

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of North Clackamas SD 12

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 12-054-035

I. BACKGROUND

On November 16, 2012, the Oregon Department of Education (Department) received a letter of complaint from the noncustodial parent of a child attending school and residing in the North Clackamas School District (District). The complaint requested a special education investigation under OAR 581-015-2030. The Department provided a copy of the complaint to the District.

Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint unless exceptional circumstances require an extension.¹ On November 23, 2012, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated. On December 1, 2012, the District timely submitted its *Response* to the *Request for Response*. This order is timely.

The Department's contract complaint investigator (complaint investigator) determined that an on-site investigation would be necessary in this case. On December 14, 2012, the complaint investigator interviewed the noncustodial parent. On December 20, 2012, the complaint investigator interviewed District staff, including the District's Special Education Director, a regular education teacher, a learning specialist, the Assistant Superintendent of Education, and a special education coordinator. The complaint investigator also interviewed the Director of the charter school attended by the student and interviewed the custodial parent. The complaint investigator also received communication from a Department of Education staff person concerning this case. The complaint investigator reviewed and considered all of the documents in reaching the findings of fact and conclusions of law contained in this order.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under OAR 581-015-2030 and 34 CFR §§ 300.151-153 (2010). The noncustodial parent's allegations and the Department's conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from November 17, 2011, to the filing of this complaint on November 16, 2012.²

No.	Allegations	Conclusions
(1)	<u>Rights of Inspection and Review of Education Records</u> The complaint alleges that the District and	<u>Not Substantiated</u> After close review of the email

¹ OAR 581-015-2030; 34 CFR §§ 300.151-153 (2010)

² OAR 581-015-2030(5)

	<p>the charter school in which the student is enrolled violated the IDEA by failing to provide access to the student's education and academic records, including particular testing results and communication from the student's other parent concerning testing of the student, after repeated requests to do so beginning in August 2010 and continuing to September 2012.³</p> <p>Additionally, the complaint alleges that the District and the charter school improperly attempted to require the parent to sign a waiver agreeing to not share the student's records with another party.</p> <p>Relevant Law: OAR 581-015-2300 and 34 CFR 300.613-619.</p>	<p>communications and other documentation in this case, the Department concludes that the charter school and District staff adequately responded to the parent's requests for particular items, under the circumstances.</p>
(2)	<p><u>Parent Participation – General; Additional Parent Participation Requirements for IEP Meetings</u></p> <p>The complaint alleges that the District and the charter school in which the student is enrolled violated the IDEA by failing to work with the parent in scheduling IEP meetings and failing to provide notice to the parent of IEP meetings occurring during the 2011-2012 and 2012-2013 school years.</p> <p>Relevant law: OAR 581-015-2190, 34 CFR 300.321; OAR 581-015-2195 and 34 CFR 300.322, 300.328 and 300.501.</p>	<p><u>Not Substantiated</u></p> <p>The Department concludes that the documentation provided in this case, including email communications, clearly demonstrates adequate communication with the parent in question concerning scheduling of IEP meetings. Concerning the IEP meetings, on June 11, 2012 and September 28, 2012, the Department finds that the charter school and the District adequately noticed these IEP meetings and communicated with the parent concerning the scheduling of the meetings. The parent attended and fully participated in the IEP meetings. The Department does not sustain this allegation.</p>
(3)	<p><u>Content of IEP</u></p> <p>The complaint alleges that the District and the charter school in which the student is enrolled violated the IDEA by failing to include in the IEP and failing to discuss with the parent at an IEP meeting, whether the student would take the "MAPs and State Testing."</p>	<p><u>Not Substantiated</u></p> <p>The MAPs is a not a State mandated test but rather a test used by this particular charter school. Additionally, the student's current IEP does provide that the student will participate in state-wide assessments.</p>

³ The Department investigated only allegations that occurred not more than one year prior to the filing of the complaint pursuant to OAR 581-015-2030(5).

	<p>Relevant law: OAR 581-015-2220, OAR 581-022-0612 and 34 CFR 300.320;</p>	
	<p><u>Corrective Action:</u></p> <p>Generally, the complaint requests the following corrective action: consult with the parent in scheduling IEP meetings, access to student's education and academic records, access to District staff concerning the student, proper provision of all parent notices concerning the student, clarification of the District and charter school policies concerning provision of the student's education and academic records to the parent, training concerning the complaint allegations.</p>	<p><u>No Corrective Action is Ordered</u></p>

III. FINDINGS OF FACT

1. The student in this case is presently 14 years old and is in the eighth grade at a charter school in the District. The student began attendance at the charter school in the District at the beginning of the 2011-2012 school year, having previously attended school in another state. The Student is eligible for special education as a student with a Specific Learning Disability.
2. The student's current IEP, dated September 28, 2012, provides for a placement of "General Education with special education support in classroom." The nonparticipation justification statement states that the student will be removed from the regular classroom "240 minutes per week to meet the goals/objectives in [the student's] IEP in reading and writing."

Rights of Inspection and Review of Education Records and Parent Participation

3. In its *Response*, the District does not dispute that the noncustodial parent is entitled to access to the student's educational and academic records and to fully participate in IEP meetings. Several email messages concerning the student's progress were exchanged between the noncustodial parent and charter school and District staff, beginning September 3, 2011. The noncustodial parent and the custodial parent learned of the student's first IEP meeting, held on October 19, 2011 (initially thought to be a "problem solving" meeting, per the District), the day before the meeting, the noncustodial parent requested the meeting be rescheduled. The District did not reschedule the meeting, but the noncustodial parent and the custodial parent each attended the October 19, 2011 IEP meeting. An email message dated October 18, 2011 from the District's Special Education Coordinator to the Director of the charter school states that the noncustodial parent must receive adequate notice prior to meetings and that "non-custodial parents have full rights to participate in IEP meetings."
4. The charter school typically holds conferences in October of each school year, but the noncustodial parent could not attend an October conference, so the student's regular education classroom teacher scheduled a conference with the noncustodial parent for November 7, 2011.

5. On November 4, 2011, the charter school Director notified the noncustodial parent by email that the regular education teacher would not be available at the time of the rescheduled conference on November 7, 2011, but that the charter school Director would meet with the noncustodial parent at this time.
6. The noncustodial parent's complaint indicates that the noncustodial parent met with the charter school Director on November 7, 2011, but did not receive the student's "grades and Fall MAPs scores." The student's regular education teacher was not aware the noncustodial parent wanted grades at the time of the conference, but would not have been able to provide grades at that time because grades are not determined until the end of the semester.
7. The Measure of Academic Progress (MAPs) is an assessment administered by the charter school within the District. It is not a State or district-wide assessment. The charter school administers the MAPs assessments twice a year, usually in September and May, and these assessments are a tool to provide guidance for the teachers of students at the charter school.
8. Some confusion existed at the charter school concerning whether the student had taken the MAPs assessment because the custodial parent had verbally requested the MAPs assessments not be administered to the student in the fall of 2011, but this was not communicated to the staff administering the MAPs assessments at the charter school. The custodial parent then made a written request that the student not take the MAPs assessments, which was made on September 12, 2012. The school had already started the testing when the custodial parent made this written request and the test administrator did not get this information until after the first day's testing had started.
9. Although the student did take the MAPs assessment in fall of 2011, the scores were not ascertainable by the District's education staff for some time because the student and several other students were "timed out" when the assessments, administered on a computer, were not completed within a particular timeframe. The scores thus had to be retrieved.
10. The charter school retained a computer expert to recover the student's fall MAPs scores, but this did not occur until April or May 2012. The charter school provided the fall 2011 and spring 2012 MAPs assessment scores to the noncustodial parent at that time.
11. The OAKs assessments are state-wide assessments, administered annually beginning in March to May of the school year. The student took the OAKs assessment during the 2011-2012 school year, completing the assessment on May 4, 2012.
12. The scores on the OAKs assessment were provided to the noncustodial parent in early June of 2012, no later than June 11, 2012.
13. The student did not participate in the Accelerated Reader (AR) program during the 2011-2012 school year. The AR program is a computerized tracking system of reading performed outside of the classroom.
14. The noncustodial parent frequently communicates with the charter school and District staff, both in person and by email, and has done so since the student enrolled in the charter school at the beginning of the 2011-2012 school year.
15. In addition to the meeting with the charter school Director, the student's regular education teacher met with the noncustodial parent in January or February 2012.

16. On October 19, 2012, the charter school Director wrote a letter to the noncustodial parent stating in part that "from this point your communication requests will be met." This letter is viewed by the charter school and District staff as a commitment to continue to timely provide available items requested by the noncustodial parent, and not as an admission that the noncustodial parent's communication requests had not previously been met.
17. The records request form provided to the noncustodial parent by the charter school contains a provision that "Information from [the charter school] student scholastic records is released on the condition that the recipient agrees not to permit any other party to have access to such information without the written consent of the parent or guardian." The plain text of the document states that this provision does not apply to release of records to a parent, but rather to a third party.
18. Three IEP meetings have occurred since the student enrolled in the charter school in the District. These IEP meetings occurred on October 19, 2011, June 11, 2012 and September 28, 2012.
19. The October 19, 2011 IEP meeting occurred more than a year preceding the filing of the complaint in this case so is outside of the jurisdiction for State IDEA complaint investigations.
20. Regarding the June 11, 2012 IEP meeting, the charter school worked with the noncustodial parent in scheduling this meeting, as reflected in email communications between charter school and District staff beginning on May 21, 2012.
21. At the June 11, 2012 IEP meeting, the IEP team, including the noncustodial parent, agreed that the next IEP meeting would be on August 30, 2012.
22. On August 28, 2012, the District confirmed this meeting would take place at 10:30 a.m. on August 30, 2012.
23. On August 29, 2012, the noncustodial parent sent an email requesting that the August 30, 2012 be rescheduled. The District cancelled the August 30, 2012 IEP meeting.
24. The next IEP meeting, which the District properly noticed and which the noncustodial parent attended, occurred on September 28, 2012.

Content of IEP

25. During the on-site investigation, the noncustodial parent clarified that her or she only seeks clarification from the Department concerning whether the custodial parent may decline MAPs and OAKs assessments.
26. The student's current IEP provides that the student will participate in state-wide assessments.

IV. DISCUSSION

Review of Education and Academic Records

The noncustodial parent alleges the District did not provide test scores upon request and denied them their right to inspect educational records covered by the IDEA. A review of the response and

submitted items in the investigative record indicates the District did provide the scores after efforts to retrieve the information.

The Family Educational Rights and Privacy Act (FERPA) defines an education record as a record that is directly related to a student and maintained by an educational agency or institution, or by a party acting for the agency or institution.⁴ FERPA gives custodial and noncustodial parents alike certain rights with respect to their children's education records, unless a school is provided with evidence that there is a court order or State law that specifically provides to the contrary.⁵ Otherwise, both custodial and noncustodial parents have the right to access their children's education records, the right to seek to have the records amended, and the right to generally consent to disclosure of personally identifiable information from the records.⁶ Here, the noncustodial parent requested access to the student's MAPs scores from fall 2011. The noncustodial parent/complainant did not provide a clear or exact date of when these requests for records were actually or initially made to the charter school. Therefore, we are not clear if this request occurred within the one year period preceding the filing of the complaint on November 16, 2012 or when the relevant 45 day time period for records requests under IDEA and FERPA would have begun. The District did submit multiple copies of correspondence with the complainant regarding requests for records during this time. The District acted on the request for MAPs records by trying to obtain the test information despite the fact that the requested scores were inaccessible at the time of the noncustodial parent's request. Under FERPA, a school must provide a parent with an opportunity to inspect and review his or her child's education records within 45 days following its receipt of a request.⁷ IDEA adds the additional requirements that education records be provided without unnecessary delay and before any IEP meeting or any Due Process or Resolution Session.⁸ In this case, the District was simply unable to provide the MAPs assessment scores to this parent within the required amount of days, due to a particular problem with the computerized assessment which was beyond the control of the District or the charter school (the "timing out" of the online tests which locked the scores and data). Also notable here is that this particular assessment is one that is distinctive to the charter school and is neither a district-wide nor a state-wide assessment. The charter school went to great lengths to recover the student's fall 2011 MAPs assessment scores for the noncustodial parent, by obtaining a special computer technician in spring 2012. The Department finds the fall 2011 MAPs assessment scores were thus provided to the noncustodial parent within a reasonable time in light of these circumstances. The spring 2012 MAPs assessment scores were also timely provided to the custodial parent at the same time.

Concerning the OAKs assessment scores, these were provided to the noncustodial parent by June 11, 2012, slightly more than a month after the student completed this State assessment. The Department thus finds that these assessment scores were also provided to the noncustodial parent within a reasonable time. The Department does not sustain the allegation that the charter school and District failed to provide requested education and academic records to the noncustodial parent within a reasonable time.

Concerning the portion of this allegation that claims the charter school and District improperly attempted to require the noncustodial parent to sign a waiver agreeing to not share the student's records with another party, the Department finds that the relevant provision of the District's form, on its face, applies only to release of records to a third party, and not to release of records to a parent. Also, the IDEA does not speak directly to this sort of waiver regarding potential third party releases

⁴ 34 CFR § 99.3

⁵ <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/for-parents.pdf>

⁶ Id.

⁷ Id.

⁸ 34CFR 300.613(a)

of student transcripts and records, but rather it allows for parental access to education records.⁹ The IDEA gives parents the right to inspect and review education records and to allow for their representative to inspect and review education records if applicable.¹⁰ Here the noncustodial parent was allowed to inspect and review the records in question. The Department thus does not sustain this allegation.

Parent Participation

The complaint alleges that the District and the charter school in which the student is enrolled violated the IDEA by failing to work with the noncustodial parent in scheduling IEP meetings and failing to provide notice to the noncustodial parent of IEP meetings occurring during the 2011-2012 and 2012-2013 school years. The IDEA and implementing OARs require that, in giving notice of IEP meetings, a District must take steps to ensure that parents are afforded the opportunity to participate. Such efforts must include attempts to schedule the meeting at a mutually agreeable time and place and keeping records of the communication and contact between the District and parents.¹¹ The record shows that the charter school and District did communicate with the noncustodial parent about scheduling the IEP meetings and the noncustodial parent attended the meetings at issue. Additionally, the August 2012 IEP was rescheduled per the noncustodial parent's request with only one day's notice to the District. The noncustodial parent then attended the later meeting. This reflects the District's willingness to let the noncustodial parent participate in the IEP process pursuant to OARs 581-015-2190 and 2195. The Department does not find that the noncustodial parent was denied participation rights during IEP meetings.

Regarding the allegation for inadequate meeting notice, first to the claim that there was inadequate notice of the first IEP meeting held on October 19, 2011 (a meeting which the noncustodial parent attended), this matter occurred more than one year preceding the filing of the complaint in this case, and the Department thus may not address this matter due to a lack of jurisdiction to do so. Concerning the additional IEP meetings, on June 11, 2012 and September 28, 2012, the Department finds that the charter school and the District adequately noticed these IEP meetings and communicated with the noncustodial parent concerning the scheduling of the meetings. The District sent numerous emails and notices to the noncustodial parent regarding the scheduling of these meetings which were submitted in the District's response. The District also submitted evidence that it tried many times to find a mutually agreeable times and dates for meetings. The noncustodial parent also attended and fully participated in these IEP meetings as further evidence of parent participation. The Department does not sustain this allegation.

Content of IEP

The complaint alleges that the District and the charter school in which the student is enrolled violated the IDEA by failing to include in the IEP and failing to discuss with the noncustodial parent at an IEP meeting, whether the student would take the "MAPs and State Testing." During the on-site investigation, the noncustodial parent clarified that the noncustodial parent only seeks clarification from the Department concerning whether the custodial parent may decline MAPs and OAKs assessments.

The MAPs assessment is an assessment used particularly by this charter school. It is not a State or district-wide assessment. The IDEA does not speak to assessments of this nature per se, but rather

⁹ See 34 CFR § 300.613-619.

¹⁰ 34 CFR 300.613(b)

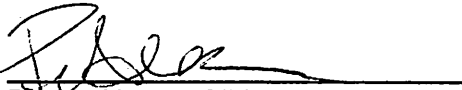
¹¹ OAR 581-015-2190 and 581-015-2195

looks to State or district-wide testing.¹² Additionally, Oregon Administrative Rule permits a district to exempt a student with a disability from participation in the Oregon State Assessment system or any district-wide assessment if the parent has requested such an exemption.¹³ As noted above, the MAPs test is not a State or district-wide assessment, so these provisions would not apply to the MAPs assessment.

CORRECTIVE ACTION¹⁴
In the Matter of North Clackamas School District
Case No. 12-054-035

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

Dated: January 11, 2013



Petrea Hagen-Gilden
Interim Assistant Superintendent
Office of Student Learning & Partnerships

Mailing Date: January 11, 2013

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.

¹² See OAR 581-015-2200(g)(A)(B) and 34 CFR 300.320(6).

¹³ See OAR 581-022-0612 Exception of Students with Disabilities from State Assessments.

¹⁴ 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)).