



Oregon

Kate Brown, Governor



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Colt Gill

Director of the Oregon Department of Education

June 28, 2022

Tony Scurto
Superintendent, Lane ESD
1200 Highway 99 North
Eugene, OR 97402

Dear Superintendent Scurto:

The Oregon Department of Education, Office of Enhancing Student Opportunities, is writing in response to concerns highlighted in state media and within the Oregon Legislature related to potential noncompliance with the Individuals with Disabilities Education Act (IDEA) due to programmatic shortening of the in-person instructional week for children served through Lane ESD's Life Skills program. As the obligation for a free appropriate public education (FAPE) continues to rest with each local education agency (LEA) that placed students into this program, this letter is also copied to the superintendent of each of the school districts served by Lane ESD.

All students, including students with disabilities, have a "presumptive right to receive the same number of hours of instruction or educational services as other students" (ORS 343.161). Under state law, students with disabilities may only be placed on an abbreviated school day program

if the student's individualized education program team:

- (a) Determines that the student should be placed on an abbreviated school day program:
 - (i) Based on the student's needs; and
 - (ii) After the opportunity for the student's parents to meaningfully participate in a meeting to discuss the placement; and
- (B) documents that the team considered at least one option that included appropriate supports for the student and that could enable the student to access the same number of hours of instruction or educational services that are provided to students who are in the same grade within the same school. (ORS 343.161(3))

It is the Department's expectation that all students with disabilities will be provided with a full in-person school week, like other students, unless the above conditions related to placement on an abbreviated school day are met. Given the concerns noted above, pursuant to the state's general supervision obligation (ORS 434.041-055 and 34 CFR § 300.149), and under the authority of OAR 581-015-2015 General Supervision, ODE is notifying you that the Department

is opening an investigation into this situation. **By July 12, 2022, Lane ESD shall respond to this letter with a list of every student enrolled, at any time during the 2021-22 school year, within the Life Skills program at Lane ESD.** This list must include the following for each student:

- Full Name;
- Date of Birth;
- Enrollment Dates;
- Secure Student ID (SSID);
- Grade Level;
- Primary Disability Category;
- Race;
- Ethnicity;
- Gender;
- School District of Residence;
- Total Minutes of Instruction Provided In Person in the School Year;
- Total Special Education and Related Services Minutes Provided In Person in the School Year;
- Total Minutes of Instruction Provided Remotely in the School Year;
- Total Special Education and Related Services Minutes Provided Remotely in the School Year; and
- Dates of Each IEP Meeting Held within the Last Year.

Please send the list to me, so that it is **received by July 12, 2022**. You may send it to the address listed below, or you may send it to me at the email listed below. Using that list, by July 15, 2022, ODE staff will select specific student records to review and notify Lane ESD of those students. Then, by July 29, 2022, Lane ESD will be required to submit copies of the following for each of the selected students:

1. Student schedules, with delivery method, including in-person and remote instructional minutes provided per week.
2. Each Individualized Education Program (IEP) in effect at any time during the 2021-22 school year.
3. Notices of Team Meetings for all IEP meetings at any time during the 2021-22 school year.
4. IEP meeting minutes for all IEP meetings at any time during the 2021-22 school year.
5. All Prior Written Notices (PWN) provided at any time during the 2021-22 school year.
6. All *Abbreviated School Day Notice and Acknowledgement Notice to Parent/Guardian or Foster Parent* form provided.
7. Copies of all documents involving requested students related to this situation, including letters, memos, email messages, notes from any relevant phone calls or meetings, or any other documents relevant to ODE's investigation into this situation.

Once you receive notification of the student records required, please send the documentation to me, so that it is **received by July 29, 2022**. You may also send it to the address listed below, or you may send it to me at the email listed below. Please **provide a table of contents or glossary for your documents and label each document** in the lower right-hand corner with a D plus ascending number (ex: D1, D2, D3, D4, etc.).

Once we have received this documentation, ODE staff will review it to determine whether there is evidence of noncompliance. Following those determinations, if noncompliance is identified, ODE will require corrective action within the timelines established in OAR 581-015-2015. In the event that noncompliance is identified and it is determined that the noncompliance could cause a student to be denied 10 or more instructional days (whether partial or full days) consecutively or cumulatively within any one school year, as compared to the majority of general education students who are in the same grade within the attending school district or program as the child or student with a disability, that noncompliance will need to be corrected within 60 calendar days. In light of that timeline for correction, Lane ESD is advised to begin planning and implementing solutions for any potential noncompliance immediately.

In addition, Lane ESD should be aware that the possibility of a disability discrimination complaint exists in this situation. ODE does not take up discrimination claims in the first instance; a parent, student, or resident of the school district would need to file a complaint with the local school district first. ODE staff are available to assist you if you have questions related to the possibility of discrimination in this instance. If you would like support in this area, please contact ODE.Appeals@ode.oregon.gov.

ODE recognizes the difficulty programs are having in light of COVID-19 and workforce shortages. Despite those difficulties, there have been no waivers to the requirements established by the IDEA. ODE has previously reminded districts and programs of the obligation for LEAs to ensure a FAPE is made available to each eligible child. School districts and programs must ultimately ensure that they deliver educational services in a way that complies with federal and state laws. Department staff are available to assist you however possible related to this issue. Please contact me if you have any questions.

Sincerely,



Eric B. Wells, Ed.D.
Director, IDEA Programs
Office of Enhancing Student Opportunities
eric.wells@ode.oregon.gov

Cc: Colt Gill, Director, Oregon Department of Education
Tenneal Wetherell, Assistant Superintendent, Office of Enhancing Student Opportunities

Kraig Sproles, Superintendent, Bethel SD 52
Adam Watkins, Superintendent, Blachly SD 90
Michael Johnson, Superintendent, Creswell SD 40
Heidi Brown, Superintendent, Crow-Applegate-Lorane SD 66
Cydney Vandercar, Superintendent, Eugene SD 4J
Gary Carpenter, Superintendent, Fern Ridge SD 28J
Troy Stoops, Superintendent, Junction City SD 69
Johnie Matthews, Superintendent, Lowell SD 71
Jodi O'Mara, Superintendent, Mapleton SD 32
Terry Augustadt, Superintendent, Marcola SD 79J
Nathaniel Tompkins, Superintendent, McKenzie SD 68
Reta Doland, Superintendent, Oakridge SD 76
Scott Linenberger, Superintendent, Pleasant Hill SD 1
Andy Grzeskowiak, Superintendent, Siuslaw SD 97J
Yvonne Curtis, Superintendent, South Lane SD 45J3
Todd Hamilton, Superintendent, Springfield SD 19