



circumstances require an extension.<sup>1</sup> This order is timely.

### 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 August 22, 2012 to the filing of this complaint on August 21, 2013.<sup>2</sup>

	<b>Allegations</b>	<b>Conclusions</b>
	<p><b>Allegations to be investigated</b></p> <p>The written complaint alleges that the District violated the IDEA in the following ways:</p>	
1	<p><b>Content of the IEP</b></p> <p>Parent alleges the content of the IEP was insufficient to address the Student's disability, i.e. profound deafness, and did not address the Student's reliance on ASL as a first language and need for integration into an English speaking and hearing classroom.</p> <p>OAR 581-015-2205, 34 CFR 300.230 and 34 CFR 300.324.</p>	<p><b>Unsubstantiated</b></p> <p>The District has provided speech support to the Student both in the testing environment and in the classroom, and the IEP notes that the District has in fact addressed the Student's reliance on ASL as a first language and the need for the Student to develop oral, written English as the second language.</p> <p>Also, the District has provided the same level of speech services as specified on the IEP, and is thus aware of the Student's continued need for oral English communication which will continue to aid the Student's integration into an English speaking classroom</p>
2	<p><b>FAPE</b></p> <p>Parent alleges the District denied educational services and related services to the Student based on the Student's individual needs.</p> <p>OAR 581-015-2040, 34 CFR 300.101 and 34 CFR 300.34.</p>	<p><b>Unsubstantiated</b></p> <p>The special services in speech remain wholly intact allowing the Student to participate in the classroom through use of an interpreter in accordance with the IEP, and the instructional program allows the Student to develop more intelligible speech so the Student can participate in a regular education environment.</p>

<sup>1</sup> OAR 581-015-2030(12) (2013)

<sup>2</sup> See 34 CFR § 300.153(c) (2008); OAR 581-015-2030(5).

<b>3</b>	<p><b>Revision of IEP</b></p> <p>Parent alleges that the May 29, 2013 revision of the Student's IEP was not proper because the revision was not based on the Student's disability and the Student's need for services but rather was based on the services the district was able to provide.</p> <p>OAR 581-015-2225, 34 CFR 300.320, 34 CFR 300.324(b).</p>	<p><b>Unsubstantiated</b></p> <p>The District, through the High Desert ESD Deaf and Hard of Hearing (DHH) program, can provide the Student's needed special education and related services, based on the Student's individual needs, at either physical location and there is no evidence that the District has changed the Student's services or placement solely based on what services the District is able to provide.</p>
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<p><b>Requested Corrective Action</b></p> <p>The Parents are requesting that the District:</p> <p>Place the Student in the Bend-LaPine School District, more specifically, the previously attended School A;</p> <p>Provide transportation for the Student to attend School A.</p>	<p><i>No corrective action is ordered.</i></p>
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### III. FINDINGS OF FACT

1. The Student is 7 years old and currently in the 2nd grade attending an elementary school in the Bend LaPine School District (School A) pursuant to a transfer executed by the Parents on April 11, 2013.
2. The Student was born with a hearing loss and was diagnosed as profoundly deaf.
3. The Student has extended family who also have profound deafness; therefore the Student's first language is American Sign Language (ASL). Student currently resides in a foster placement with a maternal aunt who is fluent in ASL. The Student's foster father is not fluent in ASL.
4. Because the Student was immediately exposed to language in the form of ASL, the Student has routinely outperformed other children admitted to the DHH program at School A. The Student is also more socially advanced than other profoundly deaf or hard of hearing children due to exposure to ASL/language at the onset of life.
5. The Student has been receiving IDEA special education services under the category of Hearing Impairment since being accepted into the Early Intervention, Early Childhood Special Education (EI/ECSE) program.
6. According to the first Statement of Eligibility for Special Education, the team determined that the Student's eligibility was "not due to limited English proficiency."
7. In subsequent IEP documents, the team continues to note that the Student's eligibility is "not due to limited English proficiency."
8. The Parent indicated that the Student's first language was ASL but that the primary language spoken at home was English.
9. The Student did not have oral spoken language until the age of five after receiving a cochlear implant. Prior to the cochlear implant, the Student communicated almost exclusively through ASL, gestures and unintelligible sounds.
10. The Student resides in the Redmond School District and the Student's home school is School B.
11. The Student's primary form of communication was and currently continues to be ASL.
12. The Student was still noted as having challenges in English language development during the

April 10, 2012 IEP meeting.

13. The Student's Service Summary pursuant to the April 10, 2012 IEP for the Student's first grade year (excluding Supports for School Personnel) is as follows:

<b>Specialty Designed Instruction</b>	<b>Anticipated Amount/Frequency</b>	<b>Anticipated location</b>	<b>Starting Date</b>	<b>Ending Date</b>	<b>Provider</b>
Written language	50min/weekly	Regular Ed/ERC	4/10/2012	4/10/2013	Regional
Communication skills	50 min/weekly	Regular Ed/ERC	4/10/2012	4/10/2013	Regional
Reading	50 min weekly	Regular Ed/ERC	4/10/4012	4/10/2013	Regional
<b>Related Services</b>					
Audiology services	30 min-Annually	Regular Ed/ERC	4/10/2012	4/10/2013	LEA
Transportation services	60 min daily	To & From School	4/10/2012	4/10/2013	LEA
Speech/language therapy	450 min Monthly	Regular Ed/ERC	4/10/2012	4/10/2013	LEA
<b>Supplemental aids/services modifications accommodations</b>					
Sign language interpreter services	1950 minutes weekly	Regular Ed ERC	4/10/2012	4/10/2013	LEA
Closed caption tv	15 minutes minimum weekly	Regular Ed/Erc	4/10/2012	4/10/2013	LEA

14. The Student began first grade in the school year 2012-2013. An IEP meeting was held for the Student's first grade year on April 10, 2012.
15. The Student qualified for special instruction based upon hearing loss alone and because the hearing loss had an effect on the Student's development. The Student was still noted as having challenges in English language development during the April 10, 2012 IEP meeting.
16. The Student was initially placed during the kindergarten year outside of the Parent's residential district, at the School A in the Bend LaPine School District because School A had a Deaf and Hard of Hearing (DHH) Resource Room. The Student had DHH peers with which to interact at School A during the kindergarten experience and could make full use of the Resource Room.
17. The Student received writing, vocabulary and speech instruction in the DHH Resource Room from a writing and vocabulary teacher and from a speech and language teacher. (speech/language).
18. In first grade, The Student could not participate in the yearly Dibels test due to the hearing impairment and lack of oral speech. An alternate test was designed to measure the Student's progress and was administered by the Special Education Teachers who could communicate with the Student.
19. In the opinion of the DHH Teacher, the Student will derive the greatest educational benefit not from having an interpreter but having a DHH Teacher who can use ASL to make a bridge to oral

and written English.

20. During the April 10, 2012 IEP meeting, the Parents were advised that if the Student became a Bend LaPine student through the open enrollment process, Bend LaPine would be responsible for transporting the Student.
21. The District also advised the Parents that if they executed a transfer for the Student, the funding that follows each student would properly be remitted to Bend LaPine rather than Redmond.
22. The Parents executed a transfer so that the Student would become a Bend LaPine Student.
23. The April 10, 2012 IEP notes that the Student suffers from limited English proficiency.
24. The Student has always participated in "deaf culture". "Deaf culture" is a social phenomenon that hearing impaired people may participate in based upon how they identify themselves and their experiences. Because the Student has been raised with family that identifies with "deaf culture", the Student also self identifies as part of "deaf culture".
25. Other children that participate in the DHH program at either Bend LaPine or Redmond may not identify themselves as participants in "deaf culture". A major component of "deaf culture" is whether ASL is the person's primary language and whether they self-identify as "deaf" before identifying with any other culture, e.g. African American or female.
26. During the Student's kindergarten and first grade years, the Student had other peers at the School A who also identified with "deaf culture". They have since moved on to middle school.
27. School A is located on the same campus as a middle school in the Bend LaPine School District. The Bend LaPine middle school has a DHH program and resource room.
28. The Student currently does not have any peers at the School A who participate in "deaf culture."
29. During the first grade year, the Student made excellent progress educationally.
30. Because the Student had ASL instruction at a very early age and had language skills when entering school, the Student has been advancing more quickly than other DHH students would typically advance.
31. Per the Special Education staff, it is typical for a DHH student to lag behind his or her classmates not only in terms of communication but also socially, due to a lack of language exposure at a young age. The Student is well beyond chronological age in comparison to other DHH children.
32. Currently School A does not have a DHH resource room, that program being terminated for lack of participants at the end of the 2012-2013 school year.
33. According to the IEP, the Student is to receive 1950 minutes of interpreter service per week which means the Student has an interpreter during school days. This has been constant since the Student's first IEP.
34. According to the IEP, the Student is also to receive, as a related service, transportation to and from school for an hour each day.
35. At the Student's April 10, 2013 IEP, the Student's Special Education Placement Determination was as follows:

Placement Options Considered	Benefits	Possible Harmful Effects	Modifications	Indicate Whether Option is Selected and Reason(s) Rejected or Selected
Resource Room for the deaf and hard of hearing	Student would benefit from specialized instruction. Student would have an appropriate peer group, academically, socially or	Miss class time	Student will be removed at least disruptive time	Currently this placement provides the least restrictive environment for [The Student]. [The Student] can receive direct instruction in the areas identified on

	vocationally in this placement			the IEP from a Teacher of the Deaf and Hard of Hearing. [The Student] can communicate directly with deaf peers who also use sign language.
Not participate in a deaf and Hard of Hearing Resource Room Setting	Socialization with mainstreamed peers, full curriculum taught	Frustration in the regular classroom without support	Sign language interpreter service. Additional support as needed	REJECTED Currently, full time placement in a regular education classroom would be a restrictive learning environment. [The Student] would not have opportunities for direct interaction with deaf peers

36. The Student's Service Summary pursuant to the April 10, 2013 IEP was as follows (excluding supports for school personnel):

<b>Specially Designed Instruction</b>	<b>Anticipated Amount/Frequency</b>	<b>Anticipated location</b>	<b>Starting Date</b>	<b>Ending Date</b>	<b>Provider</b>
Written language	120 min/month	Regular Ed/ERC	4/10/2013	4/10/2014	Regional
Other: vocabulary development	120 min/month	Regular Ed/ERC	4/10/2013	4/10/2014	Regional
<b>Related Services</b>					
Transportation Service	60 min-Daily	To & From School	4/10/2013	4/10/2014	LEA
Speech/language therapy	480 min/month	Regular Ed/ERC	4/10/2013	4/10/2014	Regional
<b>Supplemental Aids/Services, Modifications Accommodations</b>					
Sign language interpreter services	1950 Min/weekly	Regular Ed/ERC	4/10/2013	4/10/2014	LEA
Closed caption TV	Daily/as needed to access content	Regular Ed/ERC	4/10/2013	4/10/2014	LEA
Preferential Seating	Daily/as needed to access content	Regular Ed/ERC	4/10/2013	4/10/2014	LEA

Implant adapter cable	Daily/as needed to access auditory input from computer or listening center	Regular Ed/ERC	4/10/2013	4/10/2014	LEA
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37. Another IEP meeting was held on May 29, 2013 to discuss the closure of the DHH Resource Room at School A. The DHH Resource Room was closed because of lack of participating students. That decision was made by the Bend LaPine School District.

38. At the Student's May 29, 2013 IEP Meeting, the Special Education Placement Determination was as follows:

Placement Options Considered	Benefits	Possible Harmful Effects	Modifications	Indicate Whether Option is Selected and Reason(s) Rejected or Selected
General Education Classroom with Special Education Support Services	Student would benefit from specialized instruction. Student would have an appropriate peer group, academically, socially or vocationally in this placement.	Miss class time	Student will be removed at least disruptive time. Sign language interpreter service. Student would be given monthly opportunities to interact with Deaf peers who communicate in sign language and who also have sign language interpreters at school for access to their education.	SELECTED. This is the least restrictive environment that meets Kari's current educational needs.

41. Currently there is a counselor at School A who is not a Special Education Teacher, but who is fluent in ASL. This counselor can communicate directly with the Student without an interpreter.

42. The Parents believe the Student has made great progress with education due to the environment at the School A and the DHH Special Education teachers.

43. The Student was placed at the Parent's resident School B for the 2013-2014 school year pursuant to the Student's IEP but the Parents executed a transfer so that the Student could continue to attend the School A in the Bend LaPine School District.

44. The Redmond School District will not provide transportation for the Student to School A based on the Parent's execution of the transfer, stating that the placement is a "parent choice" and that the District does not have the responsibility of providing transportation for a student who has transferred out of the District.

45. The District terminated the Student's transportation on June 12, 2013 in accordance with the May 2013 IEP.

46. DHH Special Education Services in the area are provided by the High Desert ESD.

47. The Student's speech is improving but the Student still has difficulty when speaking with individuals who are not accustomed to the Student's speech patterns and has difficulty with polysyllabic words.

#### IV. DISCUSSION

##### I. Content of the IEP

**OAR 581-015-2205, 34 CFR 300.320 and 34 CFR 300.324.**

##### **Student's reliance on ASL as first language**

The Parents allege the content of the IEP was insufficient to address the Student's disability, i.e. profound deafness, and the IEP does not address the Student's reliance on ASL as a first language or the need for integration into an English speaking and hearing classroom.

The IDEA requires numerous items for IEP content. Each IEP must include 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 (i.e. the same curriculum as for nondisabled children).<sup>3</sup> The description of the child's present levels of academic achievement and functional performance must contain sufficient detail to allow the IEP team to determine the extent of the child's abilities and special education needs.<sup>4</sup> An IEP must include a statement of measurable annual goals, including academic and functional goals.<sup>5</sup> An IEP must include a description of how the child's progress toward meeting annual goals will be measured. The IDEA also requires that the IEP include a statement of special education and related services to be provided to the child.<sup>6</sup> Both the type and amount of services will depend on the child's identified needs.<sup>7</sup> An IEP must also include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class. Each IEP team must contain a statement of any individual appropriate accommodations that are necessary to measure the child's academic and functional performance on state and district wide assessments.<sup>8</sup> The IEP must state the projected date for the beginning of the services and modifications described above as well as the anticipated frequency, location, and duration of those services and modifications.<sup>9</sup> An IEP is not required to include recommendations submitted or discussed at an IEP meeting, which are not adopted.<sup>10</sup>

Importantly here, the IEP also must take into consideration certain special factors. In the case of a child with limited English proficiency, the team must "consider the language needs of the child as those needs relate to the child's IEP."<sup>11</sup> In the case of a child who is deaf or hard of hearing, the team must take into account the language and communication needs of the child, opportunities for direct communications with peers and professional personnel in the child's language, the academic level, and full range of needs, including opportunities for direct instruction.<sup>12</sup> The Education Department provided detailed guidance about factors that should be taken into account when formulating an IEP for a deaf child in 1992.<sup>13</sup> Districts were directed to consider the following factors

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<sup>3</sup> 34 CFR 320(a)(1).

<sup>4</sup> *Ashland Sch. Dist.*, 47 IDELR 82 (SEA OR 2007).

<sup>5</sup> 31 CFR 300.320(a)(2).

<sup>6</sup> 34 CFR 300.320(a)(4).

<sup>7</sup> *Winkelman v. Parma City Sch. Dist.*, 51 IDELR 92 (2008).

<sup>8</sup> 34 CFR 300.320(a)(6)(ii).

<sup>9</sup> 34 CFR 300.320(a)(7).

<sup>10</sup> *Letter to Anonymous*, 20 IDELR 1460 (OSEP 1994).

<sup>11</sup> 34 CFR 300.324(a)(2).

<sup>12</sup> *Id.*

<sup>13</sup> *Notice of Policy Guidance for the Education of Deaf Students*, 19 LRP 10004 (EDU 1992).

when developing an IEP for a deaf student and to determine the placement based on the setting which would meet the communication and other needs of the Student as set out in the IEP including: communication needs and the child's and family's preferred mode of communication, the linguistic needs, severity of hearing loss and potential for residual hearing, academic level, and social, emotional and cultural needs including opportunities for peer interactions and communication.<sup>14</sup> The Office of Special Education Programs (OSEP) clarified that school districts are still obligated to educate a deaf student in a regular classroom if the student could receive a Free Appropriate Public Education (FAPE) in that setting.<sup>15</sup>

The April 2013 IEP includes a statement of the Student's present levels of academic achievement and functional performance (PLAAFP) including- how the Student's disability affects the Student's involvement and progress. The PLAAFP page notes that in spring of 2012 the IEP team decided the Student would attend an elementary school where there will be access to both hearing and nonhearing peers. It stated that the Student spent a majority of the day with hearing peers and the Student had daily opportunity to interact with deaf peers. The PLAAFP page also notes that the Student's listening and speaking skills have improved much this past year so that IEP team decided the Student would participate in the DIBLELS district wide assessment. Student was on grade level in reading so needed no IEP goals in this area, but the Student continued to need IEP goals and specially designed instruction in writing and vocabulary development. There were no concerns for developmental or functional performance and it was noted that due to hearing loss, the Student is "challenged in the areas of English language development, especially as it relates to verbal articulation, writing skills, and vocabulary development." The May 29, 2013 IEP notes also show that the IEP noted that the Student is reading on grade level but the Student needs someone who understands the Student's speech for participation in State and District wide assessments.

The April 10, 2013 IEP included measurable annual goals and short term objectives including: writing grade level grammatically correct sentences, expanding vocabulary words in sign language and written/spoken English, and using articulation, language, and auditory strategies to become an effective communicator.

The April 10, 2013 IEP shows special education and related service for areas including written language, vocabulary development, speech/language therapy, transportation services (ending April 10, 2014), speech/language therapy, and supplementary services, modification, accommodations, and aids which include: sign language interpreter services, closed caption TV, preferential seating, implant adapter cable and supports for school personnel including speech pathologist consultation and hearing consultation.

In the April and May 2013 IEPs the District has held constant the Student's need for a DHH interpreter for ASL at 1950 minutes per week which means that the Student will have an interpreter who will provide direct instruction in ASL daily. Finally, the District has retained the IEP's level of speech services of 480 minutes per week given the Student's newly developing oral communication skills. The continued language and speech supports that the District has provided the Student and the components of the IEPs in question, all include sufficient provisions for consideration of the Student's communication needs. The accommodations and supports offered in the testing environment and in the classroom are evidence that the District has in fact addressed the Student's reliance on ASL as a first language and the need for the Student to develop oral, written English as the second language is evidenced on the 2013 IEPs. Therefore, this allegation is not substantiated.

The Student in this case has spent time in English speaking classrooms during Kindergarten, first, and second grades and was making academic, speech, and social progress. No evidence was presented to note that the Student would need extra support integrating into the English speaking

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<sup>14</sup> *Id.*

<sup>15</sup> OSEP Memorandum 94-15, 20 IDELR 1181 (OSEP 1994).

classroom in order to make progress toward the IEP goals. The IEP team considered the Student's specific communication needs when devising the IEP, included all necessary components of an IEP, and subsequently determined an appropriate placement in the Least Restrictive Environment. This allegation is unsubstantiated.

## **II. Free Appropriate Public Education (FAPE)**

**Parents allege the District denied educational services and related services to the Student based on the Student's individual needs. OAR 581-015-2040, 34 CFR 300.101 and 34 CFR 300.34.**

### **A. Denial of related services.**

The crux of the issue between the District and the Parents in this complaint has been the provision of transportation for the Student's second grade year.

The Student's April 2013 IEP specifically provides for transportation of 60 minutes per day to and from school. This related service has not changed since 2011. However, in May 2013, the District advised the Parents that the Student's transportation would end on June 12, 2013 because it was no longer necessary due to the Parent's transfer of the Student to a Bend LaPine School District. Due to the closing of the DHH Resource Room at the School A in the Bend LaPine School District, the District reasoned that the Student had no more need to attend School A because the Student's services could now be similarly provided by the DHH teachers in an itinerant capacity at the School B located within the Redmond School District.

The Parents, upon learning that the Student would be placed at School B in fall of 2013, executed a transfer so that the Student could continue education at the School A in the neighboring school district as opposed to the home school district – Redmond. The Parents did so believing the School A was the best environment for the Student, particularly in light of the Student's relationship with one noninstructional staff member who is fluent in ASL.

Transportation is specifically regarded as a "related service" under the IDEA.<sup>16</sup> Pursuant to 34 CFR 300.34 c(16), "transportation includes (i) Travel to and from school and between schools; (ii) Travel in and around school buildings. As such, a child's IEP team is responsible for determining whether transportation between school and other locations is necessary in order for the child to receive a FAPE. Transportation must be included in the student's IEP if the service is required to help the student benefit from special education."<sup>17</sup>

At the May 29, 2013 IEP meeting the annual IEP was revised. At this time, transportation was removed as a necessary related service by the IEP team. The IEP notes show that transportation was discussed. The notes show the District offered to provide transportation for the Student to meet with other deaf and hard of hearing students one time per month. The meetings notes also reflect the team discussed open enrollment and transfers out-of-district per the Parent request. The IEP notes indicate that transportation to the neighboring district would end on the last day of school, as there will no longer be a DHH program offered at the neighboring school district, and the District could thus provide comparable services in accordance with the IEP at the neighborhood school. Meeting minutes also note that the District advised Parent that sending the Student back to School A in the neighboring district would be considered a parent choice option as there was no longer a DHH program at the school. The revision notes on the 2013 annual IEP note that "...transportation services from student's home to [out-of-district School A] school will end June 12, 2013." On the service summary page, the date was amended to this effect beside transportation services in the

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<sup>16</sup> 34 CFR 300.34.

<sup>17</sup> *Norton Pub. Sch. Dist.*, 21 IDELR 974 (SEA VT 1994).

related services area. Nothing in the record indicates that the IEP team determined transportation was necessary for the Student as a related service in order to receive FAPE. This allegation is not substantiated.

## **B. Denial of Services.**

Some IEP services have been eliminated or modified between the Student's first and second grade years. The Student's Reading Instruction has been eliminated and the Special Services in Speech and Vocabulary have decreased from 50 minutes per week (for a total of 200 minutes per month) to 120 minutes per month (or thirty minutes per week). This represents a total loss of 20 minutes per week of specialized instruction in writing/vocabulary and in speech/language. The District has noted that the instruction has decreased because the Student was reared with ASL, because the Student is extremely intelligent, and because the Student has made great gains in education. The Parents attribute the Student's gains to the DHH teachers that have been providing the Student's services.

An IEP does not need to make every accommodation possible but it must attempt to give the child a platform to an educational benefit. FAPE must provide a "basic floor of opportunity" to disabled children, not a "potential-maximizing education."<sup>18</sup>

Any decreases or modifications of the Student's specially designed instruction are supported by the record and by the Student's academic gains. The Student's IEP has been modified yearly to clearly reflect the Student's needs. In the April 2012 IEP, the Student was given extra assistive technology because the Student had a cochlear implant at this time. The Student was never given preferential seating in the kindergarten IEP but that was also changed as the Student entered first grade and needed this support. The Student's vocabulary development and writing services have been decreased by 20 minutes per week, but this decrease does not constitute a denial of services. Most importantly is that the speech therapy has remained consistent at 480 minutes per week and the interpreter services have never waned. Because the Student has only had English language skills for two years, these services remain wholly intact, allowing the Student to realize full participation in a general education classroom through the use of an interpreter. This further allows the Student to develop more intelligible speech so the Student can more fully participate in a regular education environment.

Regardless of the precise location of services, the District could show their ability to provide FAPE to the Student; hence the Parent's allegations that the Student's services were decreased are unfounded. This allegation is unsubstantiated.

## **III. Revision of IEP**

### **OAR 581-015-2225, 34 CFR 300.320, 34 CFR 300.324(b)**

Parents allege that the May 29, 2013 revision of the Student's IEP was not proper because the revision was not based on the Student's disability and the Student's need for services but rather was based on the services the district was able to provide.

An IEP may be revised or amended based on a lack of expected progress toward a goal, the results of an evaluation conducted under OAR 581-015-2105, information about the child provided to or from the parents, the child's anticipated need, or other matters.<sup>19</sup>

In this case, the May 29, 2013 IEP meeting was held to address the closing of the DHH classroom in the neighboring district school where the Student was placed. As such, the placement was re-

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<sup>18</sup> Bd. of Educ. v. Rowley, 458 U.S. 176, 201 & n. 23, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)

<sup>19</sup> OAR 581-015-2225

determined pursuant to OAR 581-015-2250. A child's placement must be in conformity with the Least Restrictive Environment provisions of OAR 581-015-2240 to OAR 581-015-2255, be as close to the child's home as possible, and must be based on the child's current IEP. Also, the need for transportation was discussed at this meeting, as the team no longer thought that transportation was needed as a related service for the Student to access special education after being placed in the home district. The Prior Written Notice (PWN) dated May 29, 2013 details that a proposal to change the placement occurred at the meeting. The PWN notes that "DHH resource room in current school will not be operational in fall of 2013." The PWN also notes the team "felt that student can access services in home district" as the reason why the Parent's suggested option to continue services through a DHH resource room and continued transportation out-of-district, to the out-of-district school (School A) was rejected.

The District changed the Student's placement from the out-of-district school (School A) to the neighborhood school in the District (School B). This placement conforms with OAR 581-015-2250(e) because it is as close as possible to the Student's home. Further, the placement is in conformity with the Student's IEP because the Student's services will still be provided by a full time interpreter and by the two DHH Special Education teachers. Regardless of where the Student is placed, special education and services as required by the IEP remain the same. Unless the Student's IEP requires some other arrangement, the Student is educated in the school that he or she would attend if not disabled.<sup>20</sup> In this case, the Student's home school is the school that the May 2013 IEP meeting decided was appropriate for a placement. Based on these factors, the Student's placement at this school for the second grade year is appropriate.

In the Student's April 10, 2013 IEP, the Student was originally placed at the out-of-district school because at that point, this school still had a DHH Resource Room. However, the Bend LaPine administrators eliminated the Resource Room in the month of May, making reliance on this Resource Room placement impossible.

The services for the Student, as described in IEPs, have been consistently provided by an interpreter and by two separate DHH Special Education teachers: one teaching speech and language and the other teaching writing and vocabulary. Currently at the School A, the Student receives special instruction from these DHH teachers in a separate room from the regular education room although it is not specifically designated as a "Resource Room". The DHH teachers are not housed at School A, but have their regular offices/classrooms at a middle school which is on the same campus as the elementary school. These teachers walk across the parking lot to provide services to the Student.

If the Student had not transferred to School A, the Student's specialized instruction would still have been provided by the same two teachers, but rather than crossing a parking lot, they would have traveled to School B to meet with the Student for 50 minutes per week of specialized instruction in writing and language as well as 480 minutes of speech. Therefore, the Parent's concern that the Student would have lost the benefit of two integral and effective teachers had the Student been educated at the new school is without merit. The District, through the ESD, would provide the same specialized instruction with the same teachers, regardless of the Student's choice of school.

Further, the DHH program for these schools is not administered by a single district but is overseen by the High Desert Educational Service District (ESD). Therefore, unless and until the Student moves from the High Desert ESD's region, the Student will still have access to the same programs and staff unless the Student would no longer qualify for services.

The April 10, 2013 IEP also stated that the Student would have an appropriate peer group, academically, socially or vocationally in this environment which was the reason for the placement

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<sup>20</sup> OAR 581-015-2250(3).

out-of-district in School A's DHH resource room.

The District addressed the Student's needs for appropriate peer group socialization when it made an accommodation for the Student to meet monthly with "deaf culture" peer group to engage in opportunities to interact during the May 2013 IEP meeting. At the current time, the Student does interact with the "deaf culture" middle school peers on a monthly basis with a DHH teacher supervising the interaction. Again, this interaction can take place whether the child is a student at the School A or School B, because the District is willing to transport and accommodate the Student for these social needs. Although the District chose a placement in a general education classroom for the Student at School B, the District complied with the IDEA's mandates while giving consideration to the Student's special needs.

Finally, if the Student were to attend the local School B, the Student would not have the opportunity to interact with the counselor from School A who is fluent in ASL and who has intimate knowledge of "deaf culture". Currently the Student interacts with the counselor on a daily basis. However, this counselor does not teach the Student and acts in an administrative capacity in the school. The IEP does not require services or instruction from this staff member. It is a benefit that the Student has an adult with whom the Student can converse in ASL without an interpreter, but merely having a staff member on site with whom the Student can converse does not provide overwhelming evidence that the previously attended Elementary is the least restrictive environment for the Student. Additionally, the IDEA makes no requirements for districts to make particular faculty or staff available to a child based solely on parental preference.

Because the District, through the High Desert ESD DHH program, can provide the needed services at either location and because they have taken the Student's social, cultural and academic needs into consideration when making the placement and during IEP revision, the revisions were proper. This allegation is not substantiated.

## V. CORRECTIVE ACTION<sup>21</sup>

*In the Matter of Redmond School District*  
Case No. 13-054-024

Based on the facts provided, the Department did not find violation of the IDEA, and no corrective action is ordered.

Dated this 21st day of October, 2013

  
\_\_\_\_\_  
Sarah Drinkwater, Ph.D.  
Assistant Superintendent  
Office of Learning/Student Services

Mailing Date: October 21, 2013

<sup>21</sup> The Department's order shall include corrective action. Any documentation or response will be verified to ensure that corrective action has occurred. OAR 581-015-2030(13). The Department requires timely completion. 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).