

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Forest Grove School  
District # 15

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FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 14-054-013

**I. BACKGROUND**

On March 21, 2014, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Forest-Grove School District 15 (District). The Parent 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.

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.<sup>1</sup> This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup>

On March 27, 2014, 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 April 10, 2014.

On April 10, 2014, the District submitted a *Response* indicating they disputed all portions of the allegations in the Parent's complaint. On April 11, 2014, the District submitted additional materials. In total, the District submitted the following items:

- A. District Legal Counsel's Email Responding to the Request for Response, 4/10/2014;
- B. District Legal Counsel's Email Containing Additional Response to Complaint;
- C. Statement of Eligibility for Special Education, 2/21/2014;
- D. Statement of Eligibility for Special Education, 2/14/2014;
- E. Confidential Psychological Report Addendum, 2/21/2014;
- F. Functional Communication Evaluation, 2/19/2014;
- G. Occupational Therapy Evaluation, 2/13/2014;
- H. Medical Statement or Health Assessment Statement, 1/20/2014;
- I. Prior Notice About Evaluation/Consent for Evaluation, 2/11/2014;
- J. Student Schedule 2011/2012;
- K. Student Schedule 2012/2013;
- L. Student Schedule 2013/2014;
- M. Daily Attendance Profile 2013/2014;
- N. Daily Attendance Profile 2013/2014;
- O. Student's Individualized Education Program, 3/7/2014;
- P. Prior Notice of Special Education Action, 2/21/2014;
- Q. Student's Individualized Education Program, 10/8/2013;

<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

- R. Prior Notice of Special Education Action, 6/4/2013;
- S. Prior Notice of Special Education Action, 4/15/2013;
- T. Student's Individualized Education Program, 11/27/2012;
- U. Prior Notice of Special Education Action, 4/10/2013;
- V. Student's Individualized Education Program with meeting notes, 11/27/2012;
- W. Prior Notice of Special Education, 11/13/2012;
- X. Special Education Meeting Minutes, 11/13/2012;
- Y. Prior Notice of Special Education Action, 6/8/2012;
- Z. Student's Individualized Special Education Program, 6/8/2012;
- AA. Special Education Meeting Minutes, 6/27/2010;
- BB. Prior Notice of Special Education Action, 10/3/2011;
- CC. Special Education Meeting Minutes, 10/3/2011;
- DD. Prior Notice of Special Education Action, 9/12/2011;
- EE. Special Education Meeting Minutes 9/6/2011;
- FF. Student's Individualized Education Program, 3/29/2011;
- GG. Special Education Meeting Minutes, 3/29/2011;
- HH. Supplemental Materials Relevant to issue of drivers education;
- II. Course Catalog 2010-2011 (Relevant Pages);
- JJ. Course Catalog 2011-2012 (Relevant Pages);
- KK. Course Catalog 2012-2013 (Relevant Pages);
- LL. Course Catalog, 2013-2014 (Relevant Pages);
- MM. Labor and Materials Contract, Driver's Education (2009);
- NN. District Transition Program Materials.
- OO. Transition Self-Assessment

The Parent submitted materials for consideration on April 11, 2014, April 23, 2014; and April 30, 2014. The Department's complaint investigator determined that on-site interviews were needed. On April 21, 2014, the complaint investigator interviewed the Parent. On April 24, 2014 the complaint investigator interviewed the District Director of Special Education, High School Special Education Coordinator, Transition Teacher, Speech Language Pathologist (SLP), Speech Education Teacher, High School Principal, and one of Student's Regular Education Teachers. On April 25, 2014, the complaint investigator interviewed the former Speech Language Pathologist who worked with Student during the 2012-2013 school year. During the interviews, both the Parent and the District submitted additional materials for review. 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 March 22, 2013 to the filing of this complaint on March 21, 2014.<sup>3</sup>

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<sup>3</sup> This order does include some facts that are relevant to the case and that happened before March 21, 2013.

	<b><u>Allegations:</u></b>	<b><u>Conclusions:</u></b>
1	<p><b><u>Free Appropriate Public Education (FAPE):</u></b></p> <p>(a) The Parent alleges that the District violated the IDEA when Student was not provided with specific services and instruction as ordered to deliver FAPE in Due Process Complaint # DP 11-131.</p> <p>(OAR 581-015-2040 &amp; CFR 300.101)</p> <p>(b) Parent further alleges that the District violated the IDEA when Students was not provided with driver's education or any form of drivers training as ordered by DP 11-131.</p> <p>(OAR 581-015-2200(2) and 34 CFR 300.320(b))</p>	<p><b><u>Not Substantiated:</u></b></p> <p>(a) District attempted to offer instruction related to vocabulary in the Driver and Motor Vehicles Services (DMV) study guide, during provision of speech services. The Department concludes that this did not impact provision of speech services to Student. The Department does not sustain this portion of the allegation.</p> <p><b><u>Substantiated</u></b></p> <p>(b) The Department concludes that Student has not received any driver education training, as ordered by the ALJ in DP 11-131 as part of Student's transition services, and orders corrective action.</p>

### III. FINDINGS OF FACT

- 1) The Student in this case is 19 years old and resides in the Forest Grove School District 15.
- 2) Student is eligible for special education services under the categories of Intellectual Disability, Autism Spectrum Disorder, and Other Health Impairment for Attention-Deficit/Hyperactivity Disorder (ADHD).
- 3) Student currently attends Forest Grove High School. Student's disability affects involvement in the general education curriculum. Specifically Student's disability affects Student's ability to read, write, understand math concepts, and social communication skills to an extent that requires specifically designed instruction, and significant modifications to the general education curriculum.
- 4) The March 29, 2011 IEP includes transition information. That portion of the IEP notes that transition is, "Appropriate, measurable post-secondary goals based upon age-appropriate transition assessment related to training, education, employment, and, where appropriate, independent living skills." Relative to driving, this portion of the IEP notes, "Within one year of completing district services, [Student] will...access [Student's] community by driving..."
- 5) Student's November 3, 2011 IEP notes Student's preferences, interests and needs. "Student shared that [Student] would like to...get [Student's] driver's license."

- 6) The November 3, 2011 IEP includes transition information. That portion of the IEP notes that transition is, "Appropriate, measurable post-secondary goals based upon age-appropriate transition assessment related to training, education, employment, and, where appropriate, independent living skills." Relative to driving, this portion of the IEP notes, "Within one year of completing school district services; [Student] will attend community college part time...and will access [Student's] community by driving..."
- 7) On September 12, 2012, following a due process hearing, where Parent alleged that District violated the IDEA in several ways, an Administrative Law Judge (ALJ) ordered the District to remedy numerous issues related to these alleged violations. Which included the issue of driver education be addressed by District.
- 8) Specifically, this Due Process Order DP 11-131 stated that, "The District is also ordered to provide transition services to Student. There was no evidence presented at hearing that the District had started providing these services. Student will be 18 years old soon and, due to his/her learning deficits, needs to catch up to the earlier missed transitional educational opportunities. The district is ordered to compensate Student by providing driver's education training in order to meet the goal, stated in the transition plan that Student be able to drive. The District is also ordered to provide Student life skills training to enable him/her to attend community college as reflected in the transition plan.
- 9) Student's IEP dated November 27, 2012 includes, under Present Levels of Achievement and Functional Performance, the entry that "[Parent's] also interested in [Student] taking Drivers Ed."
- 10) In October of 2012, Student was given a transition self-assessment that was administered orally with a transition specialist. Student's IEP, dated November 27, 2012 includes, "Needs identified on student transition assessment: ...study for driver's permit test..."
- 11) The November 27, 2012 IEP includes transition information. That portion of the IEP notes that transition is, "Appropriate, measurable post-secondary goals based upon age-appropriate transition assessment related to training, education, employment, and, where appropriate, independent living skills." Relative to driving, this portion of the IEP notes, "Within one year of completing district services, [Student] will attend a community college class, which is more recreational in nature, will be employed part-time at a retail store or working with animals, where [Student] will receive on the job training. [Student] will live independently with some support, and will access...community by driving...or accessing public transportation.
- 12) The November 27, 2012 IEP includes a measurable annual goal, related to transition/life skills, geared toward Student obtaining a job and accessing the community. These goals and objectives do not include driving.
- 13) On December 18, 2013, an ALJ issued a decision in a second due process hearing, DP 13-104, which was related to District's provision of a Free and Appropriate Public Education (FAPE) as required under the IDEA.
- 14) The October 8, 2013 IEP includes transition information. That portion of the IEP notes that transition is, "Appropriate, measurable post-secondary goals based upon age-appropriate transition assessment related to training, education, employment, and, where appropriate, independent living skills." Relative to driving, this portion of the IEP notes, "Within one year

of completing district services, [Student] will attend a community college class, which is more recreational in nature, will be employed part-time at a retail store or working with animals, where [Student] will receive on the job training. [Student] will live independently with some support, and will access [Student's] community by driving...or accessing public transportation.

- 15) On October 9, 2013, Parent sent an email to District counsel inquiring about the manner in which District will provide instruction in response to the ALJ's order in DP 11-131. Specifically Parent notes that Student attempted to take the driver's permit test over the summer by was unsuccessful in passing. Parent asks whether District will pay for a driver education class.
- 16) The specific third-party driver education course Parent asked District to pay for, is the same third-party driver education company that contracts with District to market classes to Forest Grove High School students. District does not offer driver education as a class. Instead, District lists the third-party driver education provider's services in their yearly curriculum guide, in order to help students locate and take advantage of the services. collects payments from students for the driver education program, and later distributes those funds to the third-party driver education company. The driver education course listed in the District curriculum guide is offered after school hours and utilizes district classrooms. District staff does not teach driver education. the 2010-2011, 2011-2012, and 2012-2013 school years, driver education was listed in the District Curriculum guide. The District does not currently list driver education in the curriculum guide.
- 17) On October 11, 2013, Counsel for District responded to Parent's October 9, 2013 email as follows, relevant to the issue of driver education; "Finally, after the IEP meeting on October 8, you discussed...your belief that the ALJ's order required that the District provide specific driver training through a private program. You followed up with an email request for the District to pay \$350 for a private driver training school. Again the order stated on page 66 only that 'The District is ordered to compensate Student by providing driver's education training in order to meet the goal, stated in the transition plan, that Student be able to drive.' My interpretation of this statement is that it does not set for a specific curriculum or methodology for providing 'driver's education training.' As we discussed with you after the meeting in Oct, the SLP has been and is continuing to work on skills [Student] needs to support [Student's] transition activity of 'study for driver's permit.' Based on where [Student's] current performance and needs, the District believes that this work is appropriate. Accordingly the District respectfully declines your request for it to pay \$350 for the private driver's training program. As an aside, the District also has concerns that given [Student's] current needs and performance, that thrusting [Student] into a private driver's education program could be counterproductive."
- 18) On October 15, 2013, Parent responds via email, "Driver Ed—Nothing in the order says anything about the permit. Its states on page 66, 'The district is ordered to compensate Student by providing driver's education training in order to meet the goal, stated in the transition plan, that the Student be able to drive.' The district included activities to support transition studying for the permit. I am objecting to the fact that the district is using some of [Student's] one hour of speech time to study for the driver's permit test (which I stated last year as well to [the SLP].) The decision of when [Student] should/can drive is a decision to be made by [Student's] parents and with the appropriate consultation as needed."
- 19) Student was provided with at least one, but no more than two sessions of tutoring relative to

driver's education. This instruction was offered during speech services during the 2012-2013 school year by the District's former SLP.

- 20) Parent questioned and objected to District providing instruction related to driver education during Student's speech therapy.
- 21) District offered no further instruction related to the transition goal of student obtaining a driver's license.
- 22) The SLP who worked with Student during the 2012-2013 school year began working with Student on vocabulary relevant to the driver education manual after consultation with District's High School Special Education Coordinator.
- 23) The driving school that contracts through the District includes driving as part of the initial instruction. Students are therefore required to obtain their driving permit prior to enrolling in the course to allow them to legally operate a motor vehicle as part of the class.
- 24) Other transition goals listed for Student are already addressed with the District's transition program and in the specialized classroom environment.

#### IV. DISCUSSION

##### 1(a). Free Appropriate Public Education (FAPE):

The Parent alleges that the District violated the IDEA when Student was not provided with specific services and instruction as ordered, to deliver FAPE in DP 11-131. Specifically Parent objected to Student's SLP working with Student on driver education vocabulary during speech therapy. Parent was concerned that driver education training was offered during the same time as speech therapy.

- The legal requirement regarding free appropriate public education (FAPE) can be found in OAR 581-0015-2040 and 34 CFR 300.101. School Districts must provide special education and related services to all resident school-age children with disabilities.<sup>4</sup> FAPE is broadly defined in the 2006 IDEA Part B regulations as special education and related services that: (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the state involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320 through 34 CFR 300.324.<sup>5</sup> Further, the Supreme Court termed the state's obligation, for FAPE, as being the provision of a "basic floor of opportunity."<sup>6</sup> The IEP implementation mandate does not mean that a district must perfectly implement a student's IEP in order to provide a student with FAPE. A minor discrepancy between the services provided and the services required under the IEP is not enough to amount to a denial of FAPE. However, the failure to implement a *material* portion of the IEP amounts to a denial of FAPE.<sup>7</sup>

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<sup>4</sup> OAR 581-015-2040 (1)

<sup>5</sup> 34 CFR 300.17

<sup>6</sup> *Board of Education of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982).

<sup>7</sup> *Sumter County Sch. Dist. 17 v. Heffernan*, 56 IDELR 186 (4th Cir. 2011) (emphasis added); *A.P. v. Woodstock Bd. of Educ.*, 55 IDELR 61 (2d Cir. 2010); *Van Duyn v. Baker Sch. Dist.* 5J, 47 IDELR 182 (9th Cir. 2007), *reprinted as*

Parent and District agree that District's SLP worked with student for probably no more than one class session of speech therapy, on vocabulary related to student obtaining Student's driving permit. As such, the material portion of the IEP related to speech services was implemented. The Department therefore does not sustain this portion of the allegation that Student's speech services were decreased or substituted in favor of driver education training.

**1(b). Free Appropriate Public Education (FAPE):**

The Parent alleges that the District violated the IDEA when Student was not provided with driver education or any form of driver training as ordered by DP 11-131. Driving, learning to drive, or studying for Student's driving permit, have been transition goals for Student since at least Student's sophomore year in high school. Student's IEPs have contained a variety of transition services. Driving is a goal for Student, and one that is related to Student's obtaining work and enrolling in community college courses. The Administrative Law Judge in DP 11-131 noted that there was, "no evidence that the District had started providing these services."

Special Education means specially designed instruction that is provided to meet the unique needs of a child with a disability.<sup>8</sup> Such "specially designed instruction" means adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability.<sup>9</sup> For the purpose of transition the IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training education, employment, and where appropriate independent living skills.<sup>10</sup> Furthermore, transition services are a coordinated set of activities for a student with a disability that are designed to be within a result-oriented process to facilitate the student's movement from school to post school activities including: postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation.<sup>11</sup> Such transition services should be based on the individual student's needs taking into account the student's preferences and interests, including instruction, related services, and community experiences.<sup>12</sup>

The SLP, after consultation with the High School Special Education Director, began working with Student on vocabulary required for Student to successfully pass the Oregon Department of Motor Vehicles knowledge test. Successful completion of the knowledge test is required to obtain a driving permit.<sup>13</sup> Any student enrolling in the District sponsored driver education course must first obtain a driving permit because the third-party driver education provider starts students with instruction and experience in a motor vehicle. Parent initially contacted District regarding the unmet portion of the Due Process order requiring provision of "driver's education training." Parent interpreted this at some point to mean District should enroll Student in the driver education course advertised through the District curriculum guide. Counsel for District interpreted that the Due Process order did not "set forth a specific curriculum or methodology for

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*amended*, 107 LRP 51958 (9th Cir. 08/06/07); *Houston Indep. Sch. Dist. v. Bobby R.*, 31 IDELR 185 (5th Cir. 2000), *cert. denied*, 111 LRP 30885, 531 U.S. 817 (2000); and *Neosho R-V Sch. Dist. v. Clark*, 38 IDELR 61 (8th Cir. 2003).

<sup>8</sup> OAR 581-015-2000 (35)

<sup>9</sup> OAR 581-015-2000 (36)

<sup>10</sup> OAR 581-015-2200 (2)(a)(A) & (2)(a)(B)

<sup>11</sup> OAR 581-015-2000 (40)(a)

<sup>12</sup> OAR 581-015-2000 (40)(b)

<sup>13</sup> OAR 735-062-0040(1), "Applicants for an original driver permit, diver license or endorsement must pass the knowledge test(s) required under ORS 807.070(2) and, if applicable, 807.065(1)(b)."

providing "driver's education training," and thereby rejected Parent's request that District pay for the driver education course that the school advertised, mainly toward its regular education students in the District. However, no alternative driver education training was offered or created for the student.

As a special education student, the provision of "drivers education training" needs to be designed to meet Student's unique needs. While the majority of the transition services indicated on Student's IEP are anticipated to be provided through the District's existing transition program, the transition goal of driving will require an approach designed with Student's unique needs in mind. District protested that since it no longer sponsored driver education at the high school, it was incapable of providing "driver's education training" as ordered by the ALJ. However, general education curricular offerings do not mandate compliance with due process hearing administrative law decisions, nor do general education's typical offerings traditionally hinder what is appropriately offered to IDEA student's based on their individual needs and IEPs. The driver education class advertised to students through the District curriculum guide is not specially designed instruction adapted to Student's unique needs, and is therefore unlikely to suitably meet Student's transition goal of learning to drive. While District protested that the existing transition program does not include the ability to offer instruction in driving, the District must develop a plan to meet the postsecondary goal, stated in Student's IEP, of Student learning to drive, and was further required by two administrative law judges.

Upon adding driving to Student's March 29, 2011 IEP, the District should have formulated appropriate measurable goals based upon age appropriate transition assessments. While Student was administered a transition assessment, no plan or goals were developed to meet that objective. Following Due Process Hearing DP 11-131, District was ordered to "...compensate Student by providing driver's education training in order to meet the goal, stated in the transition plan that Student be able to drive." To date, District has not created a plan or offered a solution for meeting this transition goal. Nor has District provided evidence of a stay or compliance with the decisions of the Due Process Administrative Law judges.

The Department therefore sustains this allegation and orders corrective action.

## V. CORRECTIVE ACTION<sup>14</sup>

*In the Matter of Forest Grove School District #15  
Case No. 14-054-013*

Actions	Submissions <sup>15</sup>	Due By
<p>District must immediately implement the driver education training ordered in DP 11-131 and explained in this final order.<sup>16</sup> As part of its annual application to ODE for IDEA funds, the District has signed a statement of assurance that it complies with final due process and State complaint orders issued in conjunction with the State's IDEA dispute resolution system.</p>	<p>Submit monthly, from June 1, 2014 through completion of said training, activity logs and completion records documenting the implementation of the ordered driver education training. (A suggested format, with appropriate information, for these submissions is attached).</p> <p>Upon completion of the driver education training, District will submit the service log to ODE. This service log will be signed by the District Superintendent and Special Education Director.</p>	<p><b>June 1, 2014 through March 1, 2015</b></p>

Dated: this 20th Day of May 2014




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

Mailing Date: May 20, 2014

<sup>14</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)).

<sup>15</sup> 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](mailto:raeann.ray@state.or.us); fax number (503) 378-5156.

<sup>16</sup> The District may contact Laura Petschauer, Coordinator of General Supervision (IDEA) for assistance in developing appropriate accommodations, modifications, and supports for this instruction. E-mail: [laura.petschauer@state.or.us](mailto:laura.petschauer@state.or.us).