

**BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

In the Matter of Bethel School District #52

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FINDINGS OF FACT,  
CONCLUSIONS  
AND FINAL ORDER  
Case No. 12-054-037

**I. BACKGROUND**

On December 10, 2012, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent of a student (Student) residing in the Bethel School District #52 (District). The parent requested that the Department conduct a special education investigation under OAR 581-015-2030. The Department confirmed receipt of this complaint and forwarded the request to the District by email on December 11, 2012.

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.<sup>1</sup> This timeline may be extended if the parent and the school district agree to the extension in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.<sup>2</sup> On December 21, 2012, the Department extended the time period for investigation of this complaint for 24 days, because both parent and District staff were unavailable for interviews due to the scheduled winter holiday and because each party was out of the country on personal business.

On December 8, 2012, the Department's complaint investigator sent a *Request for Response* to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of January 21, 2013. After several conversations with the parent, and after further review of the parent's complaint documents, the complaint investigator revised the *Request for Response* and sent it to the parent and the District on January 14, 2013.

On January 25, 2013, the District submitted a timely response indicating they disputed the allegation in the parent's complaint. As per the complaint investigator's request, the District submitted additional materials on February 5, 2013. The response packets contained IEPs; eligibility reports; a transcript; prior written notices; meeting notices; and copies of correspondence between the District and the parent. The Department's complaint investigator determined that on-site interviews were needed. On February 12, 2013 the complaint investigator interviewed the District's Special Education Director, and a special education teacher. The parent submitted additional materials via email to the investigator and to the District during the week of February 4, 2013. The investigator interviewed the parent on February 12, 2013. The complaint investigator reviewed and considered all of these documents, interviews, and exhibits in reaching the findings of fact and conclusions of law contained in this order. This order is timely.

<sup>1</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(a)

<sup>2</sup> OAR 581-015-2030(12) and 34 CFR § 300.152(b)

## II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR §§ 300.151-153 and OAR 581-015-2030. The parent's allegations and the Department's conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and the Discussion in Section IV. This complaint covers the one year period from December 11, 2011 to the filing of this complaint on December 10, 2012.

	<u>Allegations:</u>	<u>Conclusions:</u>
(1)	<p><b><u>When IEP's Must Be in Effect/IEP Implementation:</u></b></p> <p>The parent alleges that the District failed to implement the IEP properly when it discontinued the daily "check in—check out" support system that was used to keep the student on track to complete assignments.</p> <p>(OAR 581-015-2220, OAR 581-015-2205, 34 CFR 300.320 and 34 CFR 300.323)</p>	<p><b><u>Not Substantiated.</u></b></p> <p>The parent filed the complaint on December 10, 2012, alleging that the District had not provided a daily "check in—check out" system during the 2011-2012 school year. The one year period under investigation was from December 11, 2011 to the filing of the complaint on December 10, 2012. During this one year time period, the student received services as per an IEP written on August 31, 2011. That IEP did not specify a daily "check in—check out" system. However, this service had been available to and used by the student as part of the alternative high school program. The student quit attending the District alternative high school on December 8, 2011, and did not attend for the remainder of the 2011-2012 school year. Once the student returned to school in September, 2012, the team wrote a new IEP (9/5/2012) and added the "check in check out with trusted adult" system as a supplementary service. This supplementary service has been implemented in the new setting. For these reasons, the Department does not substantiate the allegation and orders no corrective action.</p>
	<p><b><u>Proposed Corrective Actions:</u></b></p> <p>The parent requests:</p> <ol style="list-style-type: none"> <li>1. The Department answers the questions the parent has about the issues in the complaint through interviews and a review of relevant paperwork. The parent asks that the Department interview all subjects knowledgeable about the complaint</li> </ol>	

	<p>as well as the parent; and note any needed corrections.</p> <p>2. The parent would like any information about the complaint to which the parent is reasonably entitled.</p>	
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**Allegations Not Investigated:**

The parent also alleged that the District stated on the IEP that "Last year was quite difficult and the student did not attend school in any traditional way." The parent was not comfortable with this statement and wanted it to be investigated. The IDEA states that if a parent believes that information in the education records collected, maintained, or used for IDEA purposes, is inaccurate or misleading or violates the privacy or other rights of the student, the parent may request with the participating agency (here the District) that maintains the information to amend the information. The Department informed the parent that it would not investigate this allegation unless the parent first worked with District to amend the record as prescribed by the IDEA.

The parent also alleged that the District did not send general documents to the parent in a timely manner. Specifically, the parent alleged that the District did not send the parent a copy of a Behavior Contract allegedly dated on August 31, 2011. The Department informed the parent that it would not investigate this allegation but that the parent could pursue this allegation as a potential Family Educational Rights and Privacy Act (FERPA) violation at the District level. The Department has no jurisdiction to investigate these particular claims under OAR 581-015-2030 or Federal law.

**III. FINDINGS OF FACT**

- 1) The student is 17 years old and resides in the Bethel School District. However, since the beginning of the 2012-2013 school year, the student has attended an alternative program in a neighboring school district. The Bethel School District pays the tuition for the student to attend this program, and is responsible for the provision of special education and related services to the student.
- 2) From September 6, 2011, to December 8, 2011 the student attended Kalapuya High School<sup>3</sup> in the District. From December 8, 2011 until September 6, 2012, the student was not enrolled in the resident District.<sup>4</sup>
- 3) During the time the student attended Kalapuya High School, students worked in small groups with one teacher for a nine week period of time on one major subject. In these small groups, students worked at their own pace and skill level and teachers used a differentiated instruction model with each group. At the end of the nine week period, the group of students transferred as a group to another teacher and began work on a new major subject.

<sup>3</sup> Kalapuya High School is a public alternative high school in the District, serving students who have not had success in a more traditional high school model.

<sup>4</sup> The student did receive tutoring from the District during the summer of 2012. See Fact 16.

- 4) The student is eligible for special education as a student with an Emotional Disturbance, reestablished on August 31, 2011. Also on August 31, 2011, the District team wrote an IEP for the student.
- 5) In the August 31, 2011 IEP Present Level of Academic Achievement and Functional Performance (PLAAFP) statement, the team noted that the student is pleasant, hard-working, wants to do well in school and is able to communicate well with staff. The team also noted that the student has anxiety about school as well as emotional responses to stress and this makes "mainstream education difficult without support."
- 6) The parent expressed concerns in the PLAAFP about the student's emotional needs and stated that the student should be addressed with care and respect. Both staff and the parent noted concerns about the student earning graduation credits.
- 7) In describing the student's academic skills, the team wrote that the student read 208 words per minute on a 9<sup>th</sup> grade reading sample and scored 14 of 20 problems correct on a math assessment.<sup>5</sup>
- 8) The other components of the September 29, 2011 IEP are outlined in the table below:

Consideration of Special Factors	<ul style="list-style-type: none"> <li>• Exhibits behavior that impedes the student's learning or the learning of others.</li> </ul>
Transition	<ul style="list-style-type: none"> <li>• The student is undecided as to a career path, enjoys computers, but has not really determined if this is the direction in which to go;</li> <li>• The student is taking general education classes to meet requirements to graduate high school with a diploma; and</li> <li>• Anticipated graduation date: 6/15/13 with regular diploma.</li> </ul>
Assessment	<ul style="list-style-type: none"> <li>• No Statewide or District-wide assessments will be administered at student's current grade level.</li> </ul>
Goals	<ul style="list-style-type: none"> <li>• Behavior—When frustrated, the student will seek support and help from adults; and</li> <li>• Transition—The student will work with the transition specialist to determine career goals and interests.</li> </ul>
Specially Designed Instruction	<ul style="list-style-type: none"> <li>• Behavior—50 minutes weekly, in general and special education classroom; and</li> <li>• Transition—50 minutes monthly in general and special education classroom.</li> </ul>
Related Services	<ul style="list-style-type: none"> <li>• Team determined none needed.</li> </ul>
Supplementary Aids and Services; Modifications and Accommodations; Supports for School	<ul style="list-style-type: none"> <li>• Quiet space for work when needed; and</li> <li>• Extended time on assignments and tests.</li> </ul>

<sup>5</sup> There is no information in the PLAAFP about what assessment instruments were used to obtain these results.

Personnel	
Non-participation justification	<ul style="list-style-type: none"> <li>• Student does not need to be removed from participating with nondisabled students in the regular classroom.</li> </ul>

- 9) Based on the IEP, the IEP team chose the only placement option it considered: "Small group instruction with available support meets student's educational needs."
- 10) The first page of the IEP and the placement page reflect that the parent, the student, the special education and general education teachers and the school principal were invited to the IEP meeting held on August 31, 2011. The parent disputes the attendance of the general education teacher and the principal; and, in fact, alleges that there was no formal IEP meeting held on that date. The District disagrees with both of these allegations. The parent states that the only persons present at the meeting were the parent, the student, and the District special education teacher. The District does not require team members to sign the IEP document, and so there are no signatures indicating who was actually present at the meeting.
- 11) The parent agrees that on August 31, 2011, the parent and the student met with the District special education teacher to discuss an "Academic/Behavior Contract." The District special education teacher stated that this is a generic contract used with many students at Kalapuya High School to help them define their individual support needs for success in the program. At this meeting, the parent, student and special education teacher agreed the student needed the following components in order to have a successful school year.
- a. Take notes and use them;
  - b. 90% attendance;
  - c. Find your trust person;
  - d. Complete work and turn in on time;
  - e. Avoid shut down/angry –catch it ahead of time (sic); and
  - f. Let us know there is a problem.
- 12) In addition, the special education teacher agreed that staff would:
- a. Small schools and classes (sic);
  - b. Fair treatment (sic);
  - c. Check in and support;
  - d. Offer food--protein;
  - e. Listen; and
  - f. Help to encourage and meet goals.
- 13) The parent agreed to:
- a. Let the student handle most situations;
  - b. Contrive (sic) to encourage the student; and
  - c. Support the student moving through things.
- 14) The parent and the District agree that during the first nine weeks of the 2011-2012 school year, the student did well and made progress. The school principal, general education

teacher and special education teacher all provided support to the student. The student attended classes and completed 1.75 credits with a GPA of 2.62.<sup>6</sup>

- 15) When the student changed teachers at the end of the first nine week period, the situation changed. The student felt the new teacher did not provide enough support. The student went on a field trip with this teacher and other students in late November 2011, and the student felt the trip was unsuccessful. As a result, the student left the program on December 8, 2011, and did not return to school for the remainder of the 2011-2012 school year.
- 16) From January 2012 through June 2012, the District offered tutoring to the student. In mid-March, the student met with one tutor for one session. The student did not like the setting (a local recreation and swimming center) in which they met and refused to return for another session. In June 2012, the District arranged for the student to meet with another tutor. The student liked this tutor and agreed to work with the tutor during the summer of 2012. During this time, the student wrote three papers and earned .5 additional Language Arts credit.
- 17) On September 5, 2012, the IEP team met again and rewrote the student's IEP. This IEP team included members of the new alternative school in the neighboring district, as well as the parent and the student and the special education teacher from the previous school. The team retained the same goals and the same amount of specially designed instruction as in the August 31, 2011 IEP. However, the team added four new supplementary aids/services, modifications and accommodations. These are:
  - a. Check in and Check out with trusted adult;
  - b. Inform ahead of time any changes in assignments or deviations from schedule;
  - c. Choice in activity, when possible/appropriate (sic); and
  - d. Option to type papers (sic).
- 18) At this IEP meeting the team chose a mainstream placement for the student which allowed for the student greater participation with non-disabled peers. This placement also included small group instruction with available support.
- 19) To date, the student has attended school 80% of the available days, and earned 1.7 credits in the first semester.

#### **IV. DISCUSSION**

##### **When IEP's Are In Effect:**

The parent alleged that the District violated IDEA by failing to implement the IEP properly when it discontinued the daily "check in—check out" support system that was used to keep the student on track to complete assignments. (OAR 581-015-2220, OAR 581-015-2205, 34 CFR 300.320 and 34 CFR 300.323)

A District meets a procedural and substantive responsibility to provide a free and appropriate

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<sup>6</sup> During the time the student attended in the first semester of the 2011-2012 school year, the student took five classes and received a grade of A-in Algebra 1; A in Community Service; C in Contemporary U.S. Issues; Pass in Fitness/Conditioning, and C in Literature of a Theme.

public education when it implements an appropriate IEP for an individual student as the team has written it. Under OAR 581-015-2220, the District must have an IEP in effect for each student with a disability in the District. Furthermore, the District must provide special education and related services to each child with a disability in accordance with the IEP.

The parent filed this complaint with the Department because the parent believed that the lack of the “check in and check out” system had contributed to the student’s refusal to attend school beginning in December 2011. At the time the parent filed the complaint, the parent believed the Academic and Behavior Contract the parent, student and special education teacher discussed and signed was the actual IEP. The parent alleges never seeing the IEP written on August 31, 2011 and additionally contends that the general education teacher and principal did not attend the meeting. The District disputes this, but there are no meeting minutes, and no signatures on the IEP. It is noteworthy here that August 31, 2011 is outside of the one year period allowed for State agencies to investigate IDEA complaints, so the Department cannot fully investigate this particular matter.<sup>7</sup>

The parent attributes the student’s refusal to continue attending school to the parent’s belief that teachers at the school had quit supporting the student with the “check in and support” system. The student’s “trusted person” provided this support as defined on the Academic/Behavior Contract. Since September 2012, the student has been successful in the new program; and the “check in and out with a trusted adult” procedure is an identified supplementary service on the student’s September 5, 2012 IEP. This support is implemented by a variety of staff in the new setting.

Under OAR 581-015-2030, a complaint investigation covers a one year period. The parent filed the complaint on December 10, 2012, alleging that the District had not provided a daily “check in—check out” system during the 2011-2012 school year. The one year period under investigation was from December 11, 2011 to the filing of the complaint on December 10, 2012. During this one year time period, the student received services as per an IEP written on August 31, 2011. That IEP did not specify a daily “check in—check out” system. However, this service had been available to and used by the student as part of the alternative high school program. The student stopped attending the District alternative high school on December 8, 2011, and did not attend for the remainder of the 2011-2012 school year. Once the student returned to school in September 2012, the team wrote a new IEP (9/5/2012) and added the “check in check out with trusted adult” system as a supplementary service. This supplementary service has been implemented in the new setting. For these reasons, the Department does not substantiate the allegation and orders no corrective action.

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<sup>7</sup> See OAR 581-015-2030

**CORRECTIVE ACTION<sup>8</sup>**

*In the Matter of Bethel School District #52  
Case No. 12-054-037*

The Department does not order any Corrective Action resulting from this investigation.

Dated: February 28, 2013



Sarah Drinkwater, Ph.D.  
Interim Assistant Superintendent  
Office of Student Learning & Partnerships

Mailing Date: February 28, 2013

APPEAL RIGHTS: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which you reside. Judicial review is pursuant to the provisions of ORS 183.484.

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<sup>8</sup> The Department's order shall include any necessary corrective action as well as documentation to ensure that the corrective action has been completed (OAR 581-015-2030(13)). The Department expects and requires the timely completion of corrective action and will verify that the corrective action has been completed as specified in any final order (OAR 581-015-2030(15)). The Department may initiate remedies against a party who refuses to voluntarily comply with a plan of correction (OAR 581-015-2030(17) & (18)).