

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. 23-054-043

I. BACKGROUND

On October 30, 2023, the Oregon Department of Education (the Department) received a written request for a special education complaint investigation from the parents (Parents) of a student (Student) residing in the Forest Grove School District 15 (District). The Parents 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 Parents 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 November 7, 2023, the Department’s Complaint Investigator 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 21, 2023.

The District submitted a *Response* on November 21, 2023, denying the allegations, providing an explanation, and submitting documents in support of the District’s position. The District submitted the following relevant items:

1. District’s Written Response to Complaint, dated 11/21/23
2. List of Staff Members, no date
3. Section 27 Students Enrolled by Their Parents in Private Schools, no date
4. District Education Records/Records of Students with Disabilities, 2/22/16
5. District Education Records/Records of Students with Disabilities Management, 11/14/16
6. Disclosure Statement, no date
7. District Education Records/Records of Students with Disabilities Management, 2/22/16
8. Section 11 Reporting Progress: Data-Driven Decision Making, no date
9. District Notice of Meeting [Review evaluation reports; eligibility determination; IEP to follow if qualified], 3/10/23
10. Contact Attempt Report [Eligibility], 2/13/23-3/10/23
11. Evaluation Summary, 3/22/23, signed
12. Areas of Evaluation, 1/13/23
13. Prior Written Notice [Eligibility Category], 3/22/23
14. Notification for the Disclosure of Student Information to the Washington State Health Care

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

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

- Authority, no date
15. Medicaid Consent, 1/4/23, signed
 16. Request for Initial Evaluation Extension, 2/14/23, signed
 17. Eligibility/IEP Meeting Notes, 3/22/23
 18. Initial Individualized Education Program (IEP) Invitation, [Develop an Initial IEP; Determine Placement], 3/17/23
 19. Contact Attempt Report, 3/10/23-3/17/23
 20. Individualized Education Program (IEP) Cover Page (Initial), 3/22/23, signed
 21. Team Considerations, 3/22/23
 22. Present Levels of Educational Performance and Measurable Annual Goals, 3/22/23
 23. Program Accommodations/Modifications and Support for School Personnel, 3/22/23
 24. State or Districtwide Assessments of Student Achievement, 3/22/23
 25. Special Education and Related Services, 3/22/23
 26. Written Parental Consent for Initial Special Education Services, 3/22/23, signed
 27. Procedural Safeguards, 3/22/23, signed
 28. Prior Written Notice [Educational Placement; IEP] 3/22/23
 29. Notification for the Disclosure of Student Information to the Washington State Health Care Authority, no date, duplicate
 30. Medicaid Consent, 1/4/23, signed
 31. Eligibility/IEP Meeting Notes [Initial], 3/22/23, unsigned
 32. Statement of Eligibility for Special Education (Developmental Delay 98), 4/24/23, electronically signed
 33. Early Intervention & Early Childhood Special Education Programs Individualized Family Service Plan (IFSP), 5/11/23
 34. Early Childhood Special Education, 5/11/23
 35. Individualized Family Service Plan Participants, 5/11/23, unsigned
 36. Developmental Information, 5/11/23
 37. Goals and Objectives, 5/11/23
 38. Family Outcomes: Plan to Enhance Student's Development, 5/11/23
 39. Transition from Early Intervention, 5/11/23
 40. Placement Decision, 5/11/23, unsigned
 41. District Health Management Plan, 9/13/23
 42. Feeding Protocol, 8/18/23 [revised 9/28/23]
 43. Feeding Protocol, 8/18/23 [revised 9/28/23]
 44. Special Education Meeting Minutes [IEP Amendment], 10/5/23, unsigned
 45. Prior Notice of Special Education Action [Placement; FAPE (includes IEP)], 6/9/23
 46. Prior Notice of Special Education Action [FAPE (includes IEP)], 10/5/23
 47. Oregon Standard Individualized Education Program, 6/9/23, unsigned
 48. Procedural Safeguard Notification, 6/9/23
 49. Special Factors, 6/9/23
 50. Present Levels of Academic Achievement and Functional Performance, 6/9/23
 51. Statewide Assessment, 6/9/23
 52. Districtwide Assessment, 6/9/23
 53. Annual Goals, Objectives, Progress Towards Goals, 6/9/23
 54. Services, 6/9/23
 55. Extended School Year, 6/9/23
 56. Oregon Standard Individualized Education Program, 10/5/23, amendment, unsigned
 57. Procedural Safeguard Notification, 10/5/23
 58. Special Factors, 10/5/23
 59. Present Levels of Academic Achievement and Functional Performance, 10/5/23
 60. Statewide Assessment, 10/5/23
 61. Districtwide Assessment, 10/5/23

62. Annual Goals, Objectives, Progress Towards Goals, 10/5/23
63. Services, 10/5/23
64. Extended School Year, 10/5/23
65. Medical Statement, 8/23/23
66. Special Education Placement Determination, 6/9/23
67. Untitled handwritten notes, 9/11-11/13/no year
68. Data Tracking Sheet, 9/27-11/13/no year
69. Untitled handwritten data notes, no date
70. Test 1 Scoring Sheets, 11/13/23
71. Untitled handwritten data notes, no date
72. Student Profile [mathematics], 9/22/23
73. Letter name/sound probe, October
74. Counting and Cardinality probe, 10/21/23
75. Refused to do independently, 9/18/23
76. Here I am in October, no date
77. Letter Names LNF, 9/19/23
78. Phonemic Awareness probe, 9/19/23
79. Letter Sounds NWF-CLS, 9/19/23
80. Decoding NWF-WRC, 9/19/23
81. Word Reading, no date
82. Pre-kindergarten: 2022-2023 Composite
83. Student patience notes, 10/23/no year
84. Goal tracking data, 9/19/23-10/24/23
85. Emails from 5/19/23-11/8/23

The Parents submitted a *Reply* on November 30, 2023, providing an explanation and rebuttal in support of the Parents' position. The Parents submitted the following relevant items:

1. Parent reply, 11/30/23
2. Document, complaint, no date
3. Notice of Team Meeting, Student, 9/15/23
4. IEP, Student, 10/5/23
5. Special Education Meeting Minutes, Student, 10/5/23
6. Prior Notice of Special Education Action, Student, 10/5/23
7. Health Management Plan, Student, 9/13/23
8. Feeding Protocol, Student, 9/28/23
9. Emails, 10/16/23

The Complaint Investigator interviewed the Parent on November 30, 2023. On December 1, 2023, the Complaint Investigator interviewed District personnel. The Complaint Investigator reviewed and considered all 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 Parents' allegations and the Department's conclusions are set out in the chart below. The 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 October 31, 2022, to the filing of this Complaint on October 30, 2023.

Allegations	Conclusions
<p data-bbox="203 212 643 239">Access to Educational Records</p> <p data-bbox="203 279 974 411">The Complaint alleges that the District violated the IDEA by not providing the raw data collected by staff while working on IEP goals to be sent home once a month when requested by the Parents.</p> <p data-bbox="203 447 727 476">(OAR 581-015-2300; 34 CFR §300.613)</p>	<p data-bbox="1003 212 1255 239">Not Substantiated</p> <p data-bbox="1003 279 1422 340">The District did not maintain raw data as an educational record.</p>

REQUESTED CORRECTIVE ACTION
<ol style="list-style-type: none"> <li data-bbox="240 617 1433 772">1. Properly written PWNs in regard to the two requests made at each meeting, requesting raw data. As it was, the district refused our data requests, yet did not mark 'refusal' in the box of either PWN and tacked our request into the "Any other factors considered by the team" section, thereby bypassing their legal obligation to justify and explain their refusal. which is not how a PWN is supposed to work. <li data-bbox="240 772 1433 865">2. Develop a written record request policy in regard to raw data, requests and retention, that adheres to IDEA/FERPA and is posted on their website with the rest of their policies and practices. <li data-bbox="240 865 1433 957">3. Districtwide FERPA and IDEA training in regard to records requests, with an emphasis on proper management and retention of raw data, for anyone that collects, collates, or manages that type of data. <li data-bbox="240 957 1433 1150">4. Districtwide letter to parents/guardians detailing the district's prior lack of compliance with raw data requests from parents, what parents can do for restitution, how they will rectify the situation, and how they will manage raw data moving forward. This needs to include specific information about what is, and is not, raw data, specific information about what is, and is not, sole possession and explicit instructions that tell parents in plain language, what raw data is and that they have a right to raw data. <li data-bbox="240 1150 1433 1211">5. Contacting all parents who have made previous requests for their raw data, providing them with that raw data as restitution, and treating those requests as outstanding. <li data-bbox="240 1211 1433 1304">6. ODE oversight for one year, of the education records requests received by Forest Grove School District, with statistics taken as to how many requests were made and fulfilled compliance officer/specialist. <li data-bbox="240 1304 1433 1339">7. Proof of compliance.

III. FINDINGS OF FACT

IDEA regulations limit complaint investigation to alleged violations occurring no more than one year before the Department's receipt of the special education complaint. This Complaint Investigation did not consider any IDEA violations alleged to have occurred before October 31, 2022. Any facts listed below relating to circumstances or incidents earlier than that date are included solely to provide context necessary to understand the Student's disability and special education history.

1. The Student was a six-year-old kindergartener attending an elementary school at the time the Complaint was filed.
2. The Student was found eligible for Special Education in the State of Oregon on April 24, 2023, for a Developmental Delay. The local Education Service District documented this in a Statement of Eligibility and created an Individualized Family Service Plan (IFSP) on May

11, 2023 and provided Early Childhood Special Education Programming.

3. The Student was eligible for special education as a child with a developmental delay. The Student experienced delays in cognition, communication, social/emotional development, and self-care needs. The Student experienced delays in their ability to follow routines and task completion as well as a delay in fine-motor skills. The date of reevaluation was scheduled for April 23, 2026.
4. On June 9, 2023, the Prior Written Notice (PWN) of Special Education Action described a proposal to initiate placement and provision for a free appropriate public education (FAPE) based on the eligibility of Developmental Delay.
5. On June 9, 2023, the Special Education Placement Determination listed the “general education classroom with push in and pull-out support for specially designed instruction as the placement selected for the Student.”
6. The IEP dated June 9, 2023 indicated:
 - a. Special Factors were identified in communication and assistive technology.
 - b. Strengths in the categories of math, reading, academic readiness, communication, occupational therapy, and physical therapy, adaptive, and social-emotional were described.
 - c. Needs in the categories of math, reading, academic readiness, communication, occupational therapy, physical therapy, adaptive, and social-emotional were described.
 - d. The Parent shared that the Student experienced challenges eating which can result in choking. The Student was described as having some anxiety and being sensitive to heat. The Student was described as a joker who may joke during assessments. The Parent indicated that the Student should not drink water with fluoride.
 - e. There was a goal listed for language; progress will be measured by “data collection and analysis.”
 - f. There was a goal listed for speech. Objectives were listed and progress will be measured by: “data collection and analysis, speech probes, and speech sample.”
 - g. A goal for PT was listed with objectives. Means of measuring and reporting progress were not listed.
 - h. The social-emotional goal and objectives were listed. Progress will be measured with data collection and observations at the trimester with report cards.
 - i. An occupational therapy goal and objectives were listed. Progress will be measured by: “work samples and therapist/teacher observations.”
 - j. An academic readiness goal was listed with objectives. Progress will be measured by: “data collections, observations, and informal assessments” and will be reported with report cards at the trimesters.
 - k. Specially designed instruction was listed for speech and language, social-emotional, and school-readiness.
 - l. Related services were listed for PT, occupational therapy, and transportation.
 - m. The following supplementary aids/services and accommodations were listed as: individual restroom, shared adult support, seating supports, time to respond, breaks, checks for understanding.
 - n. Program Modifications/Supports for School Personnel were listed as: feeding team consult, adapted physical education consult, and PT consult.
7. On August 18, 2023, a Feeding Protocol was developed; it was revised on September

28, 2023.

8. On September 11, 2023, data was collected on the Student in PE.
9. A September 13, 2023, Health Management Plan was provided in the materials.
10. On September 15, 2023, a Notice of Team Meeting was created for a meeting scheduled on October 5, 2023, to review information and the IEP.
11. On September 19, 2023, letter names, phonemic awareness, letter sounds, decoding, and word reading, data were graphed.
12. On September 21, 2023, data was collected on the Student in PE.
13. The Student Profile from September 22, 2023, described the Student's achievement in math at the 33rd percentile. Instructional areas were identified.
14. In September 2023, data was collected on name recognition and other topics.
15. On September 29, 2023, data was collected on the Student at lunch and recess.
16. On October 3, 2023, data was collected on the Student.
17. The Amended IEP dated October 5, 2023, indicated:
 - a. The Student was in the 33rd percentile for math and in the top 20% for reading skills. Transportation was removed and a feeding protocol and health management plan were added.
 - b. The Student experienced delays in cognition and communication as well as social/emotional development and self-care needs. The Student experienced delays in their ability to follow routines and task completion as well as a delay in fine-motor skills.
 - c. The Student's strengths in receptive communication were noted, and needs were identified in the areas of expressive language.
 - d. An occupational therapy strength noted was copying one upper case letter of the alphabet. A need was identified in copying and tracing letters, name, and numbers. Baseline data was included.
 - e. Physical Therapy strengths and needs were noted and amended on October 5, 2023. The amendment noted that objectives had been met and direct physical therapy services will be dropped.
18. At the October 5, 2023 special education meeting, the Parent Advocate requested baseline data for physical therapy, noting there was none in the present levels. The Speech Language Pathologist explained the present levels were transferred from preschool since the district did not know the student at the time. The Parent Advocate requested measurable baselines with percentage opportunities going forward. They also requested the Parent receive raw data monthly. The District reported that it does not share raw data, only assessment results summarized in progress reports. The Parent Advocate asserted raw data is part of the educational record and requested PWN if the District would not provide it.
19. A PWN dated October 5, 2023, described the revisions made to the IEP dated June 9, 2023. An option that was considered was rewriting the IEP with updated present levels;

this option was rejected because the “IEP was created based on information from the Early Childhood Special Education team. The team will schedule a meeting in November to reconvene [their] annual IEP with data on school-age present levels.” The following other factors were considered by the team: “Raw data in the form of work samples and informal assessments will be shared with parents as they are with all students in the district. At any time, you as the parent can call to ask about the progress of your child. The educational professional can interpret their recent observations, work samples, and informal assessments. The district does not however provide their data collection sheets/notes to parents as the sole purpose of those notes are to serve as a personal memory aid for the professional who is reporting progress at formal grading periods [sic]”.

20. From September 19 to October 24, 2023, data was collected on prepositions, two-step directives, answering ‘wh’ questions, and letter sounds and blends.
21. Data was collected on the Student in academic readiness one time in September and three times in October 2023.
22. Data was collected on the Student in the area of social-emotional, on four different dates in October 2023.
23. In October 2023, a name-writing and personal drawing sample was collected.
24. In October 2023, alphabet letter names and sound data were collected.
25. In 2023, emotions, counting, and reading data was collected.
26. From October 16, 2023 through October 17, 2023, there were a series of emails exchanged between the Parent and the District, initiated by the Parent, requesting an update on the PWN and for “... [Student’s] raw data to be provided on a monthly basis.” The Special Education Teacher indicated the PWN had been sent on October 9, 2023. The Parent responded: “I’m looking at it right now and my first concern is that our request to write measuring guidelines for reporting progress for goals was denied for unclear reasons and it is not mentioned here. How can you get a baseline if your measurements are vague and have no timeline?” The Parent continued: “I also want to verify that the reason we’re being denied the raw data in [their] educational records is because the District believes it is in the sole possession of the record maker.” The Special Education Teacher shared that a meeting was scheduled for November 27, 2023 to rewrite the IEP to include “measurable baseline data.”

The Parent shared that there were details missing from the PWN, including the reasoning behind “...not wanting to have clear measurement criteria for goals.” The Special Education Teacher asked what raw data the Parent wanted to see; the Special Education Teacher shared they were sending home the work samples and assessment results. The Special Education Teacher inquired: “Is there a specific area you are wondering about present levels in?” The Parent reiterated: “We’re looking for all raw data and data sheets collected for reporting progress on IEP goals.” The Parent shared the following: “The District’s reasoning is in the PWN, I’m just clarifying that the reasoning is that the District believes that raw, unprocessed data taken for measuring progress towards IEP goals is defined as sole possession. I’ll also need to receive a PWN for why our request to change the wording in how goals were measured so we could get an accurate baseline was denied. Most of the goals have extremely vague

language with no frequency, and for some, no intensity in measurements. I'd like to request a PWN on why the District does not want to write clear measurement criteria for goals. Since that was our third IEP meeting in 5 months, it seems that would have been an important step to take before getting a baseline."

27. When the Parent requested the data, their expectation was that they would receive the data moving forward regarding the IEP goals. The Parent mentioned they did receive classwork for Student.
28. The Parent indicated they received a response from the District regarding the raw data, but that a reason for not providing it was never given.
29. The District shared that the Student's IEP was created from an IFSP and that data had been collected since the beginning of the year.
30. The District shared that they do believe that raw data is part of the educational record if the data is shared with others, except in the case of sole possession.
31. In the IEP meeting in which the Parent asked for raw data, the District described that the relevant data had been reviewed in the meeting. The District did not interpret the request for raw data from the Parent in the IEP meeting as a formal or official request, but has acknowledged that they should have clarified this request with the Parent. District policy indicates that an official record request must be made in writing. The District did not recall the reason the Parent provided for wanting the raw data, nor were District personnel clear on whether the request was for previous data or for data moving forward. Data was not provided to the Parent. The District does not recall if they told the Parent that an official request for data must be in written form.
32. When asked in an interview which data were kept and which were not, the District shared that the following items are shredded after they are summarized in a report: test protocols, checklists, notes, behavior logs, and informal reading inventories. The District disclosed that some license types are required to maintain data for a certain period of time.
33. In an interview, the Speech/Language Pathologist (SLP) shared that the Student has poor attendance. When describing their data-collecting process, the SLP described shredding their protocols after an evaluation. They keep their data sheets for language and articulation and are not comfortable sharing the data with the Parent because it would require further explanation. The SLP said they have maintained all the data collected. The SLP was not specifically asked in the IEP meeting about their raw data, but they collected data for the investigation. The SLP shared that, if they charged for Medicaid, they would be required to preserve the data for seven years.
34. In an interview, the Case Manager described taking observation notes, side notes, and using plusses and minuses. They took notes on progress and will report the progress at the trimester reporting period. Notes were used as a memory aid and shredded. The Case Manager was not asked directly at the IEP meeting for their raw data, but they have maintained records and provided them for the purpose of the investigation. The Case Manager does not believe their licensure requires the confidential preservation of raw data.
35. The Adaptive PE Specialist is not sure if their license requires the preservation of raw

data. They observed, consulted, and modified instruction for the Student. They maintained notes after consultation and observations and have not destroyed any data. They were not asked by the District if they were in possession of data.

36. The Physical Therapist described that their license requires them to maintain notes. They provided consultation services and collected observation notes on Student. They were not asked for the data, but the data is preserved until reports are updated, and data for this Student has been maintained. Once the reports are updated, the data is shredded.
37. The Occupational Therapist (OT) works with the student on fine motor skills and sensory processing as well as furniture adjustments and feeding evaluations. They have collected and maintained work samples with notes, notes on behavior and attendance, and trials with different pencils. Their license requires them to maintain notes for seven years. The District policy is to collect data to report progress on IEP goals and for evaluations. Once summarized into reports, the records are not needed and can be shredded. The OT was not asked directly for the data in the IEP meeting, but the District asked them for data as part of the investigation.
38. Section 11 of the District's special education procedures manual described gathering and utilizing data for special education progress reports, including method, location, type, and schedule for data collection. It was noted that progress notes must report: "specific measurable data related to student performance and must directly support the goals/objectives." Present-level statements can be derived from progress notes, and the IEP Progress Report is separate from the report card and provides insights into student progress on IEP goals. Section 11.5 describes the retention of data collection documents specifically:
 - a. 11.5.1: "The district does not retain data collection documents (data sheets, notes, assessment protocols) once analyzed and summarized in a report or another IEP document."
 - b. 11.5.2: "Once a provider has analyzed and summarized their data into a report or IEP document, the provider must shred those documents, unless the provider has specific record retention regulations as a part of their licensure."
 - c. 11.5.3: "If a parent makes a "formal" records request under OAR 581-015-2300, the district will provide all educational records, including but not limited to data collection documents, IF [sic] they have been retained."
39. On October 21, 2023, baseline data in counting and cardinality was collected.
40. On October 23, 2023, and October 31, 2023, data was collected on social interactions.
41. On October 23, 24, 30, and 31, 2023, data was collected on the Student.
42. On October 30, 2023, the Parents filed this Complaint.

IV. DISCUSSION

Access to Educational Records

The Complaint alleged that the District violated the IDEA by not providing the raw data collected by staff while working on IEP goals to be sent home once a month when requested by the Parents.

To safeguard education records of children with disabilities, the Department adopts the provisions of Family Educational Rights and Privacy Act (FERPA). FERPA defines educational records as those records that contain information directly related to a student, and which are maintained by an educational agency or institution.³ This provision includes all education records with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education. The program, district, agency, or contractor must comply with a parent's request to inspect and review records without unnecessary delay and within the following timelines. For children over the age of three, before any meeting regarding an IEP/IFSP, or any due process hearing, or resolution session related to a due process hearing, and in no case more than 45 days after the request has been made.⁴

In an October 6, 2023, IEP meeting, the Parent requested that raw data collected about the Student be provided on a monthly basis. In the interview, the Parent indicated their expectation was to receive the data moving forward about the IEP goals. At the meeting, the Student Services Coordinator stated that raw data is not shared. This led the Parent to request a PWN regarding the District's stance on raw data disclosure. The District provided the Parent with a PWN about the decision not to provide the requested data on October 6, 2023.

The District did not and does not maintain raw data as part of the educational record for the Student. The Supreme Court has interpreted "maintained" as "to keep in existence or continuance; preserve; retain" and reasoned that "[t]he word 'maintain' suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database."⁵ Although the District suggested that raw data may be a part of the educational record if it is shared with others, the District did not "maintain" this data in the manner required to qualify as an educational record. The practice of shredding raw data once progress reports are created demonstrates that the District practice is not "to keep in existence or continuance; preserve; retain" this data. While the District might have a different understanding of FERPA requirements and might have policies that provide more rights than FERPA, this does not change any legal obligations related to FERPA. It is unclear whether the Parent made a written public records request under ORS 192.324 or not. Regardless, that matter is unrelated to the IDEA.

V. CORRECTIVE ACTION

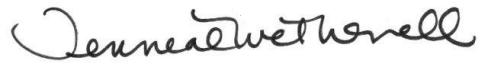
The Department does not substantiate this allegation.

Dated: this 28th Day of December 2023

³ 20 U.S.C. 1232g(a)(4)(b)

⁴ OAR 581-015-2300 (1) (2ab)(3b)

⁵ *Owasso Indep. Sch. Dist. No I-011 v. Falvo*, 534 U.S. 426, 432033 (2002)



Tenneal Wetherell
Chief of Staff
Oregon Department of Education

E-mailing Date: December 28, 2023

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).)