

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. 15-054-004

I. BACKGROUND

On February 5, 2015, 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.¹ 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.²

On February 11, 2015, the Department's Legal Specialist 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 ten business days from the date of issuance.

On February 23, 2015, the District by way of legal counsel, submitted a *Response* indicating they disputed all portions of the allegations in the Parent's complaint. At in-person interviews held on March 16, 2015, the District submitted additional materials. In total, the District submitted the following items:

- A. District/ Legal Counsel's narrative responding to the *Request for Response* dated February 23, 2015;
- B. Student's most recent Speech Therapy service log;
- C. Email correspondence between Student and/ or Parent and District related to Student attendance;
- D. Report Card explanation;
- E. Student's Transcript;
- F. Prior Written Notice dated 10/21/14;
- G. Revised IEP dated 10/21/14;
- H. IEP Meeting notes dated 10/21/14;
- I. Prior Written Notice dated 9/16/14;
- J. IEP Revision dated 9/16/14;
- K. Meeting notes dated 9/16/14;
- L. Annual IEP dated 1/30/14;
- M. Prior Notice dated 1/30/14
- N. Meeting notes dated 1/30/14;
- O. Prior Notice dated 9/16/13;

¹ OAR 581-015-2030(12) and 34 CFR § 300.152(a)

² OAR 581-015-2030(12) and 34 CFR § 300.152(b)

- P. Revised IEP dated 9/16/13;
- Q. Meeting notes dated 9/16/13;
- R. Placement Determination dated 10/21/14;
- S. Placement determination dated 9/16/14;
- T. Placement determination dated 1/30/2014;
- U. Information on the [Alternative School];
- V. [Alternative School] Schedule;
- W. [Alternative School] Student contract;
- X. Homebound Instruction Policy for District;
- Y. Special Education procedures for home instruction;
- Z. Student Parent Contact log;
- AA. Email communication regarding meeting schedule and notice;
- BB. Student enrollment history information;
- CC. Notice of transfer of Special Education Rights dated 3/19/13;
- DD. Letter from adult Student dated 9/25/14 giving Parent educational access to meetings and conferences;
- EE. List of knowledgeable District staff;
- FF. Annual IEP dated 1/27/15;
- GG. Special Education progress notes dated 1/27/15;
- HH. Summer School letter sent to Parents/ Guardians by email dated June 18, 2014
- II. Notice of Team Meeting dated 9/12/14;
- JJ. Notice of Team Meeting dated 10/16/14;
- KK. Notice of Team Meeting dated 1/9/15
- LL. Notice of Team Meeting dated 1/8/14;
- MM. Notice of Team Meeting dated 1/23/14

The Parent submitted materials for consideration via email and during the in-person interviews held March 11, 2015. The Parent's materials submitted for consideration included:

- A. Narrative Complaint
- B. Copies of email correspondence with various District staff
- C. Copies of letters and date stamped envelopes mailed to Parent's address during 2013-2014 and 2014-2015 school years
- D. Letter from District dated September 22, 2014 regarding request for educational records and fees
- E. Copy of Student's Report Card dated 2/5/2015
- F. Copy of District's Special Education Report Card letter to Parents dated 4/5/2013
- G. Handwritten notes dated 4-28-14 and 5-30-14
- H. Letter from Parent to District dated 9/18/2014 asking for an evaluation for Student in the area of Other Health Impaired (OHI)

All materials were provided to all parties by the Department. The Department determined that on-site interviews were needed. On March 11, 2015, the Department interviewed the Parent, Uncle, and Grandmother. On March 17 the Department interviewed the District Director of Special Education, High School Special Education Teacher at the alternative school and for Home Instruction, the Summer School Teacher, the Lead Teacher at the alternative school, the Assistant Principal of the High School, the Assistant Principal for the alternative school and High School, the Speech Language Pathologist/ Case Manager, Transition Teacher, Speech Language Pathologist, and the alternative school Teacher. During the interviews, both the Parent and the District submitted additional materials for review. The Department 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 February 5, 2014 to the filing of this complaint on February 5, 2015.

	<u>Allegations:</u>	<u>Conclusions:</u>
I.	<p><u>Failure to Comply with the IEP/ IEP Implementation</u></p> <p>(a) The complaint alleges the District violated IDEA by failing to comply with or implement the Student's current IEP. Specifically, that District did not allow the Student to attend the Alternative School or receive comparable instruction from September 4, 2014 to September 16, 2014.</p> <p>(b) The complaint alleges the District violated the IDEA between January 30, 2014 and the date of the filing of the complaint, February 5, 2015 by failing to provide the IEP's monthly required amount of Speech Therapy to the Student. The complaint alleges that the Student only received approximately three and one half hours of Speech Therapy since January 30, 2014.</p> <p>OAR 581-015-2200; 34 CFR 300.323 and 300.324; OAR 581-15-2225(2) and 34 CFR 300.116 and 34 CFR 300.324(a)(4)</p>	<p><u>Not Substantiated:</u></p> <p>(a) The Student did not receive instruction from September 4, 2014 to September 16, 2014 because Student did not enroll for the 2014-2015 school year and did not meet the requirements to attend the alternative school. The IEP team met as soon as possible to address the current needs of the Student and to determine the appropriate placement.</p> <p>(b) The Student did not receive all required Speech Therapy sessions during the 2013-2014 school year because of excessive absences from school. This lack of attendance prevented District from providing these services to Student, despite the fact that District was available to provide the services to Student and also spent time attempting to contact Student to reschedule the missed sessions.</p> <p>No Corrective Action is Ordered</p>
II.	<p><u>Failure to provide the Least Restrictive Environment (LRE)/ Complete Removal from the Regular Education Environment</u></p> <p>The complaint alleges the District violated the IDEA when it removed the Student from the regular classroom and tutorial instruction and placed the Student in a more restrictive home instruction program on the basis that Student's age makes regular classroom attendance "inappropriate". The complaint further alleges that when Student's placement was changed to exclusively home instruction the Student was 19 years old and that Student had no</p>	<p><u>Not Substantiated</u></p> <p>The Student was placed in a more restrictive environment of home instruction from September 2014 to January 2015, so that Student could receive more individualized instruction and support in order to earn credits for graduation. This change in placement was determined appropriate by the IEP team based on the needs of the Student, specifically: high absence rates, numerous medical concerns,</p>

	<p>behavior issues that posed a threat to anyone at the high school, including younger students, and that Student is not disruptive nor hindered from participation in a regular education classroom, because of the Student's disability.</p> <p>OAR 581-015-2240 and 34 CFR 300.114 and 34 CFR 300.116</p>	<p>and Student's need for accelerated credit accumulation for graduation in 2015. Student's attendance and academic performance improved while Student was receiving home instruction.</p> <p>No Corrective Action is Ordered</p>
<p>III.</p>	<p>Failure to provide IEP Meeting Notice/ Parent Participation Requirements</p> <p>The complaint alleges the District failed to ensure parent participation at the Student's IEP team meeting that took place on October 21, 2014 when it provided the Parent with only verbal notice of the meeting.</p> <p>The complaint further alleges that this meeting notice did not include information related to the time, purpose, and location of the meeting and those who would attend the meeting.</p>	<p><u>Substantiated in part</u></p> <p>District and Parent agree that District had an incorrect address for Student as of October 20, 2014. As such, District did not send the a written meeting notice for the October 21, 2014 IEP meeting to the Parent's or Student's correct address in advance of the meeting. Though Parent and District wrote about the meeting via email sufficiently in advance of the meeting, the email messages did not indicate the purpose the meeting or who would attend the meeting.</p> <p>The District did provide evidence of written notice for the meeting which was dated prior to the meeting and which did include all necessary elements of written meeting notice. However, this notice was not received by Parent sufficiently in advance due to the clerical error with the address. Parent attended and participated in the IEP meeting.</p> <p>No Corrective Action is Ordered.</p>
	<p>Requested Corrective Action:</p> <ol style="list-style-type: none"> 1. Fifteen hours of educational services per week comprised of (a) two one-hour tutorial classes per day at the Forest Grove High School and (b) one hour of supervised home instruction at the district office per day until the end of the school year during which Student reaches age 21 or graduates whichever is first. 2. One hour of one-on-one tutoring per week, scheduled at the high school during normal school day. 3. An additional one hour per month of 	<p>No Corrective Action is Ordered</p>

	<p>Speech Therapy sessions. These sessions should take place at the high school.</p> <p>4. Training of all Forest Grove School District special education staff to ensure that they understand that the District's responsibility to education special education students does not change or diminish when those students reach age 18.</p>	
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III. FINDINGS OF FACT

- 1) The Student in this case is 20 years old and resides in the Forest Grove School District.
- 2) Student is eligible for special education services under the category of Communication Disorder. Student receives Transition and Communication services.
- 3) Student currently attends the [Alternative School] and is working on credits toward a standard diploma.
- 4) Student requires extra time to complete assignments and works slowly or gets distracted, which impacts the Student's involvement and progress in the general education curriculum.
- 5) The revised annual IEP dated October 21, 2014 includes Transition specially designed instruction of 20 minutes per month. It also includes specially designed instruction for Communication of 60 minutes per month. It indicates that no related services are needed. For the Supplementary aids/ Services and Accommodations/ Modification section it notes the Student should receive: extra time to complete assignments/ tests, retake tests; tasks broken into chunks; use of keyboard; and checks for understanding with verbal confirmation. The supports for school personnel on this IEP indicate a confidential profile each semester in the instructor's classroom. The IEP notes that Student does not need extended school year services (ESY). Finally, for nonparticipation justification, it states: "Student will be out of the regular classroom for 100% of the school day." It further states, "Student will receive direct instruction at the district office in order to focus on credits needed to receive the standard diploma. Student will be seen at the district office for speech goals 60 minutes per month."
- 6) The meeting notes dated October 21, 2014 show that both Parent and adult Student attended the meeting.
- 7) The meeting notes dated October 21, 2014, show that the team met to discuss concerns of Parent about ADHD and extra instructional time. Parent requested ADHD evaluation. The notes show a teacher said it takes Student extra time to get through work. The notes indicate Parent provided a letter related to an Orthopedic Impairment and this was a new request for District. Notes detail District explained why Specific Learning Disability (SLD) was not appropriate for Student and that Student was previously ineligible for an Other Health Impairment (OHI) eligibility due to no impact [of a health concern on Student's education]. Teacher at the meeting reported Student is, "Distracted minimally, but does not see the frustration. Hasn't seen Student 'daze off'..." Notes also indicate Parent continued to want an OHI qualification. District agreed to take a look at OHI. District did not agree to an SLD evaluation. Meeting notes show that team reviewed Parent proposal for increased instruction time and tutoring. The notes do state that, "District described how it is not appropriate for a student of Student's age to be at the high school."

- 8) Student's revised annual IEP dated September 16, 2014 indicates Parent, Student, and Grandmother attended the meeting. It shows the home school and attending school for Student as "home instruction school." This IEP also details Communication specially designed instruction of 60 minutes per month at the District office. It further provides for 20 minutes per month of Transition Services. It states that Student will receive extra time to complete assignments/ tests and tests may be taken in tutorial; oral presentations may be made with use of smart board; and tasks should be broken into chunks. It states no related services or ESY are needed. It also provides instructors with a confidential profile of Student each semester. Finally, the nonparticipation justification for this revised IEP also states that, Student will be removed from general education classroom 100% of the school day. It states Student will receive direct instruction at the District office in order to focus on the credits needed to receive the standard diploma. Student will also be seen at the District office for the speech goal 60 minutes per month.
- 9) The Prior Written Notice (PWN) for this meeting held September 16, 2014, states that District changed the Student's placement because, "Attending the high school as a sixth year senior is not appropriate and the alternative learning center agreements were not met during the last school year." The PWN indicates District considered the other option of allowing Student to continue at the alternative learning center, but this was rejected because Student's productivity and attendance did not meet targets for last school year, Student did not attend summer school as a requirement to attend the alternative learning center this school year.
- 10) The meeting notes dated September 16, 2014 state the purpose of the meeting was to review placement of Student. The notes state Student would have needed to attend summer school to attend the alternative school this school year as a 6th year senior. The notes say the team discussed the option of attending home instruction. Notes state the team reviewed the Student's credits needed to graduate which were five. The notes show Student has finished the senior project and met required essential skills. The notes show Parent expressed concern about Student's placement and stated Student was having a hard time at home. Notes show District explained home instruction and hours. Notes show District said the transportation and placement could start September 17, 2014. Parent said that did not work, but they could "...start on Thursday."
- 11) The Placement Determination dated September 16, 2014 states that home instruction at the District office was selected for Student, because it offered individualized instruction to best meet the Student's needs and options to complete Student's degree. It further states that Student will receive five hours of instruction per week (1 hour per day M-F) of direct/ guided instruction, plus 60 minutes per month of speech services at District office. The other option considered and rejected was regular classes at the alternative learning center with speech language services. The paper states that this is because "attending the high school as a 6th year senior is not appropriate and the alternate learning center agreements were not met during the last school year." The IEP dated January 30, 2014 is an annual IEP. It shows Parent, Student, and Student's brother attended the meeting. This IEP has the same Specially Designed Instruction in Communication (60 minutes monthly) and Transition (20 minutes monthly). It also provides the Student with extra time to complete tests/ assignments, allows Student to take tests in tutorial, provides for use of a smart board for oral presentation, and notes that tasks should be broken into chunks. This IEP also gives supports for school personnel of a confidential profile each semester. The nonparticipation justification reads that, Student needs to be removed from general education environment for 14% of the school day because Student needs to receive Speech Therapy in the speech room in order to focus on speech goals without distraction. The IEP does not require ESY. It states the Student is a 5th year senior at the alternative school. It further states Student is completing regular diploma, and intends to finish this school year. At the time this IEP was made, Student was 17 and needed 24 credits to graduate. The document further notes that "At Student's

rate of acquisition, it is unlikely Student will receive the seven credits Student needs to graduate this school year..." This IEP further notes that "...being at [Alternative School] and scheduling services have made it difficult to achieve much direct therapy. Student and brother have been difficult to reach by phone, and have made at last minute cancellations to appointments for speech services..." the course of study on this IEP indicates that Student is "completing coursework at the [Alternative School] for high school graduation." The first goal on this IEP relates to communication and improved speech intelligibility specifically /r/ sounds, during Speech Therapy. The second goal on the IEP states that Student will formulate a summary of information from a variety of sources, which include: main ideas, grammatically correct sentences, and clear organization structure. The third goal on this IEP is related to Transition services, and it notes that Student will demonstrate an understanding of the steps necessary to enter Portland Community College with 90% accuracy as evaluated by teacher probes and interviews.

- 12) The Placement Determination dated January 30, 2014 states that regular classes with special education support at alternative learning center with speech language services were selected for the Student because this placement fully supports Student's educational needs. The other option considered is regular classes with no special education support at alternative learning center. This option was not selected because the placement would not fully meet Student's needs.
- 13) The attendance profile for Student during the 2012-2013 school year shows that Student missed 85 or more scheduled instructional periods due to illness, appointments, or family emergency.
- 14) The attendance profile for Student for the 2013-2014 school year shows that Student missed around 130 scheduled instructional periods due to reason codes that include: illness, appointments, unexcused absence, and doctor's note.
- 15) The enrollment history for Student shows that Student was not enrolled in District as of February 22, 2013 due to more than ten days of absence, but enrolled in District again on February 26, 2013. The profile also shows that Student's enrollment was also dropped on March 14, 2013.
- 16) A Notice of Transfer of Rights was signed by Student and dated March 19, 2013.
- 17) Student gave District a letter which stated Parent has permission to, "...schedule, attend and take part in all school meetings and conferences. Further, I give my mother permission to help me make the decisions for me, when discussing my academics, IEP, and other school related matters that might arise out of such meetings." This letter is signed by Student and dated September 25, 2014.
- 18) One of the Parent's handwritten notes dated May 30, 2014 states that "[District staff] said to have Student sign up for summer school and said when it came to the fees Student said to tell them to see Student. Student is on an IEP so Student can have the fees waived, but according to [a different District staff] she said 'no' cause [sic] that is how they get their funding by having summer school paid for by the Students' parents."
- 19) District provided parents of summer school students, via email, a letter dated June 18, 2014 which confirmed the child is registered for summer school. It also explained the summer school policies and procedures including that "we give parents/ guardians the option to give their students permission to work from home....all tests must be taken in front of state members, so attendance will be required to take tests and pre-tests." The form goes on to indicate if a parent wants their child to work from home, they must complete the permission form and return it to District. Summer school teachers were all aware of this policy and the summer school requirements.

- 20) The Summer School Teacher does not recall seeing the Student during summer school. (District Interviews)
- 21) The Student recalls going to summer school, but being told to leave summer school by the Summer School teacher.

IV. DISCUSSION

1. IEP Implementation

First, the Parent alleges that the District violated IDEA by failing to comply with or implement the Student's current IEP. Specifically, that District did not allow the Student to attend the [Alternative School] or receive comparable instruction from September 4, 2014 to September 16, 2014. Next, in this allegation, Parent alleged the District violated the IDEA when Student was not provided with the IEP's monthly required amount of Speech Therapy to the Student from January 30, 2014 to the date of the filing of this complaint, February 5, 2015. We will examine each allegation separately below.

A district must have an IEP in effect for each eligible child at the beginning of the school year; and further, must provide special education and related services in accordance with that IEP. (OAR 581-015-2220). Each public agency must ensure that: "As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP."³ A delay in implementation may rise to a denial of FAPE where the student is being denied a significant portion of the services prescribed by the IEP.⁴ Courts will likely excuse a districts' delay in IEP implementation when the student's excessive absences or withdrawal from school led to the delay.⁵ The need for a transition period between the end of an old program and the start of a new program can justify such a delay, particularly where it is in the best interests of the student.⁶

Here, the District did have an IEP in effect for the Student at the beginning of the school year. However, due to the Student's lack of attendance in summer school and failure to comply with the alternative school's requirements during both summer school and the prior school year, the Student was not eligible to enroll at the alternative school during the 2014-2015 school year. The Student therefore was not enrolled in the District at the beginning of the school year, so the District did not have the ability or requirement to implement the IEP in effect at this time. The District properly noted that the Student's needs had changed as a result of the Student's inability to meet summer school requirements, so District properly acted quickly to reconvene the IEP team and determine the new appropriate services and placement to meet Student's current educational needs. During the time frame of September 4, 2014 to September 16, 2014 nine school days passed when the Student received no IEP services. However, during this time, District was trying to schedule a new IEP meeting for Student. Parent contacted District on September 2, 2015 to inquire about enrollment and if the alternative school was still an option. (D1) District first tried to contact Student to schedule this meeting, as Student is an adult and IDEA rights have transferred. The District originally had a meeting set for September 5, 2014; however, due to the beginning of school year District was unable to obtain a regular education teacher for this meeting with such short notice. The Student did not want the meeting to commence without a regular education teacher, so refused to sign the written agreement

³ 34 CFR 300.323(c)(2)

⁴ *Wilson v. District of Columbia*, 56 IDELR 125 (D.D.C. 2011). See also *Sarah Z. v. Menlo Park City Sch. Dist.*, 48 IDELR 37 (N.D. Cal. 2007).

⁵ See, e.g., *Gunnison Watershed Sch. Dist.*, 63 IDELR 119 (SEA CO 2014). See also *Myles S. v. Montgomery County Bd. of Educ.*, 20 IDELR 237 (M.D. Ala. 1993); and *Robertson County (TN) Sch. Dist.*, 22 IDELR 1147 (OCR 1995).

⁶ *Bonnie Ann F. v. Calallen Indep. Dist.*, 20 IDELR 736 (S.D. Tex. 1993), *aff'd*, 22 IDELR 615 (5th Cir. 1994), *cert. denied*, 514 U.S. 1084, 114 LRP 26693 (1995). See also *Special Sch. Dist. No. 1 (Minneapolis)*, 29 IDELR 95 (SEA MN 1997).

to excuse the regular education teacher. As such, the District had to attempt to reschedule the meeting, and set the meeting for the next date all parties agreed to, September 16, 2014. At this meeting, the team modified the IEP and agreed to home instruction to meet the Student's current needs. The team felt that due to the Student's high number of absences and amount of credits needed to obtain the regular diploma, a home instruction model would best serve the Student's needs. While Parent felt that District did not allow Student to return to the alternative school because of the Student's age, the District was able to refute this claim by evidence of other 5th and 6th year students (over the age of 18) attending the alternative school, who had met the alternative school's attendance and credit requirements. Additionally, District claims they tried to relay that the regular education placement at the high school is not appropriate for Student because of Student's current needs at the September 16, 2014 IEP meeting. This is evidenced by the IEP, Prior Written Notice, and IEP meeting notes. The Student's lack of services for this nine days while the IEP meeting was trying to convene is also *de minimus*, as the IEP's specially designed instruction that is needed to provide the Student with a free appropriate public education (FAPE) is for monthly amounts of instruction,⁷ which could have still been provided to Student in the new home instruction format decided upon by the IEP team during the month of September 2014.

As for the delay in speech services during the 2013-2014 and 2014-2015 school years, the speech services were not provided to Student due to excessive numbers of Student absences. These absences were evidenced on the Student's attendance reports.

The Department therefore does not sustain this allegation. No corrective action is ordered.

2. Least Restrictive Environment

The complaint alleges that the District violated the IDEA when it removed the Student from the regular classroom and tutorial instruction and placed the Student in a more restrictive home instruction program on the basis that Student's age makes regular classroom attendance "inappropriate". The complaint further alleges that when Student's placement was changed to exclusively home instruction the Student was 19 years old and that Student had no behavior issues that posed a threat to anyone at the high school, including younger students, and that Student is not disruptive nor hindered from participation in a regular education classroom, because of the Student's disability.

The rule in effect when we consider this allegation is OAR 581-015-2240. Under this rule, a District is responsible to ensure that students with disabilities are educated with students who do not have disabilities to the maximum extent appropriate. Districts must remove students from the regular education environment only when the nature or severity of the student's disability is such that modifications, accommodations and supplementary aids and services do not mitigate the negative effect of the disability. The IDEA requires that each public agency ensures a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.⁸ Not every student with a disability will benefit from placement in the regular education setting. The requirement for a Free Appropriate Public Education (FAPE) overrides LRE requirements when the two principles conflict.⁹

Districts should place students in educational settings which allow the student to make progress in and be involved in the general education classroom as per OAR 581-015-2200 (1)(b)(A). Most legal decisions stemming from IDEA LRE disputes rely on the following factors for determining whether a

⁷ The 1/30/2014 IEP calls for specially designed instruction of 60 minutes per month in Communication and 20 minutes per month in Transition.

⁸ 34 CFR 300.115(a)

⁹ *Hartmann v. Loudoun County Bd. of Educ.*, 26 IDELR 471 (4th Cir. 1997) See also *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2d. Cir. 2008).

child with a disability can be educated satisfactorily in a regular class with supplementary aids and services: whether the district has made reasonable efforts to accommodate the child in a regular classroom; the academic and nonacademic benefits available to the child in a regular class, with appropriate supplementary aids and services, as compared to the benefits provided in a special class; and the possible negative effects of the inclusion of the child on the education of the other students in the class.¹⁰ The two prong test to review placement on the LRE continuum adopted by the 9th Circuit requires courts to consider: whether a student can be satisfactorily educated in the general education environment with the use of supplementary aids and services; and if not whether the student was mainstreamed to the maximum extent appropriate.¹¹

Here, the facts show that Student was not able to make progress in the regular education environment despite the use of modifications and accommodations. Parent is correct that there is no evidence that Student poses any threat to others, and Student is in no way a negative factor for other students in the regular education environment. District agrees that Student has no significant behavior problems and that Student gets along well with peers in regular education environments. However, Student has significant issues with going to both the alternative school and high school as evidenced by the attendance records and frequent Student absences in both the 2012-2013 and 2013-2014 school years. Student also makes slow progress on academic work and credit achievement, and Student only earned 2.5 credits toward graduation at the alternative school during the 2013-2014 school year. Additionally, as a 6th year senior, in need of five credits to graduate with a regular diploma, Student displays the need to work in an environment that will help Student gain more credits than were obtained by Student at the high school or alternative school in an accelerated manner. Obtaining these regular education credits is particularly important for this Student, in light of the fact that Student has turned 20 years old,¹² and will only have instruction in the District for another year (when IDEA eligibility terminates and Student turns 21). As such, District properly noted that Student was not making sufficient progress at the alternative school, so an IEP team meeting was necessary to discuss the current needs of Student.¹³

As for the Student's desire to remain in the alternative school, the Student did not meet the requirements of the alternative school which are required of all students. The alternative school's contract that was signed by Student and dated September 11, 2013 indicates that Student's placement at the alternative school is contingent on following the alternative school's policies, and having a strong attendance record. This document further states that if a student does not meet the standards required, the school will meet with the student and parent to discuss other placement options. These requirements for the alternative school include: earning four credits per semester and attending school 90% of the time. Student did not meet either of these requirements during the 2013-2014 school year. It is also important to note that the alternative school is considered to be a regular education placement by the District for IDEA continuum of placement purposes. The IEP team which met on September 16, 2014 noted that the Student's needs had changed in that Student did not meet the alternative school's requirements and was not making progress there. Additionally, the IEP dated January 30, 2015 states that scheduling speech services while Student attended the alternative school was difficult, and the Speech Language Pathologist had difficulty reaching Student while Student attended the alternative school. These IEPs evidence that Student was not making academic progress at the alternative school, continued to struggle with attendance while attending the alternative school during 2013-2014, and had difficulty receiving speech language services while at the school in 2013-2014. These reasons all provided the IEP team with enough information to change the placement to a different environment. On January 27, 2015 an eligibility and IEP meeting was held for Student. At that time the team reviewed the Student's progress during home instruction from

¹⁰ *Oberti v. Board of Education*, 19 IDELR 908 (3d Cir. 1993) see also

¹¹ See *P. v. Newington Board of Education*, 51 IDELR 2 (2d Cir. 2008)

¹² Note, Student was 19 during the fall of 2014.

¹³ 34 CFR 300.324(b)(ii)(A)

September 2014 to January 2015, and the team noted Student had earned 1.5 credits with improved attendance and participation at this time. The Student also received more one-on-one or small group instruction during this time of home instruction.

Therefore, the nature and severity of the Student's disability and Student's individual needs did justify the removal from the alternative school and the temporary use of the home instruction program to gain credits needed for graduation in an accelerated manner. The Department therefore does not sustain this portion of the allegation. No corrective action is ordered.

3. IEP Meeting Notice/ Parent Participation

The complaint alleges the District failed to ensure parent participation at the Student's IEP team meeting that took place on October 21, 2014 when it provided the Parent with only verbal notice of the meeting. The complaint further alleges that this meeting notice did not include information related to the time, purpose, and location of the meeting and those who would attend the meeting.

The general parent participation requirements are found at OAR 581-015-2190. This rule states that: School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, IEP and educational placement of the child, and the provision of a free appropriate public education to the child. Specifically for Meeting Notice, School districts must provide parents with a written notice of the meeting sufficiently in advance to ensure that one or both parents will have an opportunity to attend. The written notice must: state the purpose, time, and place of the meeting and who will attend.¹⁴

The District was able to produce a written meeting notice dated October 16, 2014 for the October 21, 2014 meeting. This written notice includes the purpose, time, and place of the meeting and it also notes who will attend the meeting. This meeting notice was prepared by the District secretary and it includes her phone number for any questions. The written notice indicates both Parent and Student were included on the document and the meeting. Both Parent and District agree that there was some initial confusion on behalf of the District with Student's address, due to another Student in the District with the same first and last name (but different middle initial), and that some mail may not have been received by Parent as a result of this. In an email exchanged dated October 20, 2014 the parent indicates they have not received the written materials for the meeting, and the District staff notes that "they had the wrong address in the computer". The District also said they would "...change the mailing address downstairs and get the new one in the computer system." In this email dated October 20, 2014, District went on to note that, "I will resend the meeting notice and the paperwork to the new address."

There is evidence of written notice of the meeting to Parent via emails sent to Parent from this same District employee dated October 15, 2014 (confirming attendance of meeting and location of meeting, Parent asked for accommodations at meeting) and on October 20, 2014 (confirming Parent's attendance at meeting and being reminded of request for accommodation to a downstairs location). An email sent from the District to Parent further indicated the notice was originally sent to Parent via mail on October 16, 2014. However, as this same staff member admitted on October 20, 2014 that they did not have the correct address for Parent at that time and the notice went to the wrong address, Parent would not have received the written notice of the October 21, 2014 IEP meeting sufficiently in advance of the meeting. While the District was making efforts to communicate with Parent via email and in writing, the fact remains that Parent did not receive a written meeting notice sufficiently in advance of the October 21, 2014 meeting, with information about who would attend the meeting and the purpose of the meeting. The emails sent by District did inform Parent of

¹⁴ OAR 581-015-2190

the date and time of the meeting, but they were missing the required elements of the purpose of the meeting or the list of who would attend the meeting so the emails alone cannot constitute proper written notice sent sufficiently in advance to Parent. It is important to note that Parent was able to attend this IEP meeting due to the District's email messages.

District needs to ensure that all mailing addresses are correct for its students and that written notices for IEP meetings are sent as soon as possible to the appropriate address.

The Department therefore does sustain this allegation. However, no corrective action is needed, in light of the fact that District has already corrected the information for Student, and Parent was able to attend the meeting and participate on behalf of Student. There is also ample evidence of District working with Parent in advance of this meeting via email to ensure participation and to provide accommodations to Parent. Parent has since this time received written notices and documents from District at the correct address. Therefore, the noncompliance in relation to this written notice has been remedied and no corrective action is ordered.

V. CORRECTIVE ACTION¹⁵

*In the Matter of Forest Grove School District #15
Case No. 15-054-004*

No Corrective Action is ordered.

Dated: this 2nd Day of April, 2015



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

Mailing Date: April 2, 2015

¹⁵ 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)).