



	<p>needs.  Relevant Law: 581-015-2105; OAR 581-015-2110, OAR 581-015-2115 and 34 CFR 300.301 and 34 CFR 300.3033.</p>	<p>school district, the district in which the charter school is located. OAR 581-015-2080(3). Based on these circumstances, the Department does not sustain the allegation that the District failed to provide appropriate evaluation and assessment of the Student's special education needs.</p>
<p>2.</p>	<p><b><u>Free Appropriate Public Education (FAPE)</u></b></p> <p>(a) The complaint alleges the District violated the IDEA by failing to protect the Student from bullying and inappropriate behaviors of other students despite the Parents' notification to the District of the problems, resulting in a denial of FAPE.</p> <p>(b) The complaint alleges the District violated the IDEA by failing to provide special education services and accommodations despite the Parents' documentation of issues, resulting in a denial of FAPE and requiring the Student to enroll in a public charter school in order to obtain FAPE.</p> <p>Relevant law: OAR 581-015-2040 and 34 CFR 300.101.</p>	<p><b><u>No Finding</u></b></p> <p>In this case, because the Student had not been identified as a student with a disability, the FAPE and its related complaint procedures do not apply. The Department thus does not make a finding on the allegations that the District failed to provide FAPE to the Student.</p>

	<p><b><u>Proposed Corrective Action</u></b></p> <p>The complainant requests the following corrective action:</p> <p>Provision of 50 hours of remedial tutoring to the Student at the Student's public charter school, at the District's expense.</p>	<p>No Corrective Action is ordered in this case.</p>
--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------

### III. FINDINGS OF FACT

#### Background

1. The Student in this case is presently 13 years old, and the District has not determined that the Student is eligible for special education.

2. The Student no longer attends school in the District. The Student last attended school at the District on December 14, 2012. The Student formally withdrew from the District on January 25, 2013.
3. The Student enrolled in home school on February 4, 2013.
4. The Student enrolled in a charter school (Oregon Connections Academy) on or about February 11, 2013. The District received a records request from the charter school dated January 15, 2013.
5. This complaint examines only the portion of the 2012-2013 school year beginning on October 25, 2012 (one year preceding the filing of the complaint in this case) until the child was no longer enrolled in the District, or the relevant timeframes when the Student attended school in the District and the District maintained FAPE responsibility for the Student.

### **Evaluation and Reevaluation Requirements**

6. During the early part of the Student's 2012-2013 school year, the District did not have any concerns about the Student's school performance that led the District to suspect that the Student had a disability. Therefore the District did not have occasion to evaluate the Student, on that basis.
7. The Parents did not make a request for the District to evaluate the Student. The Parents, instead, filed a complaint against the District on September 1, 2012 with the Department (complaint 12-054-025), and the Parents and District entered into a mediation agreement on November 1, 2012 resulting in dismissal of that complaint by the Parents.
8. The Parents and District agreed during the mediation that the District would assist the Parents with their ongoing private evaluation process initiated by the Parents, and the District also agreed to provide 10 hours of tutoring to the Student.
9. The Parent reported that the District did assist with the evaluation by completing teacher observations and providing them to the private evaluator; and that the Student eventually attended an appointment with the private evaluator on May 6, 2013. The Parent reported that the private evaluator issued an evaluation report a couple of weeks after that appointment.
10. The Parent also reported that the Student was made eligible for special education services under the serious emotional disturbance category by the charter school based on the private evaluator's evaluation. The Student currently has an IEP at the charter school.
11. The District did not receive the report from the private evaluator upon completion of the Parent initiated evaluation in May of 2013. The District did not hold a meeting concerning the private evaluation, because the Student withdrew from the District and enrolled in the charter school, which is associated with the another district, in February of 2013,
12. During the Student's enrollment with the District from October 25, 2012 (one year preceding the filing of the complaint in this case) to the withdrawal of the Student on January 25, 2013, the Student had not been identified as a student with a disability, as found above in this Order. Therefore, the Student did not have an IEP in effect while enrolled in the District.

## IV. DISCUSSION

### 1. Evaluation and Reevaluation Requirements

The complaint alleges the District violated the IDEA by failing to provide appropriate evaluation and assessment of the Student's special education needs.

OAR 581-015-2105 provides that a District must conduct an initial evaluation to determine if a child is eligible for special education services when a public agency suspects or has reason to suspect that the child has a disability that has an adverse impact on the child's educational performance. Additionally, a parent may initiate a request for an initial evaluation.<sup>3</sup>

In this case, the District did not suspect that the Student had a disability that adversely impacted the Student's educational performance during the relevant time period in this case, from October 25, 2012 to January 25, 2013. Additionally, the Parents did not request that the District conduct an evaluation of the Student and it was not until the mediation process of a prior complaint filed by the Parents with the Department that the District learned that the Parents had initiated a private evaluation process from a private evaluator. The District and the Parents agreed in the mediation completed on November 1, 2012 that the District would assist the Parents with the process of completing the private evaluation previously initiated by the Parents, and the District did so. The Parents were to provide the evaluation results to the District so that an evaluation planning meeting could be held. The evaluation results were not provided to the District upon completion of the evaluation in May of 2013. The Parents instead enrolled the Student in a charter school which was located in another district about three months before the completion of the private evaluation. At that time, the IDEA responsibilities for the Student transferred to the District where the charter school was located.<sup>4</sup> Based on these circumstances, the Department does not sustain the allegation that the District failed to provide appropriate evaluation and assessment of the Student's special education needs.

### 2. Free Appropriate Education (FAPE)

The complaint alleges that the District violated the IDEA by (a) failing to protect the Student from bullying and inappropriate behaviors of other students despite the Parents' notification to the District of the problems, resulting in a denial of FAPE, and (b) failing to provide special education services and accommodations despite the Parents' documentation of issues, resulting in a denial of FAPE, requiring the Student to enroll in a public charter school in order to obtain FAPE.

OAR 581-015-2040 provides that school districts must provide special education and related services to resident school-age children with disabilities. Residency and subsequent IDEA responsibility for students of charter schools is determined in accordance with Oregon law at ORS chapter 338. Residency of students for public charter schools is assigned to the district in which the public charter school is located.<sup>5</sup> Additionally, OAR 581-015-2030 provides that an IDEA complaint may be filed with the Department only when an allegation is made of a violation of the Individuals with Disabilities Education Act (IDEA) or regulations under that Act.

In this case, because the Student had not been identified as a student with a potential or existing disability, nor was the Student eligible for IDEA services, the FAPE requirements and

---

<sup>3</sup> OAR 581-015-2105(2).

<sup>4</sup> See ORS chapter 338 and OAR 581-015-2080(3).

<sup>5</sup> ORS 338.155(1)(a)

accompanying IDEA complaint procedures do not apply. The Department thus does not make a finding on the allegation that the District failed to provide FAPE to the Student.

**CORRECTIVE ACTION<sup>6</sup>**

*In the Matter of Lincoln County School District*  
Case No. 13-054-030

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

Dated this 18th Day of December 2013



---

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

Mailing Date: December 18, 2013

---

<sup>6</sup> 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)).