

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Beaverton School District )  
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FINDINGS OF FACT,  
CONCLUSIONS,  
AND FINAL ORDER  
Case No. 21-054-037

**I. BACKGROUND**

On November 10, 2021, the Oregon Department of Education (Department) received a letter of complaint (Complaint) from the parent (Parent) of a student (Student) residing in the Beaverton School District (District). The Parent requested that the Department conduct a special education investigation under Oregon Administrative Rule (OAR) 541-015-2030. The Department provided the District with a copy of the Complaint by email on November 10, 2021.

On November 19, 2021, 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 December 3, 2021. The District requested an extension of time to respond, asking to complete the RFR on December 17, 2021. The Department extended the *Response* due date to December 10, 2021. The District completed its *Response* and the Department’s Contract Investigator (Investigator) received it on December 10, 2021. The *Response* included a narrative, exhibit listing, and the following documents:

1. Emails between Parents and District dated between September 14, 2020 and August 9, 2021
2. Emails between Charter School and District dated between September 16, 2020 and November 20, 2020
3. Pre-Referral Worksheets, October 2020
4. Referral for Special Education dated November 4, 2020
5. Notice of Team Meeting dated November 4, 2020
6. Team Meeting Minutes dated November 12, 2021
7. Prior Written Notice dated November 12, 2021
8. Grades for academic year 2020-21 inclusive of teacher comments
9. District Special Education Guidance for school year 2020-21
10. Student work sample in English created by Student June 2021

The Parent provided multiple documents prior to receipt of the District’s Response. After receiving the District’s Response, the Parent’s Counsel provided a formal Reply. In summary, the Parent and Parent Counsel provided the following documentation in addition to their formal Reply:

1. Daily School Schedule - Charter School (Charter) Kindergarten Mandarin Immersion program
2. Log on details for all Charter classes
3. Emails between Parent and Charter dated between September 11, 2020 and November 15, 2021
4. Emails between the Parent and the District dated between September 16, 2020 and September 1, 2021.
5. Confidential psychological evaluation dated June 8, 2021
6. Parent created document compilation entitled “The Road to [Student’s] November 2021 Mediation” (undated)

The Investigator determined that in-person interviews were necessary. On December 15, 2021, the Investigator interviewed teachers from the Charter. On December 18, 2021, the Investigator interviewed District personnel. On December 18, 2021, the Investigator interviewed the Parents in the presence of their counsel.

After completion of the Interviews, the Investigator requested additional information from both parties.

The Investigator received four (4) short videos from the District:

1. Student's participation in CDL
2. Homework assignment for language arts (English) - phonetics/reading
3. Homework assignment for language arts (English) - find letter "P"
4. Homework assignment for language arts (English) - read a short story

The Investigator received a document from the Parent entitled, "[Student's] Road to November 2021 Mediation" which contained the aforementioned emails and a narrative from the Parent relevant to this Complaint.

The Investigator reviewed and considered the previously described documents, interviews, and exhibits in reaching the findings of fact and connections of law contained in this order.

Under Federal and state law, the Department must investigate written complaints that allege Individual with Disabilities Education Act (IDEA) violations that occurred within one year prior to the Department's receipt of the complaint. The Department must issue a final order within sixty days of receiving the complaint. The District and the Parent can agree to extend the timeline to participate in mediation. The timeline may also be extended for exceptional circumstances.<sup>1</sup> This order is timely.

## **II. ALLEGATIONS AND CONCLUSIONS**

The Department has jurisdiction to resolve this Complaint.<sup>2</sup> 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 November 11, 2020 through November 10, 2021.

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<sup>1</sup> OAR 581-015-2030(12)

<sup>2</sup> 34 CFR §§ 300.151-153; OAR 581-015-2030.

Allegations	Conclusions
<p><b><u>Evaluation</u></b></p> <p>The Parent alleges that the District failed to evaluate the Student and failed to evaluate in every area of suspected disability.</p> <p>(OAR 581-015-2105; 34 CFR § 300.301)</p>	<p><b><u>Not Substantiated</u></b></p> <p>The Parents did not offer any independent evaluations, medical diagnosis, or other factual evidence of disability during the November 12, 2020 evaluation meeting to give the District a concrete basis for an evaluation. Further, based on the Student's grades, the fact that the Student's behavior did not inhibit access to the general education curriculum, and given the fact that the Student was making progress appropriate in light of their circumstances, the District did not violate the IDEA by failing to schedule another meeting.</p>
<p><b><u>Prior Written Notice</u></b></p> <p>The Parent alleges the District failed to remit a Prior Written Notice to the Parents regarding the denial of an evaluation for the Student.</p> <p>(OAR 581-015-2310; 34 CFR § 300.503)</p>	<p><b><u>Substantiated</u></b></p> <p>The District does not dispute this allegation.</p>
<p><b><u>Parent Participation</u></b></p> <p>The Parent alleges the District violated the IDEA because it did not give the Parents the ability to participate in the identification of the Student's disability and disregarded the Parent's input regarding an evaluation of the Student's disability.</p> <p>(OAR 581-015-2190; 34 CFR § 300.501)</p>	<p><b><u>Not Substantiated</u></b></p> <p>The Parents were in attendance during the evaluation meeting, had the ability to share information, to ask questions, and to fully participate in the meeting. Further, the District provided a facilitator for the evaluation meeting to support the Parents understanding of the process, as both Parents disclosed they have learning differences.</p>

## REQUESTED CORRECTIVE ACTION

- Compensatory Education - Tutoring
- Hold a meeting to discuss evaluation and a special Facilitated IEP team meeting (with ODE)
- Correct Child Find issues by proactively reviewing all rejections of [special education] from last year under supervision of ODE
- Perform Restorative Justice by having all parties involved in the [special education] denial apologize to my [child] for the way that their decision harmed [my child]
- Compensate for pain and suffering related to failure to accommodate due to failure to test, resulting in School becoming a place of Trauma and (Student) hyper-accommodating

### III. FINDINGS OF FACT

1. The Student is six (6) years old and is a bright, precocious, independent child. The Student loves drawing, responds well to music (especially singing), and naturally takes the lead in creative play with peers. The Student is extremely social and gets along well with both staff and peers.
2. The Student has experienced poverty and homelessness. During the Student's lifetime, the Student has attended five (5) different schools and has lived in ten (10) different locations. Both of the Student's Parents have learning disabilities.
3. The Student attended preschool at the International School in Portland, Oregon where the Student began learning Mandarin. The Student was enrolled in the Mandarin program until February 2020.
4. The Student participated in the lottery application process for a charter school in the District (Charter) prior to the 2020-21 academic year. The Student was placed on the wait list for admission and was enrolled late in classes just before the start of the academic year.
5. Upon gaining admission to the Charter, the Charter makes clear to all parents that they are expected to work with their children and to use Mandarin at home; the immersion program expects parents to be participants as well and to integrate the language studies and practice into their routine. Practicing the language and a commitment to the child's education is stressed by the Charter.
6. When the Student began kindergarten classes at the Charter, all classes were held via comprehensive distance learning (CDL) through Zoom. The Student was also enrolled in KinderCare at that time and attended CDL while at KinderCare. The Charter held classes four (4) days per week.
7. The Student used a computer without adult support to participate in CDL. The Student would engage in CDL by using headphones, a microphone, and Zoom alone in a portion of a KinderCare room. The Student was not separated from other children and the Student did not have a carrel or special cubicle where the Student could be alone to attend school via CDL. The Student became extremely adept at raising a hand to ask a question, logging into the room, and fully participating in classes. At the time the Student was participating in CDL without adult support, the Student was five years old.

8. The Charter's kindergarten program taught science and math in Mandarin and language arts in English. The Student spent the majority of the day in Mandarin immersion with the last portion of the day being taught in English. School began at 8:30 a.m. and there was a live lesson every half hour until the lunch break at 11:30 a.m. The Student would log into Zoom for CDL at least four (4) times on Tuesdays and Thursdays and five (5) times on Mondays and Fridays.
9. The Mandarin Teacher assigned homework that had three distinctive parts: (a) instructions; (b) audio for pronunciation; and (c) the assignment itself. The Mandarin Teacher asked that the Parents and the Student read through and listen to the materials at least twice before attempting the homework.
10. On September 14, 2020, the Student's instructors emailed the Parents and praised the Student for being so responsible and organized, stating that the Student did a great job at working independently and that the Student knew when to ask questions and to get permission to get supplies.
11. On September 16, 2020, the Parent emailed the District's Special Education Case Manager (Case Manager) for the Charter and conveyed that both Parents had learning differences. The Parent requested that the Case Manager give the Student any extra help on how to learn, noting that his concerns could also be because the Student was only five years old but that he had seen some "early signs" of a learning disability. The Parent then forwarded the same email to the District's Psychologist (Psychologist) serving the Charter. The Psychologist forwarded the email on to the Charter's Principal (Principal) and School Counselor (Counselor).
12. The Student did not have a medical diagnosis of any disability during the academic year 2020-21.
13. The Parent emailed the Charter on September 20, 2020 and advised that the Student was having a hearing test that day and would be late for school. The Student had one more hearing exam during the year.
14. On September 23, 2020, the Counselor emailed the Parent and discussed options for the Student to ensure the Student was supported. The Counselor also requested the Parent to sign a release of information so the Counselor could speak with the Student's private therapist (Therapist).
15. On October 1, 2020, the Parent signed a release of information giving the Counselor permission to speak with the Student's Therapist. Thereafter, the Counselor requested a meeting with the Parent to discuss possibilities for the Student's education, including supports and special education resources. The Parent and the Counselor spoke on October 21, 2020 regarding the Student's needs. The Counselor then gave the Parent the email addresses for the Case Manager and Psychologist so the Parent could make a formal request for an initial evaluation for special education.
16. On October 8, 2020, the Parent emailed the Student's teachers explaining that the Student was behind on submitting work through the online program, "Seesaw." The Parent stated that they were attempting to get the Student caught up.
17. Beginning in October 2020, the Parent began criticizing the Mandarin Teacher's teaching methods and emailed various suggestions on how to teach the Student. The Parent was

concerned that the Student could not understand “word searches” assigned by the Mandarin Teacher and that the Mandarin Teacher was unduly hard on the Student.

18. Throughout the first half of the Student’s kindergarten year, the Parent emailed the Mandarin Teacher when the Student’s work was marked incorrect and argued that the manner in which the questions were worded were subject to interpretation. The Parent also made arguments to justify the Student’s incorrect answers’, and requested that the Student’s grades on certain assignments be reconsidered.
19. On October 20, 2020, the Counselor sent out a special education “pre-referral” form to the Student’s teachers to assess the Student for a potential special education evaluation, noting “We recognize that we do not have much to pull from since we just started the school year and CDL, but just do your best.”
20. The special education pre-referral received from the English Teacher noted that the Student recognized all uppercase letters and 24 out of 26 lower case letters. The Student did have b/d reversal, which is common for kindergarten. The Student identified 2/10 sight words, scored a 45 on DIBELS, and scored 10/10 in all areas of phonological awareness, except syllables (where the Student scored 9/10). The English Teacher assigned a “Read Well Check In” test over Seesaw, but the Student did not complete it.
21. The special education pre-referral input received from the Mandarin Teacher noted that the Student’s assignments were all given over Seesaw and none of them were completed because the Student did not have the booklets the Mandarin Teacher created for the assignments. Since there was no data obtained through Seesaw, the Mandarin Teacher collected in-class data from the Student and compared it to the progress of three other Students who were first year learners of Mandarin. The Student scored in the same range as these classmates with the exception of being unable to recognize any characters denoting family.<sup>3</sup>
22. The special education pre-referral form completed by the teachers did not note any behavioral problems or academic problems. The pre-referral form noted that the Student was responsible, calm, observant, energetic, and good at problem solving. The form also noted that the Student could rarely work independently but did not engage in disruptive behaviors or appear emotionally withdrawn. The Student sometimes needed prompting to pay attention and would often fail to recall information from a previous lesson. Conversely, the Student could follow multi-step directions from the teacher and make needs clearly known. There were no emotional or medical concerns noted on the pre-referral form.
23. On November 1, 2020, the Mandarin Teacher emailed the Parent and advised that the Student was missing several assignments in Seesaw. The Parent responded, indicating that the Parents could not keep up with the Mandarin portion of the Student’s curriculum and were unable to assist the Student with the Mandarin homework. The Parents had been able to assist the Student with the English homework.<sup>4</sup>
24. A meeting to determine whether the Student should be evaluated to determine eligibility for special education services was held on November 12, 2020. During the meeting, the District

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<sup>3</sup> The Parent has argued that using first-year Mandarin learners as a comparison for the Student is inappropriate because the Student had studied Mandarin at the International School. However, the Student had not attended the International School for seven (7) months prior to enrolling in the Charter. Moreover, by the Parent’s own admission, neither parent practices speaking Mandarin with the Student at home.

<sup>4</sup> The Parents were expected to assist the Student organize supplies, print out study materials, and assist the Student in turning in assignments through electronic media, i.e. Seesaw.

employed a facilitator to help explain the process to the Parents. The District believed there may be a misunderstanding by or pushback from the Parents. At the meeting, the Parents expressed that they were concerned based on their personal learning experiences and did not think that a decision regarding evaluation had to be made immediately. The Parents expressed that they had a better experience at the International School and were unsure why the Student was struggling so much at the Charter. The Parent opined that the Student simply wanted to be with their Parents and was not so concerned with making friends. The Parents also shared that they were trying creative ways to encourage learning.

25. During the meeting, the District reviewed the data and stated that the Student was still on track with other students with the exception of a few areas of concern. The letter reversals the Student was experiencing were common and the Student was still keeping up with peers. The team did identify Mandarin character recognition as a concern but that the Student was otherwise on track in Mandarin so long as the Student could practice.
26. At the end of the meeting, the District asked if the Parents had any questions. The Parents did not have any questions. The District then stated that it would not be evaluating the Student for special education services, but that the Student's progress would be watched and information about the Student's learning would continue to be collected so that teachers would know if a referral is needed.
27. After the meeting, the Counselor emailed the Parents and explained that the teachers would be making adjustments to the Student's schedule to ensure the Student would be able to keep up with peers. The Mandarin Teacher and the educational assistant were going to give the Student one-to-one practice time daily because they were not getting practice at home. Also, since the Student was becoming frustrated, the Mandarin Teacher arranged special prizes for the Student. The Mandarin Teacher also made the assignment books for the Student so the Parents would not have to go back into Seesaw to find them.
28. When the COVID-19 surge occurred during school year 2020-21, the Parents removed the Student from KinderCare. The Student participated in CDL at home from approximately Thanksgiving 2020 through the end of February 2021. Prior to this time, the Parents worked with the Student on homework for two hours per day. The Parents had also communicated with the Charter that they had planned to catch the Student up on weekends but focused on family activities instead. By March, 2021, the Parents stopped requiring the Student to do homework as homework completion was resulting in the Student having meltdowns.
29. The Student routinely did not have needed supplies for class. When the Student was attending KinderCare, the supplies were in a cubby and, if the Student did not have the supplies that were needed for the instruction, no adult would be available to help find supplies. As a result, the Student began modifying assignments when the Student did not have the correct supplies to participate. For example, if the Student did not have the lesson booklet printed out or available, the Student would simply draw pictures to show the Mandarin Teacher that the Student understood and was following the lesson. Teachers made accommodations for the Student. For example, the Mandarin Teacher accepted the Student's "self modification" to assignments and permitted them to continue until in-person learning resumed.
30. The Student's Mandarin class began learning to write characters, which became a point of contention for the Parent, Student, and Mandarin Teacher. The Student would not create

characters in the proper stroke order<sup>5</sup> and the Parent would defend the Student's choices. The pushback from the Parent became so great that the Mandarin Teacher eventually started making an effort to make the Student feel special and recognized and also started adding points to the Student's grades for being well-behaved at home.

31. On March 24, 2021, the Parent emailed the Counselor and stated that the Parent was going to have the Student independently tested and asked if the Counselor had any "spring documentation" that the Counselor could provide. The Parent did not request a special education evaluation at that time.
32. On March 28, 2021, the Parent sent an email to the Counselor and other Charter staff entitled, "Signs of Learning Differences and Need for Accommodations" The Parent provided multiple screen shots of work the Student had done and noted that the Student also had deleted some pages in a fit of frustration. At the end of the email, the Parent noted that, "It's behaviors like this that almost had me be mis-diagnosed [*sic*] in second grade as Emotionally Disturbed. My parents had me tested and I was correctly diagnosed as ADD." The Parent did not ask for an evaluation at this time and did not specify what special education accommodations were desired for the Student. The Parent did ask that the deleted assignment be resent. The Counselor replied that the Counselor would touch base with the Student to help the Student with problem solving skills.
33. On May 7, 2021, the Charter confirmed with the Parent that the Student would attend all four days of instruction in person. When the Student participated in person, the lessons were repetitive, but the Student found new and creative ways to alter the schoolwork and took pride in doing lessons twice and in different ways.
34. On August 30, 2021, the Parents withdrew the Student from the Charter School.
35. The Student was given independent psychological evaluations on August 12, 2021, September 14, 2021, and September 16, 2021, and was diagnosed as having a Generalized Anxiety Disorder and ADHD, predominately hyperactive/impulsive presentation, moderate.
36. According to the Student's report card, the Student made steady progress in all areas except Mandarin writing. The Student never exhibited behavioral problems, was extremely well liked by peers, and was a very good learner.

## IV. DISCUSSION

### **Evaluation**

The Parent alleges that the District failed to evaluate the Student and failed to evaluate in every area of suspected disability.

"An initial evaluation must be conducted to determine if a child is eligible for special education services when a public agency suspects or has reason to suspect that:

- (A) The child has a disability that has an adverse impact on the child's educational performance; and
- (B) The child may need special education services as a result of the disability."<sup>6</sup>

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<sup>5</sup> When creating Chinese characters, stroke order is imperative to making a correctly proportioned symbol that can be read. Having correct stroke order is also imperative so that once elementary characters are mastered with a specific stroke order, a student can build upon elementary characters to create more intricate and detailed characters.

<sup>6</sup> OAR 581-15-2105(3)



In the instant case, the Parent's first email on September 16, 2020 did not specifically request a special education evaluation. Rather, the Parent, based on the Parent's own history and the other Parent's history, asked the Psychologist and the Charter's Case Manager to keep an eye on the Student. The Parent did not present any evidence that the Student experienced any type of disability (e.g., a medical diagnosis, specific incidences of behavioral problems, or indication of a disability from the Student's prior preschool). In light of the email sent on September 14, 2020 from the Student's teachers praising the Student's organizational skills, independence, and school participation readiness, the Student did not exhibit any evidence of disability.

In October, however, the Student did have difficulty doing word searches and identifying characters in Mandarin class. Thereafter, the Mandarin Teacher modified the Student's curriculum to eliminate word searches. The Mandarin Teacher also allowed the Student to demonstrate a knowledge of Mandarin characters in other ways (e.g., drawing a picture of what a character represented). The Mandarin Teacher made these modifications in response to the Parent's assertions that the Teacher was not instructing the Student in a manner the Student could understand. The Mandarin Teacher believed that the Student could learn the material, but made these changes in an attempt to support the Student and Parents.

During the meeting to discuss evaluating the Student for special education services, the Parent did mention the Student's inability to grasp the word search concept. However, when a student displays a relatively new behavior or there is a likelihood that the behavior could be a short-term issue, it is reasonable for a District to delay an evaluation.<sup>7</sup> The Student was accessing every other part of the curriculum without any difficulty. The Student was making progress appropriate in light of their circumstances. In fact, the Student was displaying amazing resilience given that the Student had attended multiple schools and was virtually alone during CDL from the beginning of school until December, 2020.

The Parent also alleged that the District failed to evaluate in all areas of disability, noting there was no hearing evaluation conducted. However, there is no evidence that the Student was experiencing a hearing disability, nor did the District have reason to suspect this based only upon two medical appointments for hearing tests. The Parent recognized that the hearing issue is routine and did not request any evaluation based on hearing testing.

It should also be noted that the Student had no trouble whatsoever accessing the English curriculum and learning without intervention from the Parents or the English teacher.

The Department does not substantiate this allegation.

### **Prior Written Notice**

The Parent alleges the District failed to remit a Prior Written Notice to the Parents regarding the denial of an evaluation for the Student.

The District does not dispute this allegation.

The Department substantiates this allegation.

### **Parent Participation**

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<sup>7</sup> See, Mr. P. v. West Hartford Bd of Educ., 71 IDELR 207, 885 F2d 735 (2nd Cir 2018)

The Parent alleges the District violated the IDEA because it did not give the Parents the ability to participate in the identification of the Student's disability and disregarded the Parent's input regarding an evaluation of the Student's disability.

“School districts must provide one or both parents with an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child.”<sup>8</sup>

In the instant case, the District held an evaluation meeting and recorded the Parent's' concerns. Notably, one of the Parents stated that it was not imperative that the District make a decision on whether or not to evaluate the Student at that time. The other Parent opined that the Student was not as happy at the Charter and simply wanted to be with the Parents. That Parent also stated that the Parent was trying creative ways for the Student to engage in learning. The District noted this and at the end of the meeting explained to the Parents that they would not be testing, but would watch the Student and collect data about the Student's learning so that teachers would know if an evaluation was needed.

The District held the meeting with both Parents, noted their concerns, and explained that they would follow up if the Student was not making progress. The Parents did participate fully and the District took reasonable action in its decision to forego evaluation for a student who had only been in Kindergarten for two months and who showed no signs of a disability.

Further, pursuant to OAR 581-015-2190(3), a “school district must take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English”.

In the instant case, both Parents made the District aware that they had “learning differences.” Thereafter, one of the Parents discussed how mental health difficulties, homelessness, and poverty had affected both the Student and the Parents. The Parent also challenged the Mandarin Teacher on many occasions regarding grading, wording of lessons, and teaching style. The Parent's manner of communication also put the District on notice that the Parent had the propensity to argue a point and to vociferously advocate for the Student.

Given the Parents' collective history, the District requested that a facilitator attend the evaluation meeting because the District anticipated that misunderstanding or pushback could ensue. The District wanted to ensure that the Parents understood the evaluation process and the basis upon which evaluations were made for Special Education services. By including the facilitator, the District further assured that the Parents understood the process in which they were engaging for the first time.

The Department does not substantiate this allegation.

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

*In the Matter of Beaverton Public School District*  
Case No. 21-054-020

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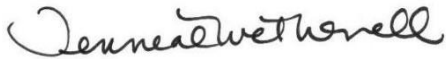
<sup>8</sup> OAR 581-015-2190

<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).)

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

Action Required	Submissions	Due Date
Training of building special education staff members on when Prior Written Notices are required.	Completed sign-in sheet for training.	<b>March 15, 2022</b>

Dated: this 7<sup>th</sup> day of January 2022



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Tenneal Wetherell  
Assistant Superintendent  
Office of Enhancing Student Opportunities

E-mailing Date: January 7, 2022

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).)