledge and oral assessments.
- 54) During the period under investigation, the District, parent (on behalf of the student) and occasionally, the student, exchanged numerous emails about the evaluation, the student's assignments, etc. The District had previously agreed to send emails to the student via a "gmail" email address; rather than through the ORCA Learning Management email system. The student still had difficulty reading the messages on the "gmail" account, but that system was less visually

cluttered than the ORCA system. Most of the reports and other documents were sent in a Microsoft Word format; similarly, all special education documents are available only in "pdf" or Word formats. The student could not read any of these materials either on the computer screen, or once printed on paper.

55) In May, the District offered to settle with the parent for a sum of \$5000.00 to be used to provide some vision and assistive technology services and equipment for the student.²⁶ In return, the parent and student had to agree not to pursue any further special education activity. On advice from their attorney, the parent and student refused the offer.

IV. DISCUSSION

1) Special Education Evaluations:

The parent and the student allege that the District did not identify and evaluate the student for special education eligibility for a visual impairment (VI) or other health impairment (OHI) when the District should have known that the student was in need of special education services. In addition, the parent and student allege the District did not evaluate the student in all areas of suspected disability (Other Health Impairment and Vision Impairment); and that the District did not evaluate the student to obtain an accurate statement of the student's academic achievement and functional performance. Finally, the parent and student allege that the District terminated the student's eligibility for special education as a student with a Communication Disorder without conducting an evaluation.

OAR 581-015-2080 states that school districts must identify, locate and evaluate all resident children with disabilities, regardless of the severity of the disability, who are in need of early intervention, early childhood special education, or special education services, including:

- (d) Children who are suspected of having a disability even though they are advancing from grade to grade
- (e) Children enrolled in public charter schools;

Until July 1, 2011, child find, evaluation, re-evaluation, eligibility determination, provision of FAPE and related special education requirements were the responsibility of District A School District, the parental resident school district, even if the child enrolled in an out-of-district charter school. Therefore, the District had an obligation to evaluate this child.

Additionally, State evaluation and reevaluation rules exist which would apply in this case. OAR 581-015-2110 (4) requires that:

- (d) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- (e) The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified; and
- (f) The evaluation includes assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

This student exhibited areas of suspected disability related to communications disorder and vision

²⁶ Per the settlement offer, \$3500 for instruction in adaptive technology for transition to adult living and opportunities; \$1400 for purchase of AT equipment and software at Parent/Student's discretion up to \$1400.

impairment. Many of student's needs were not common or commonly linked to Communication Disorder, which was student's area of eligibility on the 2010-2011 IEP. However, based on student's continuous struggles with class work, self reported issues, parental input, and medical documentation there was sufficient basis to demonstrate a need for evaluation in a broader context than the initial communications evaluation which was given to the student once in 2009. The only evaluation tool reportedly used on the student was the Goldman Fristoe Test of Articulation conducted on May 5, 2009. While the parent and student refused the independent vision evaluation with Dr. Lowery²⁷ which was offered by the District and the District's proposed other tests for emotional disturbance, additional assessment tools and strategies could have been used to provide relevant information on the student's educational needs for the CD eligibility.

Additionally, the District erred when they failed to conduct a reevaluation on the student for the Communication Disorder before termination of student's eligibility for this disability type.

When the student's Communications Disorder eligibility was terminated on April 18, 2011 the student was still of an age to qualify for special education and services under the IDEA, and the student had not yet been awarded a regular diploma.²⁸

Pursuant to state law, OAR 581-015-2105 (1)(d) requires that:

- (1) General: A public agency must conduct an evaluation or reevaluation process in accordance with this rule and 581-015-2110 before:
 - (a) Terminating the child's eligibility as a child with a disability, unless the termination is due to graduation from high school with a regular diploma or exceeding the age of eligibility for a free appropriate public education under OAR 581-015-2045.

No reevaluation for communications disorder was conducted before the eligibility termination occurred. Rather the IEP team decided to end the eligibility, and the record shows the parent and student did not agree with this decision. The District procedurally violated the IDEA when it terminated the CD eligibility without first conducting a reevaluation of the student.

Further, state law requires the use of a variety of assessment tools and strategies in gathering relevant information on the child. This includes information provided by the parent.

OAR 581-015-2110 (3) states that:

- (3) Conduct of evaluation. In conducting the evaluation, the public agency must:
 - (a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining:
 - (A) Whether the child is a child with a disability under OAR 581-015-2130 through OAR 581-015- 2180; and
 - (B) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
 - (b) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
 - (c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

²⁷ Due to the complainants reported lack of trust with the District and Dr. Lowery.

²⁸ The record shows that student received a regular diploma from ORCA on January 26, 2012.

Here, the District did not indicate that it used information provided by the parent or any other technically sound instruments in the Communications Disorder “reevaluation” which was needed in order to terminate eligibility. No complete evaluation was ever completed on the student. As such, it would be impossible for the district to accurately determine if the student needed special education²⁹ which will be discussed further in this order.

Even though this student was advancing from grade to grade with substantial accommodations, State law requires that a child who is disabled and needs special education must be determined eligible under IDEA and that if a child has may have more than one disability; they must be evaluated in all areas of disability.

OAR 581-015-2120 (3)(4) states:

- (3) The team must determine a child to be eligible under this rule if the child has a disability and needs special education and related services, even though the child is advancing from grade to grade.
- (4) For a child who may have disabilities in more than one category, the team need only qualify the child under one disability category. However, the child must be evaluated in all areas related to the suspected disability or disabilities, and the child's IEP must address all of the child's special education needs.

The student was never fully evaluated for Communication Disorder, Other Health Impairment, or Visual Impairment for the reasons noted above.

The student's IEP team met three times between January 31, 2011 and May 2011 to consider the student's eligibility for special education as a student with a Communication Disorder, a Vision Impairment, or an Other Health Impairment. They reviewed medical information, a functional vision assessment, an assistive technology report, two year old articulation testing, the speech language specialist's therapy notes, general education teachers' comments, a two year old psychological assessment, the student's transcript, and a general review of the student's attendance, grades and progress. The team found that the student was not eligible for special education under any of the three categories. Specifically, the team concluded that the student had an articulation disorder, but it had no adverse impact on the student's ability to obtain a free appropriate public education. Similarly, the team concluded that the student had an Other Health Impairment; exhibiting limited strength and vitality; but again, found no adverse impact and no need for specially designed instruction. Finally, the team concluded that the student did not have a Vision Impairment because the vision episodes were transient. They recommended a 504 plan.

Conducting an evaluation and determining eligibility under IDEA is a process of carefully considering all aspects of the student's skills, weaknesses, needs and abilities.³⁰ It is the thorough examination of whether or not a disability is present, and, if so, whether the defined disability negatively impacts the student's ability to obtain a free and appropriate public education; and whether specially designed instruction will mitigate the negative effects. In this case, it was the team's lack of consideration of all factors; long-standing assumptions about the singular importance of adverse educational impact as related to a student's grades; and misunderstanding of the definition of “specially designed instruction” that obscured the District's decision-making process here. The Department thus finds a violation related to evaluation and eligibility.

²⁹ 34 CFR § 300.39(3)

³⁰ 34 CFR 300.301-300.306

The Department has held that, “In resolving a complaint about eligibility, the Department will first look at whether a school district has followed the required procedures to reach its determination, and second, whether the district has reached a decision that is consistent with the IDEA in light of the student’s abilities and needs.³¹ The Department will find that a district has complied with the IDEA if the district has followed required procedures, applied required standards, and reached a determination that is reasonable supported by the student specific data and is consistent with the IDEA.³²

Accordingly, the Department first looked at the required procedures for each determination. The District should have followed the required procedures for a Communication Disorder determination:

OAR 581-105-2135 states:

- (1) If a child is suspected of having a communication disorder, the following evaluation must be conducted:
 - (a) Speech-language assessment. A speech and language assessment administered by a speech and language pathologist licensed by a State Board of Examiners for Speech-Language Pathology and Audiology or the Teacher Standards and Practices Commission, including:
 - (c) Phonological or articulation disorder:
 - (A) The child's phonology or articulation is rated significantly discrepant as measured by a standardized test; and
 - (B) The disorder is substantiated by a language sample or other evaluation(s).

The District did not follow the required procedures for a reevaluation of Communications Disorder prior to terminating eligibility. The speech/language specialist did not administer a new Articulation Test, but instead used data from one that was two years old. The specialist further noted in the evaluation summary that it would take many hours of intense therapy for the student to correct the articulation disorder and that “in public school we do not provide that intensity of speech therapy for older students,” thus minimizing any consideration of the student’s individualized communication issues and unilaterally predetermining the services for the child. Although general education teachers noted they could understand the student “most of the time,” the speech/language specialist did not take a language sample or observe the student in conversation with a peer or classroom group. Even though the student had protested multiple times to the speech/language specialist that the lists of words the specialist presented to the student to use in practicing correct “R-controlled” vowel sounds were causing double and blurred vision, the team did not take this into consideration nor did they offer an alternate tool or assessment to measure this area. The District should have also applied the required procedural standards for Communication Disorder, Vision Impairment, and Other Health Impairment eligibility but did not.

Here the District conducted a minimal evaluation in the area of Communication Disorder, which relied on one test score that was over two years old, and interpreted the potential adverse impact based solely on classroom grades and grade level advancement measures. The team then subsequently concluded a lack of need for specially designed instruction existed in very narrow terms.

The next prong that the Department used to evaluate the suitability of this eligibility determination was if the District reached a determination that was reasonably supported by the student specific data and that is consistent with the IDEA.³³

³¹ Case No. 03-054-009, In the *Matter of the Education of J.P. and Sherwood School District*

³² See OSEP Memorandum 00-20, 34 IDELR 264 (July 17, 2000)

³³ Case No. 03-054-009, In the *Matter of the Education of J.P. and Sherwood School District*

The District had very little student specific data here.

The team acknowledged that the student would need a “multiplicity of hours to correct the articulation error.” The team also found that in spite of many hours of outside help and tutoring, the student was not in need of specially designed instruction. The investigation record also notes that the content, methodology and delivery of instruction in many classes were also substantially modified in order for the student to meet standards and make progress. These factors should have been considered in the eligibility discussion, but were not. No clear data was offered to demonstrate student progress toward the IEP goals. The District instead focused singularly on the idea that it was only mandated to help the student “access the general curriculum within the normal range of [student’s] grade level to the extent possible with [student’s] disability” and used the child’s grades as a basis to preclude any form of eligibility, thus disregarding the student’s individualized capability. However, the Office of Special Education Programs at the US Department of Education has stated that, “The IDEA and regulations clearly establish that the determination about whether a child is a child with a disability is not limited to information about the child’s academic performance.”³⁴ IDEA requires that a student needs special education in order to access the general education curriculum ³⁵ which was clearly demonstrated here.

In each area of eligibility consideration for this case, the team assumed there was no adverse impact on the student’s ability to get FAPE merely because the student was achieving high grades and had passed the CIM on February 1, 2009 and April 17, 2009. However, the student took an extra year to graduate from high school despite student’s “good grades” and had to rely on many resources outside of school for the academic progress, and this extra year was even indicated on the most recent IEP. The team judged that the student did not need specially designed instruction because the “accommodations” the District provided were sufficient, despite the fact that the May 24, 2010 IEP actually provided expressly for specially designed instruction to the student for SLP services of 60 minutes per month in a Special Education setting. Therefore, the existing IEP provided the facts necessary for IDEA eligibility: that the student is eligible with one of the necessary conditions (Communication Disorder) and the student must need special education as result.³⁶ Here, the student could have met both prongs of eligibility for special education with communication disorder.

The issue of IDEA eligibility for students with high cognition and students with speech-language impediments who are advancing from grade to grade has been considered in instructional Letters from the Office of Special Education Programs.³⁷ OSEP has observed that, “A student with speech-language impairments must need specialized instruction, and not merely related services in order to qualify as a ‘child with a disability’ under the IDEA.”³⁸ Special education includes speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under state standards.³⁹ Oregon law recognizes Speech Language services as special education.⁴⁰

In *Letter to Redacted*, dated January 13, 2010, OSEP noted that while IDEA is silent regarding “twice

³⁴ *Letter to Clarke*, OSEP, March 8, 2007

³⁵ *Ashli and Gordon C., individually and on behalf of their minor child, Sidney C. Plaintiffs, vs. State of Hawaii, Department of Education and Pat Hamamoto*, Civil No. 05-00429 HG-KSC. 2007 U.S. Dist. Lexis 4297 (quoting *J.D. ex rel. J.D. v. Pawlet Sch. Dist.*, 224 F. 3d 60, 66, 2nd Cir. 2000)

³⁶ 34 CFR 300.8(a)

³⁷ *Letter to Clarke*, OSEP, March 8, 2007

³⁸ *Id.*

³⁹ 34 CFR 300.39(a)(2)

⁴⁰ OAR 581-015-2000(34)

exceptional” students, “it remains the Department’s position that students who have high cognition, have disabilities and require special education and related services are protected under the IDEA and its implementing regulations.” Also in *Letter to Redacted*, OSEP stated, “Moreover, it has been the Department’s long-standing position that, in general, it would be appropriate for the evaluation team to consider information about outside or extra learning support provided to the child to determine whether the child’s current academic achievement reflects the service augmentation, and not what the child’s achievement would be without such help.”

Letter to Lillie/Felton, from OSEP (1995), specifically addressed the issue of special education eligibility for students who are twice exceptional, or the needs of gifted and talented students with disabilities covered by the IDEA. *Letter to Lillie/Felton* examined the amount of time parents and others spend outside of school helping the students with homework, reviewing material, and studying for tests as well as parents paying for tutors who provide specialized instruction outside of school. In this letter, OSEP noted that generally it would be appropriate for the evaluation team to consider information about outside or extra learning support provided to children in developing the written report. There is no evidence that the IEP team here considered the individual needs of this student related to student’s dual exceptionality and the outside work done by the student to access the general curriculum.

It is therefore clear that the District reached an unreasonable eligibility determination based on the second prong of analysis. The lack of student specific data used in the determination process and inconsistent application of IDEA’s eligibility and evaluation requirements is present in these facts.

Given all of this, the Department substantiates this allegation and orders Corrective Action.

2) IEP Design and Content:

The parent and student alleged that the District did not accurately describe the student’s present levels of academic achievement and functional performance including how the student’s disability affects the student’s involvement and progress in the general education curriculum. They also alleged that the IEP was not designed to meet the student’s needs resulting from the student’s disability; specifically in the areas of reading, writing, math, related services and supplementary aids and services. In addition, they alleged the District did not consider special factors relating to a student who is blind or visually impaired. Finally, the parent and the student alleged that the District did not design a transition plan with appropriate goals based on transition assessments and related to training, education, employment and independent living skills.

Oregon law addresses IEP Content at OAR 581-015-2200, which states in part:

(1) The individualized education program (IEP) must include:

(a) A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.

(b) A statement of measurable annual goals, including academic and functional goals (and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives) designed to:

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum;

(d) A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

Finally, OAR 581-015-2200 (2) states:

(2) For the purposes of transition, the IEP must include:

(a) Beginning not later than the first IEP to be in effect when the child turns 16, or younger, if determined appropriate by the IEP team, and updated annually thereafter:

(A) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and

(B) The transition services (including courses of study) needed to assist the child in reaching those goals.

The IEP in force during the time frame under investigation was written on May 24, 2010, and remained effective until the student's eligibility was terminated on April 18, 2011. This IEP contains a three page PLAAFP and the student's communication needs, progress in the general education curriculum, previous evaluation for special education and a Section 504 plan. There is a section in the PLAAFP which clarifies the many accommodations listed in the services section of the IEP, and clearly states the parent's concern at the time the IEP was written. The PLAAFP statement alludes to the student having "delicate health" and problems with visual tracking. However, the team writing this statement did not have access to the visual testing conducted on the student in early 2011. Therefore, it was reasonable that, when considering Special Considerations, the team did not rule on the consideration factors for a student who is blind or visually impaired. The student had not yet been identified as someone with severe vision impairment. Similarly, and reasonably, the team found no reason to write goals for any skill area other than communication. Instead, the team acknowledged that the student was having some difficulty with writing skills, including dysgraphia and a nonverbal learning disorder and included a wide variety of accommodations to help the student achieve academic goals. In writing the transition plan, the team acknowledged that the student needed additional time to complete assignments and thus might take an extra year to complete graduation requirements. Again, at the time this IEP was developed many of the student's later difficulties with serious vision issues had not yet manifested or been substantiated.

Given the fact that the District wrote a complete Present Level of Academic Achievement and Functional Performance statement and transition plan that reflected the student's perceived current needs, the Department finds no violation and does not substantiate the allegations. The Department also finds that the District did not have sufficient evidence to consider the special factor of blindness or visual impairment at the time it wrote the student's IEP and related transition plan and therefore does not substantiate that allegation.

However, the Department did note that the District did not complete any measurable post-secondary goals for the transition portion of the IEP. OAR 581-015-2200(2) states that for students 16 or older, the IEP must list appropriate postsecondary goals based upon age appropriate transition assessments related to training, education, employment and where applicable independent living skills and the transition services necessary for the student to reach those goals. The May 24, 2010 IEP includes the following for student transition: "[Student] is taking online courses at ORCA to complete [student's] high school requirements for graduation." This is not a goal based on assessments or student interest. The Transition Personal Profile included with the IEP notes that the student has "long term plans" of having a career in medicine or as a priest and that the student wants excellent speaking skills. These long term plans should have been discussed in the transition context and included as appropriate and measurable post secondary goals. The IEP does list a course of study of "extra year to complete requirements of graduation" and "therapy this year to assist with articulation of the r-colored vowels." The course of study goes on to note that, "[Student] would like to improve [student's] speaking skills and use those in [student's] future career." However, the future

career and requisite college courses or speaking abilities are not references in the Transition goals portion of the IEP.

3) IEP Implementation:

The parent and student alleged that the District did not implement the student's IEP correctly when it did not provide 30 minutes two times per month of speech language services; when it did not provide appropriate adaptive and assistive technology in such a manner that the student could use the technology; and, when it did not provide auditory access to the reading and writing curriculum.

The legal basis for this allegation is found at OAR 581-015-2220 which states:

(1) General:

(b) School districts must provide special education and related services to a child with a disability in accordance with an IEP.

Additionally, OAR 581-015-2205 (2)(b) states:

In developing, reviewing and revising the child's IEP, the IEP team must consider the following special factors: (b) Whether the child needs assistive technology devices and services.

The District provided the 30 minutes two times per month of speech language services as specified in the IEP. From September 2010 until April 18, 2011, when the student was terminated from special education, the student's episodes of blurred and double vision increased and the student was unable to attend some of the sessions. These vision episodes were often followed by illness and the student missed many of the speech/language sessions. In general, school districts do not reschedule services unless the missing services are the result of lack of staff, inclement weather, etc., so this portion of the implementation allegation is not substantiated.

Similarly, the District made an effort to provide assistive technology devices and services, including audio text and curriculum, to the student. The District did not instruct the student on how to use the assistive technology. Many of the low level accommodations such as giving increased time for work, oral responses in lieu of written work, and others (see Fact 40) were implemented. In January, 2011, the District ordered audio text for the student. However, the student was unable to adequately install, play or use the text; and the District's response to this accessibility issue was minimal. The District instructed the student to call Learning Ally and get support for installing and using the programs. The Learning Ally customer service agents were only able to provide student with phone based instructions utilizing the computer monitor which set off the vision condition. When the parent asked for help from District staff, the Director refused, and referred the parent to the upcoming eligibility discussion. When the District revised the student's IEP in January, 2011, the team removed the Assistive Technology plan from the IEP and substituted the Functional Vision Evaluation and the Assistive Technology Assessment instead. The effect of this was to leave the student with audio texts but no support or instruction on how to use them effectively. Even when the student's math teacher asked for staff support to work with the student one-to-one to find a way to make math problems readable for the student, the District refused. In short, the District made an effort to make the general education curriculum accessible but then diluted the effort by not providing any further support or instruction for the student.

The District could have kept the Assistive Technology Plan in the student's IEP even while the evaluations were going on to ensure that the student had all special factors considered which were necessary for this particular IEP⁴¹ and could have provided staff support to the student in learning

⁴¹ 34 CFR 300.324(a)(2)

how to use the assistive and audio technology which is a component of assistive technology services under the IDEA.⁴² This extra student training and support for assistive technology should be discussed as a special factor in an IEP.⁴³ However, the district did not consider these concerns and therefore, the AT services were rendered useless for the student. The Department substantiates the allegation and orders Corrective Action.

Finally, the IEP in question did not specifically mention auditory access to reading and writing curriculum to be implemented. However, it does reference a need for Assistive Technology devices or services, which as noted above were not provided in a manner the student could utilize.

4) Parental Participation at IEP Meeting:

The parent and the student alleged that the District did not provide the “parent”⁴⁴ with the opportunity to participate in the May 5, 2011 IEP meeting, (a) by predetermining the outcome of the IEP meeting and (b) by not providing the student or parent with a meeting notice which identified the individuals who would attend the meeting. Specifically, the parent was concerned that the District invited its attorney to attend by telephone.

The requirements for parent participation in general are found at OAR 581-015-2190. This states that:

- (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.
- (2) Meeting Notice:
 - (a) School districts must provide parents with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend.
 - (b) The written notice must:
 - (A) State the purpose, time and place of the meeting and who will attend;

IDEA specifies that parents or adult students must be given an opportunity to participate in meetings when the team discusses the identification, evaluation, IEP and educational placement issues about the child. In OAR 581-015-2190 through 2195, the law outlines such issues as meeting notices, making sure the parent or adult student can participate in his or her native language, and how the team can function if the parent or adult student cannot attend. Districts must schedule a meeting early enough so that parents or adult students can arrange to attend the meeting, and if they cannot, districts can use such methods of telephone conference calls to facilitate participation.

However, there is no express language of pre-determination of decisions in the IDEA. Generally accepted practice is that teams do not vote on decisions, and that if an IEP team cannot come to a consensus agreement, the District representative makes the final decision. If parent or student disagrees with that decision, then the Act’s administrative remedies should be utilized. Districts may present a drafted IEP at a meeting in order to begin the discussion of the student’s needs, but the district may not present a final IEP or other special education document to the parent or adult student.

For the second part of this allegation, the District did include the attorney’s name on the meeting notice sent to the parent and student for the May 5, 2011 IEP. In fact, the parent even wrote an email to the Director questioning the need for the attorney to attend as a result, and the Director

⁴² 34 CFR 300.6

⁴³ *Id.*

⁴⁴ See OARs 581-015-2000(1) and 581-015-2325

replied that the purpose was to have the attorney available to help guide the eligibility discussion if needed. Therefore, the parent was properly notified of who would be in attendance of the meeting.

The issue of predetermination is more difficult to discern. Clearly, as noted in facts 17, 21, 29, 32, and 50; the District Director made many comments to the parent suggesting that it would be difficult to find the student eligible for special education on the basis that there was "no adverse impact" because the student had met state standards, etc. The speech/language specialist also alluded to this in conversations with the student and parent. Almost every staff member interviewed during the investigation process stated that they felt it would be very difficult to find the student eligible because the student had passed the state CIM standards and had such "good grades." Finally, the parent asked the Director a number of times about the issue of adverse impact before the meeting asking the director to clarify exactly what "adverse impact" was and how it is determined. The parent and student also provided the district with many examples that they viewed as "adverse impact" for the child. (See Fact 17 as an example).

As per OAR 581-015-2190 (1), a District is obligated to "provide one or both parents⁴⁵ 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." Team members should at least hear all information and engage in a discussion about whether or not the student is eligible for special education. In this case, the team members, especially the District Director, sent very clear messages about their opinions on the student's not being eligible from the very beginning of the meeting and before any information or data could be shared or reviewed.

For this reason, the Department substantiates Part A of the allegation and orders Corrective Action. However, the District did notify the parent that the attorney would attend the meeting. Therefore the Department does not substantiate Part B of the allegation and orders no corrective action.

5) Free and Appropriate Public Education

The parent and student alleged that the District did not provide a Free and Appropriate Public Education when it did not provide AT and vision impairment skill training in the home environment or when it did not alternately provide transportation for the student to receive the AT training somewhere else. In addition, the parent and student alleged the District failed to provide FAPE when it did not provide the student access to the student's curriculum.

OAR 581-015-2040 (1) states:

(1) School districts must provide special education and related services to all resident school-age children with disabilities, except as provided in OAR 581-015-2045.

"School-age children" are children who have reached five years of age but have not yet reached 21 years of age on or before September 1 of the current school year.

As discussed in the section on IEP Implementation, while the District made an effort to provide assistive technology, and help for the student's vision issues, the attempt was minimal. The District sent the Vision Specialist and Assistive Technology specialists to assess the student in the home; but would not allow either specialist to provide any additional services after the assessments. The District offered the Resource Room in the high school, and when the parent expressed concern about what would happen if the student were to have a vision episode and need to return home, the

⁴⁵ This includes adult students per OAR 581-015-2000 (1) and OAR 581-015-2325.

District offered to discuss transportation but never followed up. Similarly, the District bought audio CD's of the student's text but then refused to provide any support or instruction in the home setting to help the student learn how to use the audio text.

A partial effort does not meet the standards set forth in IDEA for FAPE. The District provided assistive technology materials but no actual instruction on how to use them. It did not allow the parent and student to engage in any problem solving with vision and assistive technology specialists in order to find ways for the student to use the technology. Instead, it referred the parent and student to the upcoming eligibility meeting, even though the student had an active IEP. For these reasons, the District substantiates the allegations and orders corrective action.

6) Access to Educational Records:

The parent and student alleged that the District did not provide the student with access to IDEA educational records. In the course of the investigation, it became clear that the issue was that after the student became responsible for student's own special education, and the District began sending all copies of special education paperwork to the student, the student could not read them and the District would not send them in a different format. There are multiple instances when the student or parent or both informed the District that the student could not read text, computer materials, Power Point presentations, etc. However, there is little evidence to indicate that the parent or student sent any written requests for the special education documents to be sent to the student in a different format. Therefore the Department does not substantiate the allegation and orders no corrective action.

CORRECTIVE ACTION⁴⁶

*In the Matter of District A School District
Case No. 12-054-011*

Actions	Submissions ⁴⁷	Due By
<p>Policy, Procedure, and Practice Review</p> <p>To ensure the District's policies and implementing procedures are aligned with IDEA as implemented through Oregon Administrative Rules (OAR):</p> <p>a. Identify existing District</p>	<p>a. Email to ODE copies of existing⁴⁸</p>	<p>July 10, 2012</p>

⁴⁶ 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)).

⁴⁷ 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.

⁴⁸ Note: This submission item does not require creating or revising district documents.

<p>policies, administrative regulations (AR), internal procedures, staff directives or other technical assistance documents used for staff training related to the following topics:</p> <ul style="list-style-type: none"> • Child Find • Evaluation/reevaluation • Eligibility Determination • Terminating Eligibility • Parent/adult student Participation in evaluation planning, eligibility determination, and IEP development • Prior Written Notice • IEP team considerations • IEP transition content <p>b. Following ODE review, confer with ODE team regarding existing documents and revisions needed, if any. This conference may be done by telephone or other means. Conference/conference call to be completed not later than August 15, 2012.</p> <p>c. Provide training on the policies listed to district staff, contract service providers, those who serve as district representatives, and ESD staff who may be involved in evaluation, eligibility determination, termination of eligibility, and IEP development.</p>	<p>documents for review.</p> <p>If the District does not have a current document in a requested area, please provide information to that effect in an e-mail.</p> <p>Submit list of proposed dates for 1 hour review and planning by July 13, 2012.</p> <p>Evidence of completed training: If providing training by e-mail:</p> <ul style="list-style-type: none"> • Distribute materials to appropriate staff and request “read receipt” • Copy ODE on the distribution of materials to staff members • List of staff members and position <p>If providing training in person:</p> <ul style="list-style-type: none"> • Agenda • Attendance roster identifying names and positions of attendees • Copy of the training materials 	<p>July 13, 2012</p> <p>August 15, 2012</p> <p>October 8, 2012</p>
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Dated: June 29, 2012

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

Mailing Date: June 29, 2012

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.

Additionally, pursuant to OAR 581-015-2030(14)(b), the Department of Education will not reconsider complaints after a Final Order has been issued.