

## BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Santiam Canyon School )  
District )

FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 19-054-041

### I. BACKGROUND

On October 29, 2019, the Oregon Department of Education (Department) received a letter of complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Santiam Canyon District (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 581-015-2030. The Department provided the District with a copy of the Complaint on October 31, 2019.

On November 11, 2019, the Department sent a *Request for Response* (RFR) to the District identifying the specific allegations in the Complaint to be investigated and establishing a Response due date of November 22, 2019. On November 22, 2019, the District attempted, through its counsel's office, to remit a response via email to the Complaint Investigator (Investigator). Due to the size and specific data, the file transfer was not successful. After several attempts, the Investigator received the District's response on November 25, 2019. The Response included a narrative and the following documents upon which the Investigator relies for this Order:

1. Neuro-psychological Evaluation dated February 17, 2014 (incomplete report)
2. IEP Team Meeting Minutes (Salem Keizer) dated October 8, 2014
3. Salem Keizer Functional Behavior Assessment dated November 18, 2014
4. Behavior Support Plan dated November 18, 2014
5. Salem Keizer Meeting Documentation Cover Sheet dated November 18, 2014
6. IEP team meeting minutes (Salem Keizer) dated November 18, 2014
7. Functional Communication Assessment Report dated February 16, 2016
8. Functional Behavioral Assessment dated February 17, 2016
9. Psychological and Educational Assessment dated February 17, 2016
10. Occupational Therapy Report dated February 24, 2016
11. Behavior Intervention Plan dated March 18, 2016
12. Behavior Intervention Plan dated March 31, 2018
13. Email communications between Parents and ORCA staff/administration beginning August 31, 2018 and continuing through November 7, 2019
14. Student Attendance records from September 1, 2018 through November 15, 2019
15. Notice of Team Meeting dated September 4, 2018
16. IEP dated September 21, 2018
17. IEP Meeting Notes dated September 21, 2018
18. Annual Measurable Goal Progress Report dated September 21, 2018
19. Special Education Placement Determination dated September 21, 2018
20. Prior Written Notice dated September 24, 2018
21. Notice of Team Meeting dated September 4, 2019
22. Prior Written Notice dated September 16, 2019
23. IEP dated September 16, 2019
24. Special Education Placement Determination dated September 16, 2019
25. IEP Team Meeting Notes dated September 16, 2019
26. Notice of Transfer of Parent Rights dated September 16, 2019
27. IEP Snapshot – undated

28. Referral Team Meeting Notice dated October 4, 2019
29. Responsive Letter from ORCA Executive Director dated November 1, 2019
30. Student's full transcript dated November 14, 2019
31. Grade book details for school year 2018-2019
32. Grade book details for school year 2019-2020
33. Discipline status for school year 2018-2019

The Investigator determined that in person interviews were necessary. The Investigator interviewed the Parent via telephone on December 6, 2019. The Investigator then interviewed District personnel in person and through Adobe Connect on December 9, 2019. During the District interview, the Investigator requested specific records from the District and received the following via email:

IEP meeting agenda for the September 16, 2019 IEP team meeting

The Parent did not submit any additional documentation in response to the District's submission. The Investigator did not request any additional documents from the Parent.

The Investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of facts and conclusions of law contained in this order

The Department has jurisdiction to resolve this Complaint.<sup>1</sup> Under federal and state law, the Department must investigate written complaints that allege Individuals with Disabilities Education Act (IDEA) violations that occurred within one year prior to the Department's receipt of the complaint. This Complaint covers the one-year period from October 30, 2018 through October 29, 2019. The Department must issue a final order within sixty days of receiving the complaint. This Order is timely.

## II. ALLEGATIONS AND CONCLUSIONS

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.

	<b>Allegations</b>	<b>Conclusions</b>
<b>1. Least Restrictive Environment (LRE)</b>	<p>The Parent alleges that District violated the IDEA because the District failed to educate the Student in the least restrictive environment.</p> <p>(34 C.F.R. § 300.114; OAR 581-015-2240, OAR 581-015-2250)</p>	<p><b>Not Substantiated</b></p> <p>Neither the Student, nor the Parent, nor the District determined that the Student should move to a less restrictive environment. The record indicates that during the Complaint period, the Student's removal from the general education environment was appropriate for the Student, as reflected by progress the Student made in such a setting.</p>
<b>2. IEP Content and Implementation</b>	<p>The Parent alleges that the District violated the IDEA because the District</p>	<p><b>Substantiated</b></p> <p>After the Student stopped attending ORCA classes dedicated to delivering SDI to support</p>

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<sup>1</sup> 34 CFR §§ 300.151-153; OAR 581-015-2030.

	<p>refused to make changes or accommodations to the Student's IEP which would have addressed the Student's unique needs.</p> <p>(34 C.F.R. §§ 300.323, 300.324; OAR 581-015-2205, OAR 581-015-2220</p>	<p>the Student's single IEP goal in the area of transition, the District did not convene an IEP team meeting during the 2018-2019 school year to review and potentially revise the Student's IEP.</p>
<b>3.</b>	<p><b>Parent Participation</b></p> <p>The Parent alleges that the District violated the IDEA when it failed to consider the Parent's input regarding the Student's education.</p> <p>(34 C.F.R. § 300.327; OAR 581-015-2190, OAR 581-015-2195)</p>	<p><b>Not Substantiated</b></p> <p>The Parent gave input on the Student's IEP draft and in IEP team meetings. The Parent was an active participant, given the opportunity to provide input, ask questions, and be involved in revisions to the Student's IEP. The District considered the Parent's input, and in many instances, agreed to incorporate the Parent's suggested revisions to the Student's IEP.</p>

#### **REQUESTED CORRECTIVE ACTION**

Re-enrollment in the ORCA program and an agreement for implementation of the Student's IEP including completion of core curriculum credits.

### **III. FINDINGS OF FACT**

1. The Student is seventeen years old, a junior in high school, and enrolled in the Career Technical Educational Center ("CTEC") program in culinary arts offered by the Salem-Keizer School District. The Student also participates in the Junior Reserves Officers' Training Corps (JROTC) program. The Student has a deep sense of patriotism and has always enjoyed video games. The Student has developed an interest in drones, particularly their military application.
2. During the 2018-2019 school year and for the three previous years, the Student was enrolled in Oregon Connections Academy (ORCA). ORCA is a full-time online high school program operated by the Santiam Canyon School District (District).
3. The Student is eligible to receive special education services under the primary disability category of Autism Spectrum Disorder and a secondary disability category of Other Health Impairment.
4. The Student has historically experienced anxiety around requesting help from teachers and completing classroom work. When the Student struggled accessing the "brick and mortar" educational curriculum in a Salem-Keizer School District classroom due to their anxiety, the Parent requested that Salem-Keizer School District release the Student so the Student could attend ORCA rather. Salem-Keizer School District released the Student and the Student began attending ORCA during the 2016-2017 school year.
5. The Student entered ORCA with a Behavior Support Plan (BSP) that had been developed

by the Salem-Keizer School District during the 2014-2015 school year. ORCA completed a Functional Behavioral Assessment ("FBA") and developed a Behavioral Intervention Plan ("BIP") for the Student, noting the Student experienced learning challenges due to depression, withdrawal, and anxiety. A target behavior addressed in the ORCA BIP was "work avoidance."

6. Between the Student's enrollment in ORCA and September 2018, the Student's IEP contained annual measurable goals in reading, writing and math, and ORCA provided Specially Designed Instruction (SDI) in those areas. At the Student's September 21, 2018 IEP team meeting, the team decided to eliminate the reading, writing, and math goals because the Student had performed well in those areas and no longer required SDI. The team replaced these goals with the following annual goal in the area of transition: "[The Student] will develop an appropriate plan to achieve vocational goals by researching the requirements for entering the military." This goal was to be measured through teacher observations twice per semester.
7. The September 21, 2018 IEP included 60 minutes per month of "Transition" SDI, to be delivered by the District between September 21, 2018 and September 20, 2019.
8. The Student did not participate in the ORCA lessons connected with the Student's September 21, 2018 IEP transition goal. The Student's September 16, 2019 IEP references a January 30, 2019 Progress Report, which reports the Student's progress as "Unsatisfactory" and states that the Student "did not attend any . . . [lessons] for Beginning Transition" and that "[a]ttendance at these session is imperative for making progress on this goal." The same September 16, 2019 IEP also references a June 17, 2019 Progress Report, which notes the Student's progress continued to be "Unsatisfactory," that progress could not be ascertained, and attendance is "imperative to monitoring progress."
9. According to the Parent, the Student "did not access or utilize the [lessons] as they were not necessary for [the Student's] success in the classroom."
10. When the Student expressed an interest in the military, the Parent researched different options and found a JROTC program through the Salem-Keizer School District. During the Student's ninth grade year at ORCA, the Student began participating the JROTC program. The Student is still involved in JROTC and recently became a squad leader.
11. ORCA provides SDI to students through specialized classes, which students access online. To achieve IEP goals with socialization aspects to them (e.g., Social Skills, Behavior, etc.), ORCA offers field trips, social/academic clubs, access to counselors, and family support liaisons.
12. The Student's September 21, 2018 IEP Present Level of Academic Achievement and Functional Performance ("PLAAFP") stated that the Student kept in regular contact with teachers via webmail for guidance on assignments and regularly attended Live Lessons in core classes.
13. The Student's placement was predominately in the general education environment—more than 80% of the day. The Student's "Special Education Placement Determination" document indicated that the Student's interactions with peers was greatly minimized in ORCA, but noted that the Student still had opportunities to interact with others through field trips and other ORCA programs. The Student also had the opportunity to work at a comfortable pace and receive academic support from teachers.

14. Throughout the 2018-2019 school year, the Student regularly corresponded with an ORCA English teacher regarding assignments and participated in “Live Lessons” in English. At the beginning of the 2019-2020 school year, the Student contacted the same English teacher and requested assistance in locating an old assignment.
15. On February 1, 2019, the Parent requested that the Student’s Math class be modified for the Student. In response, the Math teacher eliminated the Student’s “pre-tests” and a non-essential portfolio assignment, then modified the Student’s daily note taking assignment. The Math teacher modified other components of the Student’s class, including a daily writing requirement, which reduced the Student’s workload significantly.
16. During the 2018-2019 school year, the Parent requested that the Student be moved from Standard English to Foundations English. The Foundations class had fewer assignments and was not graded as rigorously as either Advanced English or Standard English. The Parent also requested that the Student only be given information that would be on the test and that “non-essential” information be noted as such so the Student did not spend time reviewing information that would not be on an examination. The English teacher complied and noted throughout presentations, especially on power point, what information was non-essential and what facts would be on an exam. The Student was moved to Foundations English Class on November 1, 2018 and the curriculum was modified pursuant to the Parent’s request.
17. On March 4, 2019, the Parent notified ORCA that the Student had been accepted into the Salem-Keizer School District CTEC program to study drones. The Parent then indicated the Student would attend ORCA to obtain credits in core classes, and would earn the balance of credits required for a regular diploma through JROTC and CTEC at Salem-Keizer School District. The Parent requested dual enrollment at ORCA and CTEC.
18. At the beginning of the 2019-2020 school year, ORCA notified the Parent that dual enrollment was not possible at ORCA because ORCA is a full-time program and students cannot participate on less than a full-time basis.
19. In advance of an IEP team meeting, ORCA’s typical practice is to correspond with IEP team members via email and collect their input. After input is received, ORCA develops an IEP draft for review and revision at the IEP team meeting. An IEP draft is usually revised once before it is discussed at the IEP team meeting. The Student’s draft IEP for the September 16, 2019 IEP team meeting was revised at least three times before the IEP team meeting.
20. The Student’s special education teacher included the Parent’s requested accommodations on the Meeting Agenda for the September 16, 2019 IEP team meeting and also made several changes to wording in the IEP’s PLAAFP, Services, Transitions, Accommodations, and Goals sections.
21. On September 29, 2019—after the Student did not participate in ORCA classes since the beginning of the 2019-2020 school year—ORCA requested an IEP team meeting to discuss evaluation and re-visit the Student’s FBA and try to better understand the Student’s non-participation.
22. The Parent has indicated that the Student has “come a long way and has been successful.” By September 2019, the Student was attending JROTC classes on Monday, Tuesday, and Thursday from 7:00 a.m. to 9:00 am. Such involvement increased the amount of classes the Student attended and increase the number of writing assignments for which the Student was responsible, but the Parent reported that the Student was meeting these challenges.

23. The next IEP team meeting that convened was for the Student's annual review on September 16, 2019.
24. During the 2019-2020 school year, the Student attended two ORCA classes, on September 3 and 4, 2019.
25. ORCA sent the Student attendance reminders. The Parent received attendance reminders on September 3, 8, 13, and 28, 2019.
26. On or about October 9, 2019, the Student was disenrolled from ORCA.

#### **IV. DISCUSSION**

##### **A. Least Restrictive Environment (LRE)**

The Parent alleges that the District violated the IDEA because it failed to educate the Student in the least restrictive environment. A school district may provide special classes, separate schooling, or engage in other removal of students with disabilities from the general education environment only if the nature or severity of the student's disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.<sup>2</sup> A local educational agency that operates an online program must adhere to the requirements of the IDEA and provide its students with a free appropriate public education (FAPE) in the least restrictive environment.<sup>3</sup>

The Student transferred to the District's online ORCA program in response to anxiety the Student experienced in a traditional school environment. The Student's placement at ORCA was more than 80% in the general education environment, with less than 20% removal to special education classes. Once in ORCA, the Student improved appropriate and effective engagement with teachers. Neither the Student, nor the Parent, nor the District determined that the Student should move to a less restrictive environment. The record indicates that during the Complaint period, the Student's removal from the general education environment was appropriate for the Student, as reflected by progress the Student made in such a setting.

##### **B. IEP Content and Implementation**

The Parent alleges that the District violated the IDEA when it refused to make changes to the Student's IEP that would have addressed the Student's unique needs. An IEP must contain a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education environment and meet each of the child's other educational needs that result from the child's disability.<sup>4</sup> A school district must ensure that an IEP team review each student's IEP periodically and revise it, as appropriate, to address a lack of expected progress toward annual goals, or other matters.<sup>5</sup>

Before the 2018-2019 school year, the Student's IEP contained annual measurable goals focused on reading, math, and writing. These goals were eliminated after the IEP team decided the Student was making appropriate progress in these academic areas and did not require

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<sup>2</sup> OAR 581-015-2240(2).

<sup>3</sup> Dear Colleague Letter, 68 IDELR 108 (OSEP 2016).

<sup>4</sup> OAR 581-015-2200(1)(b).

<sup>5</sup> OAR 581-015-2225(1).

special education for them. The Student's September 21, 2018 IEP team developed one annual goal focused on transition, specifically the Student's interest in a post-secondary career in the military. The team also added 60 minutes of monthly SDI in the area of "Transition." But during the 2018-2019 school year, the Student did not attend any ORCA classes dedicated to delivering SDI to the Student and working on the Student's transition goal. The record does not show that the SDI in the Student's IEP was delivered in another class or some other format. During the 2018-2019 school year, the District issued progress reports acknowledging the Student's non-attendance and indicated that attendance was imperative for the Student to make progress on the transition goal. But the District did not make overtures to reconvene the Student's IEP team to address any lack of expected progress, or to revise the Student's IEP to reflect a change in the Student's academic program. Rather, it appears the District accepted a statement made by the Parent that the Student did not need the transition goal and associated SDI since the Student was having success in the classroom.

After the Student stopped attending ORCA classes dedicated to delivering SDI to support the Student's single IEP goal in the area of transition, the District should have convened an IEP team meeting at some point during the 2018-2019 school year to review the Student's circumstances and revise the Student's IEP as appropriate. Promptly addressing the Student's non-participation is particularly important given the Student's history of work avoidance (and ORCA's development of a BIP to address this identified need). The Department substantiates this allegation.

### **C. Parent Participation**

The Parent alleges the District violated the IDEA when it failed to consider the Parent's input regarding the Student's education.<sup>6</sup> School districts are responsible for providing parents with an opportunity to meaningfully participate in meetings with respect to the identification, evaluation, IEP, placement, and provision of FAPE to a child.<sup>7</sup> The IDEA does not require school district to accede to parental demands without exploring other alternatives.<sup>8</sup>

The Parent requested several academic accommodations for the Student, most of which were received, considered, and agreed to by the District. In response to Parent input, the Student's draft IEP went through multiple revisions before the September 16, 2019 IEP team meeting. The Parent attended the September 16, 2019 IEP meeting and was an active participant, given the opportunity to provide input, ask questions, and be involved in revisions to the Student's IEP. The Parent was provided with an opportunity to meaningfully participate in IEP team meetings and the Student's IEP development. The Department does not substantiate this allegation.

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<sup>6</sup> The Parent appears to be dissatisfied with the District prohibiting the Student from dually enrolling in ORCA and the Salem-Keizer School District. Such a decision by the District does not by itself violate the IDEA. The Parent may explore the District's public complaint process to pursue a grievance with the District's enrollment protocols.

<sup>7</sup> 34 CFR § 300.501; OAR 581-015-2190.

<sup>8</sup> Blackman v. Springfield R-XII Sch. Dist., 31 IDELR 132 (8th Cir. 1999).

## V. CORRECTIVE ACTION<sup>9</sup>

*In the Matter of Santiam Canyon School District  
Case No.19-054-041*

Based on the facts provided, the following corrective action is ordered.

No.	Action Required	Submissions <sup>10</sup>	Due Date
1.	With the assistance of the ODE County Contact, the District shall review its current procedures for monitoring the delivery of SDI to online students and establish a plan to ensure that IEP meetings are scheduled in a timely fashion when it's discovered that students are not attending the classes in which SDI is delivered.	Submit a copy of the current procedures to the County Contact. Once this is jointly reviewed, send the updated plan/procedures document to the County Contact.	<b>February 15, 2020 for current plan, April 1, 2020 for updated plan.</b>

Dated this 27th Day of December 2019

*Candace Pelt, Ed. D*

Candace Pelt, Ed. D  
Assistant Superintendent  
Office of Enhancing Student Opportunities

Mailing Date: December 27, 2019

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)

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<sup>9</sup> The Department's order includes corrective action. The order includes documentation to be supplied to ensure the 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).)

<sup>10</sup> Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Mike Franklin, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5634; e-mail: [mike.franklin@state.or.us](mailto:mike.franklin@state.or.us) fax number (503) 378-5156.