

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Rogue River SD 35

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FINDINGS OF FACT
CONCLUSIONS AND
FINAL ORDER
Case No. 14-054-026

I. BACKGROUND

On June 17, 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 Rogue River SD 35 (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 by email on June 17, 2014.

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. This timeline may be extended if the Parent and the District agree to the extension in order to engage in mediation or local resolution of the complaint.

On June 30, 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 July 14, 2014.

On Thursday July 11, 2014, and Friday, July 12, 2014, the Parent met with District staff and negotiated an agreement to provide the Student with additional services during the remainder of the summer break. The District summarized the agreement as follows:

"The [S]tudent will be provided six weeks of instruction, totaling of (sic) 36 hours, with a minimum of 3 hours of instruction per week. An average week will consist of 3 days of instruction for 2 hours per day. The instruction will take place at the local library. The [S]tudent will be assessed three times during the six weeks of instruction. Assessments will be conducted outside of scheduled instructional time. Assessments will take place at the Rogue River district office (sic), the Rogue River library, or at Rogue River Elementary school.

A progress meeting will take place after the first week of instruction between the District Special Education Director and the Parent. Each additional progress meeting will be planned at the end of the last progress meeting. If a progress meeting is determined to be unnecessary for a week, the Director will provide updates via email communication to the Parent. At the beginning of the 2014 school year, the [S]tudent will receive a full battery of assessments. Specific assessments will be determined by the IEP team."

On July 14, 2014, the District submitted a *Response* indicating they "generally" disputed Allegations 1 and 3 of the Parent's complaint, but stated the District "lacks documentation to support the dispute." For Allegations, 1 and 3, the District noted it had reached an agreement with the Parent to provide the services the Parent requested. The District disputed Allegations 2 and 4. In total, the District provided these materials:

- A. District Response Letter;
- B. IEP and Placement Determination Documents;
- C. Progress Reports on IEP goals, and Data Tracking Sheets;
- D. Evaluation and Eligibility Documents;
- E. A Written Agreement Between the Parent and the District;
- F. Prior Written Notices;
- G. A letter, dated May 20, 2014, sent from the District to the Parent in response to the Parent's expressed concerns;
- H. The on-site schedule for the Charter School;
- I. The Student's attendance record for the 2013-2014 school year;
- J. The signed Charter School parent/student contract agreement;
- K. A copy of a math test given to the Student on March 21, 2014;
- L. An Agreement between the Parent and the District and a copy of the instructional schedule for summer instruction for the Student;
- M. Charter School Special Education Case Manager Job Description;
- N. Charter School Special Education Case Manager Job Posting;
- O. Functional Speech-Language Assessment Report, dated 4/30/2014;
- P. Team Meeting Notices for 11/6/2013 and 5/14/14;
- Q. Meeting Minutes for 5/14/14;
- R. 7th Grade Progress Report, NWEA Testing;
- S. Goal Monitoring Pages;
- T. 6th and 7th Grade OAKS testing results in Reading and Math;
- U. Referral and Evaluation Consent documents, dated 2/22/13;
- V. SPED Contact Log, 10/4/13 to 11/7/13;
- W. Charter School Staff Emails, 3/18/14 to 6/16/14;
- X. IEP, 5/14/14;
- Y. Parent Letter of Concern, given to District and Charter School staff, 5/14/14;
- Z. A copy of the District's Contract with the Charter School; and,
- AA. A copy of the Charter School Staff Manual.

On July 16, 2014, the District notified the Department's investigator (and the Parent confirmed later that day), that the Parent had decided not to withdraw the complaint. The Department's complaint investigator determined that on-site interviews were needed. On July 22, 2014, the Department's complaint investigator interviewed the Parent; two special education teachers, a District special education coordinator, and an Educational Specialist (ES)¹ - all of whom worked at the Charter School during the 2013-2014 school year. On July 23, 2014, the complaint investigator interviewed the Charter School Executive Director, another Charter School Educational Specialist, the new District Special Education Supervisor and the District Director of Special Programs. During and after the interviews, District and Charter School staff gave the complaint investigator additional materials.² 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.

¹ Educational Specialist is the title given to general education teachers at this Charter School.

² Some of these documents were sent via email, and the investigator forwarded them to the Parent. Some of the materials were paper copies and the District sent a paper copy to the Parent.

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 June 16, 2013 to the filing of this complaint on June 17, 2014.

	Allegations	Conclusions
1.	<p><u>When IEP's Must Be in Effect:</u></p> <p>a. The Parent alleges that the District violated the IDEA when it did not provide the Student with specially designed instruction in math and communication services during the 2013-2014 school year.</p> <p>b. The Parent alleges that the District violated the IDEA when it changed the Student's service time for math and communication services from 50 minutes per week to 15 minutes per week outside the IEP process.</p> <p>c. The Parent alleges that the District violated the IDEA when it did not implement the IEP at the beginning of the 2013-2014 school year.</p> <p>(OAR 581-015-2220 (1) & 34 CFR 300.323).</p> <p>d. The Parent alleges that the District did not inform the teacher of the IEP.</p> <p>(OAR 581-015- 2220(3) & 34 CFR 300.323 (d))</p>	<p><u>Substantiated:</u></p> <p>The Student did not receive the specified services; the IEP was not implemented at the start of the school year; the team inappropriately changed the amount of service time; and the Student's Education Specialist was not informed of the Student's IDEA eligibility and the subsequent requirements related to the implementation of the IEP. In addition, the Charter School told the Parent that such services were not available in the Charter School setting. For these reasons, the Department substantiates this allegation and orders corrective action.</p>
2.	<p><u>Charter Schools:</u></p> <p>a. The Parent alleges that the District violated the IDEA when it told the Parent that services on the Student's IEP were not available at the Charter School.</p> <p>(OAR 581-015-2075 & 34 CFR 300.209)</p>	<p><u>Substantiated:</u></p> <p>The Student did not receive the specified services; the IEP was not implemented at the start of the school year; the team inappropriately changed the amount of service time; and the Education Specialist (ES) was not informed of the Student's eligibility and the provisions of the IEP. In addition, the Charter School told the Parent that such services were not available in the Charter School setting. For these reasons, the Department substantiates this allegation and orders corrective action.</p>

<p>3.</p>	<p><u>Free Appropriate Public Education (FAPE)- Denial of FAPE</u></p> <p>a. The Parent alleges that when the District did not provide services, changed the amount of service time on the IEP and told the Parent services were not available at the Charter School, it did not provide the Student a Free and Appropriate Public Education.</p> <p>b. The Parent alleges that when the District did not provide appropriate specially designed instruction and related services, the Student did not make progress in math and communication skills, thus resulting in a lack of a Free and Appropriate Public Education.</p> <p>(OAR 581-015-2040 & 34 CFR 300.101)</p>	<p><u>Substantiated:</u></p> <p>All of the allegations that are substantiated above, in concert, amount to not only a violation of numerous administrative rules, but also constitute a denial of FAPE. As noted above, there are numerous substantive and procedural violations of the IDEA. There is no indication that the Student received educational benefit in accordance with an IEP that was written for Student's specific needs. For these reasons, the Department substantiates this allegation and orders corrective action.</p>
<p>4.</p>	<p><u>Confidentiality of Student Education Records:</u></p> <p>a. The Parent alleges the District violated IDEA when staff discussed the Student in the office of the Charter School in front of other students and parents.</p> <p>(OAR 581-015-2300 & 34 CFR 300.610 & 34 CFR 300.101)</p>	<p><u>Not Substantiated:</u></p> <p>Given the facts, and the lack of substantial information, the Department does not substantiate this allegation, and orders no corrective action.</p>

III. FINDINGS OF FACT:

Facts Specific to Charter School Organizational Structure and Operation:

1. REACH (River's Edge Academy Charter School) was originally chartered by the District on February 19, 2011. The charter was renewed on January 23, 2013, and the renewal became effective on July 1, 2013. The current contract between the District and REACH is in effect until June 30, 2015. The Charter School serves 150 students per year in Kindergarten through grade 12. Students in the Charter School are residents not only of the District but also of other districts in the region. The Charter School describes its vision as *"At the heart of our program are our Education Specialists (ESs) (sic) and the site-based teachers. In partnership with our parents, they help REACH fulfill its vision—to individualize education, to nurture the innate curiosity of our students, ignite our students' passion for learning and prepare our students for lifelong success."*³ REACH's mission is *"to provide a performance & standards based, personalized learning program in Oregon supported by the principles of multiple intelligence, and service learning & vocational readiness to students in grades K-12.*

³ REACH Educational Specialist Manual, 2013-2014, Module 1, pp. 1.

*REACH provides academic excellence through an individualized education that promotes a partnership between families, the community & public education.*⁴

2. The Charter School accepts a student after the parent completes an application. Specifically, the Charter School asks for demographic information about the student, and asks the parent to describe his or her vision of “ideal” schooling. The Charter School notes in the online handbook that it is a “school of choice”, and that students are considered without regard for ethnicity, national origin, gender, disability or achievement level.⁵
3. The organizational structure focuses on the parent as educator, supported by an assigned “Educational Specialist” (ES). The ES registers the student; meets with the student and parent for one hour weekly; determines the student’s learning style; assesses the student’s academic levels; creates individualized educational goals and objectives; selects a curriculum that will support the personalized learning plan; and, assesses the student’s progress in the curriculum.
4. In addition, students may take classes at the Charter School’s physical location. These classes cover a wide variety of subjects (ballroom dancing, cooking, art in geometry), and are offered on a quarterly time schedule. Students may also participate in classes or extracurricular activities at District schools.
5. The Charter School’s ES Manual states that *“The parent will make the final decision about which educational approach will be used, the daily instructional schedule, and the curriculum materials to be used within the approved selection.”*
6. When a student enrolls at the Charter School, and school begins in the fall, each student is assigned an Educational Specialist. During the registration process, the ES is encouraged to ask some additional questions, but the ES Manual does not indicate how the information is shared with administrative or other teaching staff. Most of these questions are about what kind of special education services the student might have received in past educational settings.⁶
7. After the student is accepted into the Charter School, the parent, student, and ES all sign a “Parent Student Contract Agreement”. The Parent Student Contract Agreement contains a section entitled “Special Education Needs”. This section notes that the Charter School adheres to all provisions of IDEA, and specifies the following:
 - a. *“REACH is a Personalized Learning program in which parents become a strong partner in their children’s learning program.*
 - b. *The services of a licensed/registered regular education teacher in the child’s home will be up to one hour per week.*
 - c. *Each student has a standard maximum amount of allocated funds for that student’s educational program.*
 - d. *Each student identified with special needs must have an IEP stating that the personalized learning program offered through REACH is an appropriate placement for the student.*
 - e. *If the IEP team determines that REACH is not an appropriate placement for the student, then the student will return to his/her district of residence for appropriate placement.”*

⁴ REACH Educational Specialist Manual, 2013-2014, Module 1, pp. 2.

⁵ <http://www.REACH-school.org/index.html>

⁶ The suggested questions do not include any specific questions about area(s) of eligibility, current IEP, etc.

8. The ES Module 3, page 3, gives these instructions to the ES regarding students who are eligible for special education: *"If the student is receiving services for Special Education and has a current Individualized Education Plan (IEP), enroll the student and contact the Administrator so that an IEP meeting can be arranged. An IEP meeting must be held because enrolling in REACH may be considered a possible change in placement."*
9. The Charter School has a designated fiscal allotment system for educational materials and services for its enrolled students, to access each year, which varies depending on the student's grade level. This system features "educational units"(EUs) which are used to pay for curriculum or materials such as books, onsite or offsite approved vendors, supplemental materials, school supplies, and other items that are primarily educational in nature.
10. The Charter School has developed a job description for the position of Special Education Case Manager. The responsibilities described in this document defines many typical case management tasks such as: inputting records in the computer system, conferring with ESs and parents, coordinating IEP meetings, and, supporting and mentoring general education teachers (ESs). The job responsibilities also include conducting educational and behavioral evaluations and reevaluations, and completing and reviewing special education paperwork to ensure compliance. This job description includes the statement that the Case Manager will, *"Assist regular education teachers in providing quality and comprehensive programming for children with special education needs."*
11. During the interviews, the complaint investigator asked all Charter School staff to explain who provided specially designed instruction (SDI) and related services (RS) to the Student during the 2013-2014 school year. The two special education teachers, and a District special education coordinator, stated they had been instructed by the Executive Director of the Charter School that provision of SDI and RS was the job of the Educational Specialist. They also stated that the Executive Director had told them the Charter School did not have enough funds to pay for the provision of specially designed instruction and related services. One of the Educational Specialists, the individual assigned directly to the Student, stated the Director had specified the provision of SDI and RS was the ES's responsibility, but that the ES was never given any instruction on how to do this or on what to teach. The Charter School's Executive Director denied having given such instructions to the special education case managers at the Charter School. The District Director of Special Programs, who is assigned to supervise the Charter School, understood that the SDI and RS were being provided by the ESs under direction from the special education staff and Executive Director of the Charter School.
12. During the 2013-2014 school year, the Charter School had two different special education case managers. One individual was on staff from the start of the school year in September, 2013, and left the school at the end of October, 2013. The second Case Manager was hired at the end of January, 2014, and remained at the Charter School through the end of the 2013-2014 school year.
13. In the July 1, 2013 charter agreement between the District and REACH, there is this section on Students with Disabilities:

a. Education of Students with Disabilities

River's Edge Academy Charter School shall comply with all District policies and regulations and the requirements of federal and state law concerning the education of children under the Individual with Disabilities Education Act ("IDEA"). The District shall provide its policies to River's Edge Academy Charter School upon request.

Compliance by River's Edge Academy Charter School includes, but is not limited to, the following:

- (i) River's Edge Academy Charter School shall comply with all state laws and District policies regarding discipline of special education students. The District shall provide such policies to River's Edge Academy Charter School upon request;
- (ii) The Individual Education Plan/Program (IEP) team is determined by federal law;
- (iii) The student's IEP team will determine the appropriate educational program and placement for the student. River's Edge Academy Charter School shall abide by the IEP team's decision on program and placement;
- (iv) River's Edge Academy Charter School staff shall comply with training required by an IEP team for delivery of services to a River's Edge Academy Charter School student;
- (v) The funds from the Oregon Department of Education representing the Average Daily Membership weighted (ADMw) for special education for River's Edge Academy Charter School special education students shall be retained by the District;
- (vi) The District has the discretion to determine where specialized programs will be offered to students on an IEP;
- (vii) The student's IEP team may recommend any appropriate placement for the student based on the student's needs, whether in or out of River's Edge Academy Charter School. River's Edge Academy Charter School shall not change the student's placement or IEP without IEP team action;
- (viii) Special education transportation will only be provided by Rogue River School District to a River's Edge Academy Charter School special education student if it is a related service on a River's Edge Academy Charter School student's IEP;
- (ix) River's Edge Academy Charter School shall provide substitutes, as needed, for River's Edge Academy Charter School staff who are required to attend IEP meetings or other meetings related to a River's Edge Academy Charter School special education student at River's Edge Academy Charter School's expense;
- (x) River's Edge Academy Charter School shall notify the District if a student may need special education services;
- (xi) If, after a student is enrolled and attending River's Edge Academy Charter School, the staff and employees of River's Edge Academy Charter School suspect a student may be eligible for special education and related services under IDEA, River's Edge Academy Charter School shall comply with the normal practices and policies for referral of the student for evaluation;
- (xii) Pre-approved costs of any training required of River's Edge Academy Charter School's staff to accomplish the implementation of an IEP for a student of the District shall be paid by the District. This is limited to costs for substitutes, course fees, consultants or necessary supplies and materials;
- (xiii) The District remains responsible for offering and providing a free appropriate public education (FAPE) to all special education students who attend River's Edge Academy Charter School. The District is responsible for the provision of all specially designed instruction to special education students who attend River's Edge Academy Charter School;
- (xiv) River's Edge Academy Charter School shall protect all personally identifiable student information relating to special education students attending REACH. River's Edge Academy Charter School will maintain a copy of a student's special education file located within the student's permanent record in accordance with District's policies. The District shall provide such policy to

- (xv) River's Edge Academy Charter School upon request; and, In the event the District is required to participate in a special education administrative complaint or due process proceeding connected to a student enrolled or previously enrolled at River's Edge Academy Charter School, and the District requests the participation of River's Edge Academy Charter School, REACH will cooperate with the District's efforts to respond to these complaints. This means REACH will respond to the District's information requests and make the involved REACH staff available for proceedings related to the student complaint.⁷

14. The District has not adopted any policies specifically related to the Charter School.

Chronology:

15. The Student is 12 years old and resides in the Rogue River School District 35. During the 2013-2014 school year, the Student attended the Charter School in the District (River's Edge Academy Charter School [REACH] as a 7th grader.

16. The Student is eligible for special education services under the category of Emotional Disturbance. This eligibility was established on May 15, 2013. At this eligibility meeting, the IEP team also considered the results of a Communication Disorder evaluation, but decided the Student did not meet criteria as a student with a Communication Disorder. However, the team chose to include language services on the Student's IEP based on the Student's needs.

17. On May 15, 2013, the IEP team met and wrote the Student's IEP. The team specified the following in the IEP:

Consideration of Special Factors:	Student needs Assistive Technology (calculator); Student has Communication needs; Student has behavioral needs (addressed through accommodations)
PLAAFP: Present Levels of Academic Achievement and Functional Performance	Included: <ul style="list-style-type: none"> • OAKS⁸ Reading score of 213 and OAKS Math score of 207; • Student struggles in the classroom with emotional regulation and learning in a large group; • Student needs reteaching of skills and frequent review of previously taught skills • Student needs assignments reduced in number of problems and modified in content and expectations for success; • Student's overall language skills are in the low average range; • Student should be taught calming strategies to regulate emotions.
District and Statewide Assessments:	Student will take all assessments with Standard Administration

⁷ Charter Agreement *between* Rogue River School District *and* River's Edge Academy Charter School

⁸ OAKS: Oregon Assessment of Knowledge and Skills in each subject area.

Measurable Annual Goals:	<p>Language:</p> <ul style="list-style-type: none"> • Student will locate and compare curriculum based vocabulary terms while using a visual organizer with at least 2 features; Criteria- 3 of 4 opportunities, or a scale score of 6 as evaluated by session data, standardized measure, and Evaluation Procedures may include: session data, standardized assessment, and classroom performance. • Student will answer questions after reading a passage in multiple choice format or written format with 80% accuracy as evaluated on curriculum assessments, teacher evaluation, or work samples. • Student will use coping strategies and problem solving techniques with teacher prompting when frustrated or when faced with social problems, with teacher support in 2 of 4 opportunities, as evaluated by behavior logs or teacher checklist.
SDI: Specially Designed Instruction	Language Arts and Math, 50 minutes per week each, in the General Education classroom.
Related Services:	Language for 60 minutes per month in the General and Special Education setting.
Supplementary Aids/Services, Modifications, Accommodations:	<ul style="list-style-type: none"> • Access to adult mentor; all day, daily, all settings; • Homework support; 1 time per day in General Education classroom • Additional adult support; Lang. Arts & Math daily in Gen. Ed.; • Adult support with peer conflicts; 1 time per day, all school settings; • Modify/Reduce assignments; core subjects daily, Gen. Ed.; • Copy of notes/power points; before class start/daily, Gen. Ed.; • Seating near an adult; all subjects daily, Gen. Ed.; • Modeling of expectations; when giving instructions daily, Gen. Ed.; • Reteaching/review of skills; 1 time daily, Gen. Ed./SPED; • Positive Encouragement; all day daily, all school settings; • Organization support; 1 time weekly, Gen. Ed./SPED.
Supports for School Personnel:	Copy of IEP 2 times per year; Consultation with staff for 30 minutes per year.
Non-Participation Justification:	None needed.
ESY: Extended School Year:	None
Placement Determination:	Regular education with special education services provided in class.

18. The Parent was very concerned about the Student going into 7th grade in the junior high school after the difficult year the Student had experienced during the 6th grade. The Student had experienced much anxiety and frustration with both the social and academic requirements of the 6th grade. The Parent began to discuss school options with other parents, and in June, decided to look into the charter school option. The Parent was pleased with the design of the Charter School and decided to enroll the Student as a 7th grader there for the 2013-2014 school year. On June 18, 2013, the Parent completed the registration process and signed the REACH 2013-2014 Parent/Student Contract Agreement.
19. The Student started at the Charter School on Tuesday, September 3, 2013; at which time the Student met the assigned Educational Specialist and attended a picnic with other Charter School students and parents. The Student attended the program for 199 days during the school year, achieving 100% attendance.⁹
20. The ES was not given a copy of the Student's IEP before the school year commenced nor at the beginning of the school year. The Parent asked the ES several times in September when the Student would begin receiving the special education services, but the ES had no information about the Student's special education needs at that time. The ES told the complaint investigator that the ES had heard "something about the [S]tudent having an emotional disturbance." The ES also told the Complaint Investigator that the ES never received a copy of the Student's IEP, was never given instruction on providing any SPED services, and only provided extra instructional time to the Student because the Student worked well with the ES.
21. No IEP meeting was held for the Student at the beginning of the school year, and the District did not send any Prior Written Notice (PWN) noting any changes to the Student's special education placement and delivery of services from those described in the May 15, 2013 IEP. On October 7, 2013, the Case Manager called the Parent and explained that the Charter School needed to decrease the amount of time for SDI and RS it would provide the Student. The District prepared and the Parent signed a Written Agreement between the Parent and the District that an IEP meeting was not necessary to change the Student's IEP for this change. The Parent remembers the phone call, but does not remember signing the form. The Parent reported that they asked the Case Manager why this instructional time was being decreased and the Parent said that the Case Manager explained that because the Student was enrolled at the Charter School and was receiving 1:1 instruction in the home as part of the program, the Student did not need as much SDI or RS time as was then required by the IEP. The District memorialized this in a PWN on October 7, 2013, and recorded the new amount of time on the IEP Services Summary page. The PWN notes that the amount of SDI for Language Arts and Math for the Student was decreased from 50 minutes per week each to 15 minutes per week each.
22. On October 29, 2013, the District sent the Parent a meeting notice for a meeting to "develop or review an individualized education program and placement" for the Student. The Parent met with the ES and the District special education coordinator and the group reviewed the Student's progress academically and behaviorally to date. The PLAAFP was revised to state that the Student was about one year below grade level in Math; that the Student's reading comprehension was adequate but that the Student had difficulty maintaining focus on auditory/verbal information; and that the Student was smiling and cooperative in the current educational setting. There is no evidence that the team reviewed the goals and short term

⁹ This number signifies the number of times the Student either met with the ES, attended an on-site class, met the ES at the on-site classroom, or worked on assignments at home with the Parent.

objectives in the IEP at this time. The Charter School Case Manager sent the Parent a PWN after the meeting and informed the Parent that the team decided the math goal needed to be clarified; that due to the Student's progress the IEP needed revision; and, that Related Services and Accommodations needed revision since the Student had enrolled in the Charter School with 1:1 tutoring and home study. In addition, the Case Manager noted the Language Development was being addressed in tutoring sessions and with accommodations. The Service Summary page was changed to note that under Related Services the Communication service of 60 Minutes per month was removed. No math goal was added to the IEP. All accommodations except the one pertaining to "organization support" and the one about "copy of notes/power points" were removed. Five different accommodations were added:

- a. Adjust assignments in length, 30 minutes per week;
- b. Visual supports for verbal information, 30 minutes per week;
- c. Repeat/simplify directions, 30 minutes per week;
- d. Adult read aloud math test questions, during math tests and quizzes; and,
- e. Wait/processing time for verbal response, 30 minutes per week.

23. The Parent told the complaint investigator that from November to May, the Parent asked multiple times why the Student was not receiving any communication or other IEP services. Each time, the Charter School staff person (ES, Case Manager, and Executive Director) told the Parent that such services were not available in the Charter School.

24. On April 30, 2014, the District sent the Parent a Meeting Notice for a meeting to be held on May 14, 2014. The meeting notice included information that the purpose of the meeting was to discuss the Student's IEP and transition back to the District from the Charter School. The Parent presented the team with a letter of concerns about the Student's education. In this letter, the Parent noted that the Student had not received any IEP services throughout the year; that a previous IEP teacher had said the Student would receive an extra hour per week, but that hadn't happened; the Charter School staff told the Parent that certain services were not available in the Charter School; that the Student had not made any improvement in areas of disability over the year; and, that the Parent had not received a copy of the changed IEP.

25. During this meeting, the Charter School Executive Director told the Parent that the ES would "typically" provide the extra service, in response to the Parent's question as to why the Student had not received speech services in accordance with the IEP. The team revised the Student's IEP and added:

- a. additional accommodations for State and District testing;
- b. access to a computer and texts on CD;
- c. wrote Language Arts, Math and Communication goals; and
- d. noted that the Student needed to be removed from the General Education setting for 60 minutes per month for specific communication services.

The team identified the Student's new placement as: "Regular education with pull-out for specially designed instruction in Communication". A Speech/Language Specialist and a high school SPED teacher participated in the meeting. The District recorded these decisions in a PWN sent to the Parent.

26. The Parent asked the Executive Director to make a copy of the letter of concern the Parent had presented at the beginning of the meeting. The Executive Director and one of the ESs left the meeting and went out to make the copy. The Parent's mother was sitting in the

Charter School office during the meeting and when the parties left to make copies. Other adults and students were seated in the office, and after the meeting the Parent's mother told the Parent that the Executive Director and the ES were talking negatively about the family in front of the others. The Parent and her mother confronted the Director and the ES about this when the meeting was over, but both individuals denied having said anything negative or confidential about the student or family. Both the Executive Director and the ES also denied having said anything inappropriate at this time during the interviews with ODE; and there were no other individuals who had witnessed the alleged inappropriate conversation. The complaint investigator talked with the Parent's mother, but the mother stated she had heard only a few words-none of them very clearly during the interview.

27. On May 8, 2013, the Student took the Grade 6 version of the OAKS Reading Test and scored 220 (Nearly Meets). On May 14, 2013 the Student took the 6th grade version and scored 207 (Does Not Meet). Next, the Student took the OAKS Grade 7 Reading test on February 19, 2014 and received a score of 228 (Nearly Meets). The Student also took the OAKS Grade 7 Math test on May 9, 2014 and scored 220 (Does Not Meet).
28. On May 20, 2014, the Charter School Executive Director sent a letter to the Parent. This letter responded to many of the Parent's concerns which were expressed to the Charter School.¹⁰
29. The Parent filed the complaint on June 16, 2014.

IV. DISCUSSION

1. When IEP's Must Be In Effect, OAR 581-015-2220(1) and 34 CFR 300.323

First, the Parent alleged that the District violated the IDEA, specifically OAR 581-015-2220 (1) when it:

- a. did not provide specially designed instruction in math and communication during the 2013-2014 school year;
- b. changed the amount of service time for math and communication;
- c. did not implement the IEP at the beginning of the school year; and,
- d. did not inform the Student's general education teacher (ES) that the Student was eligible and had an IEP.

For every student with a disability, public school districts must have in effect an Individualized Educational Program (IEP). School districts must provide special education and related services to each student with a disability in accordance with an IEP.¹¹ Under OAR 581-015-2220 (1), a district meets this responsibility when it has an IEP in place for every eligible student at the beginning of each school year; and when it provides the services specified in the IEP to the student. When a district agrees to a contract with a charter school in the district, these responsibilities do not disappear or change. Additionally, for districts where public charter schools are located, when a nonresident student enrolls in a public charter school in the district, and has an individualized education program (IEP), the school district in which the public charter school is located must implement the individualized education program and follow the terms of the individualized education program until a new individualized education program is developed.¹²

¹⁰ See Fact # 11.

¹¹ 34 CFR 581-015-2220(a), OAR 581-015-2220(1)

¹² See ORS 338.125(8)

In this case, the District assigned this IEP implementation responsibility to the Charter School and its staff by virtue of the contract in which the District and REACH agreed on February 19, 2011. Under this contract, REACH had the responsibility to notify the District that the Student needed special education services and to provide the services that were prescribed by the IEP in effect. However, under Oregon law, the District maintained responsibility for the Charter School's implementation of the IEP.

Accordingly, both the District and REACH erred in this case. The Student did not receive the special education and related services that were needed according to the IEP. The REACH staff told the Parent that the ES would provide the services in extra time, and that speech/language services were not available in the charter school setting. The REACH staff next organized an IEP meeting in October of 2013, and later informed the Parent that a math goal had been written after the IEP meeting and that the related service of communication was no longer needed in the charter school setting. However, the goal was not written on the actual IEP in effect, and there was no evidence in the record to indicate why the IEP team would decide to dismiss the communication goal. There was also no evidence presented that the IEP was not implemented at the Charter School and neither the District, nor the Charter School implemented the IEP at the start of the school year.

Further, neither party informed the ES that the Student had an IEP. The ES said that she was given no concrete information about services the Student needed, nor how to provide them. Even though the ES did provide additional instruction to the Student, the instruction was not based on the framework or the goals required by the IEP.

The Student did not receive the specified services, the IEP was not implemented at the start of the school year, and the ES was not informed of the Student's eligibility and the provision of the IEP. In addition, the Charter School told the Parent that such services were not even available in the charter school setting. For these reasons, the Department substantiates this allegation and orders corrective action.

2. Charter Schools, OAR 581-015-2075 and 34 CFR 300.209

The Parent alleged that the District violated the IDEA, specifically OAR 581-015-2075 (2), when it told the Parent that the services on the Student's IEP were not available at the Charter School.

OAR 581-015-2075 (2) states that, "a school district must serve resident children with disabilities attending public charter schools located in the district in the same manner as the school district serves children with disabilities in other district schools," This responsibility includes identifying, locating and evaluating students; implementing Specially Designed Instruction (SDI) and Related Services (RS) according to each student's IEP; and, providing supplementary and related services on site at the public charter school to the same extent that as these services are provided to students on site to its other schools.

As the facts above note, the Student in this case was not served in the manner that the District has described in its adopted general IDEA policies and procedures. Therefore, the facts substantiate a violation of OAR 581-015-2075 (2) and corrective action is ordered.

3. Free Appropriate Public Education (FAPE), OAR 581-015-2040 and 34 CFR 30.101

The Parent alleged that the District violated the IDEA, specifically OAR 581-015-2040 (1), when it did not provide specially designed instruction and related services, and consequently the

Student did not make progress in math and communication skills which resulted in a denial of a Free and Appropriate Public Education.

OAR 581-015-2040 provides that Districts must provide “special education and related services to all resident school-age children with disabilities”, and defines “school age children” as “children who have not yet reached 21 years of age on or before September 1 of the current school year.” However, under Oregon law, residency of charter school students for special education purposes is determined based on the location of the charter school.¹³ Special education is defined as “specially designed instruction that is provided at no cost to parents to meet the unique needs of a child with a disability.”¹⁴ Additionally, FAPE is broadly defined in the 2006 Part B regulations as special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the State Education Agency; include an appropriate preschool, elementary school, or secondary school education in the state involved; and are provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 through 34 CFR 300.324.¹⁵ The contours of an appropriate education must be decided on a case-by-case basis, in light of an individualized consideration of the unique needs of each eligible student.¹⁶ The Supreme Court has developed a two part test to determine the appropriateness of an educational program: 1) the procedural requirements of the IDEA must be met; and 2) the IEP must be developed and reasonably calculated to enable the child to receive educational benefits.¹⁷

Here, the Charter School’s agreement with the Parent specified that only one hour of 1:1 instruction will be provided to the Student each week, and that there is a standard maximum amount of allocated funds for a student’s educational program while enrolled in the Charter School. These statements that are found in the Charter School documents strongly imply that no other special education services are available to an eligible IDEA student. In addition, this agreement states that a student’s IEP must specify REACH as the appropriate placement¹⁸ on the IEP. When this Student enrolled in the Charter School, the IEP team did not meet to review or change the IEP despite the fact that Student was now receiving educational services in a one-to-one home based type environment in accordance with the Charter’s educational program, but the IEP in effect at this time (the May 15, 2013 IEP) called for the placement of regular education with special education services provided in class. The May 15, 2013 IEP also called for special education and related services needs that could not be met via the means that were required by the Charter School in their standard written agreement with parents. For example, the Student’s May 15, 2013 IEP required specially designed instruction in both language arts and math for 50 minutes per week in the general education settings. The Student’s May 15, 2013 IEP also required supplementary aides, services, accommodations, and modifications which included:

- additional adult support;
- language arts & math daily in general education;
- adult support with peer conflicts;
- modify/reduce assignments;
- copy of notes/power points;
- seating near an adult;
- modeling of expectations; when giving instructions daily;

¹³ See OAR 581-015-2040(4) and ORS Chapter 338.

¹⁴ OAR 581-015-2000(34)

¹⁵ 34 CFR 300.17

¹⁶ *Board of Educ. of the Hendrick Hudson Cent. Scho. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982).

¹⁷ *Id.*

¹⁸ Oregon does not consider a charter school to be a “placement” on the IDEA continuum. Rather, it would be the school the child would attend if nondisabled in accordance with the LRE Requirements found at 300.116(2)(c).

- re-teaching/review of skills;
- positive encouragement; all day daily, in all school settings; and,
- organization support; one time weekly.

When the Parent asked about the required IEP services, the Parent was variously told that services were not available in the Charter School setting, that there were no funds to pay for the services, or that the ES would provide the services during extra time. Therefore, the Department substantiates the allegation and orders corrective action.

4. Confidentiality of Student Education Records, OAR 581-015-2300 and 34 CFR 300.101

The Parent alleged the District violated IDEA when staff discussed the Student in the office of the Charter School in front of other students and parents. Under OAR 581-015-2300, a District must keep all records pertaining to students with disabilities confidential and must protect the confidentiality of personally identifiable information. This responsibility extends not only to written records, but also includes conversations staff have about an individual student. Any school district staff are obligated to conduct conversations about a student with disabilities in areas of the school where such conversations will not be overheard by others.

In this case, the Parent’s mother believed she had heard the Director and an ES speaking negatively about her child and grandchild while sitting in a public office. Both the Director and ES denied the conversation, and the mother admitted she did not clearly hear the conversation. There were no other individuals to interview, and, in fact, to have done so might have violated the Student’s right to confidentiality, because then others would then know the Parent had filed a complaint. Additionally, no evidence in the record supports the claim that the District did not maintain confidentiality of educational records or personally identifiable student information.

Given the facts, and the lack of substantial information, the Department does not substantiate this allegation, and orders no corrective action.

V. CORRECTIVE ACTION¹⁹

*In the Matter of Rogue River School
District 35
Case No. 14-054-026*

	Actions	Submissions²⁰	Due By
1.	Implement the agreed upon student instruction plan that was submitted by the District and Charter School in conjunction with this complaint.	Send a report of the outcomes of the instructional plan to ODE and the Parent that includes:	September 8, 2014

¹⁹ 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).

²⁰ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone — (503) 947-5722; e-mail: raeann.ray@state.or.us; fax number (503) 378-5156.

		the Charter School agreement links to the information.	
4.	Revise Charter School policies and procedures, including student contract, and charter agreement.	Submit draft revisions to ODE for approval	October 31, 2014
5.	<p>Upon ODE approval,</p> <ul style="list-style-type: none"> • Notify Charter School parents of any changes; • Provide training to all staff regarding the revisions. 	<p>Share with ODE a copy of the notification sent to parents.</p> <p>Submit evidence of completed training (agenda, dated sign in sheet; materials included)</p> <p>Submit evidence of board adoption (board agendas and minutes) and posting to website to ODE.</p>	January 16, 2015

Dated: this 18th Day of August 2014


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

Mailing Date: August 18, 2014