

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of:)	
Beaverton School District 48J)	FINDINGS OF FACT,
)	CONCLUSIONS,
)	AND FINAL ORDER
)	Case No. 19-054-023

I. BACKGROUND

On May 23, 2019, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the Parent (Parent) of a student (Student) who receives special education services from the Beaverton School District 48J (District). The Department confirmed receipt of the Complaint and forwarded it to the District on May 23, 2019.

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 Parent and the District agree to the extension to engage in mediation or local resolution of the complaint, or for extenuating circumstances. A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.² Based on the date the Department received the Complaint, the relevant period for this Complaint investigation is May 24, 2018 through May 23, 2019.

On June 3, 2019, 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 June 17, 2019. The Final Order is due to be issued on July 22, 2019.

On June 18, 2019, the District submitted a packet of materials for the Department’s Complaint Investigator (Investigator). These materials included in the submission are listed below:

1. IEPs, IEP meeting notices, and IEP meeting minutes
2. Prior Written Notices
3. Documents describing how the District implemented Student’s IEP
4. Communications between the Parents and the District
5. Attendance records, progress reports, and report cards
6. Data and documents which explain the positive behavior interventions and supports created and implemented for Student
7. District policies and practices relating to a parent’s visitation and observation of the Student in the school setting
8. Assessment Reports

The Investigator determined that on-site interviews were necessary. On June 23, 2019, the Investigator interviewed the Parents. On June 25, 2019 the Investigator interviewed the District’s

¹ 34 CFR § 300.152(a); Oregon Administrative Rule (OAR) 581-015-2030(12).

² 34 CFR § 300.152(b); OAR 581-015-2030(5).

Special Education Facilitator, the Classroom teacher, the Autism Consultant and the High School Assistant Principal.

The 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 the Complaint.³ 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 on the Discussion in Section IV.

<p>1. Additional Parent Participation Requirements for IEP and Placement Meetings</p> <p>The Parent alleges the District violated the IDEA when it did not give the Parent a copy of the child's IEP after the IEP meeting.</p> <p>(34 CFR § 300.322(f); OAR 581-015-2195(5))</p>	<p>Not Substantiated</p> <p>The District did not promptly deliver the Parent a copy of the Student's March 15, 2019 IEP. However, there is no indication the delay hindered the Parent's opportunity to meaningfully participate in the IEP process, nor that any of the Student's services were held up by the delay.</p>
<p>2. Content of the IEP</p> <p>The Parent alleges the District violated the IDEA when it suggested goals to the IEP Team that were not based on the child's abilities and needs.</p> <p>(34 CFR § 300.320; OAR 581-015-2200)</p>	<p>Not Substantiated</p> <p>A review of the record along with interviews with District staff and the Parents revealed that the Student's goals and short-term objectives were appropriate and added with the Student's specific needs in mind.</p>
<p>3. IEP Team and Definition of Parent</p> <p>The Parent alleges the District violated the IDEA when it informed one of the biological parents of the child that the stepparent was not allowed to participate in the IEP process.</p> <p>(34 CFR §§ 300.321(a)(1), 300.30(a)(4); OARs 581-015-2210(1)(a), 581-015-2000(26)(a)(D))</p>	<p>Not Substantiated</p> <p>The Student's stepparent was involved in IEP Team meetings and regular email communications with District staff.</p>

³ 34 CFR §§ 300.151-153; OAR 581-015-2030.

4.	<p>IEP Team Considerations and Special Factors</p> <p>The Parent alleges the District has failed to consider the use of positive behavior interventions and supports to address the Student's behavior. This failure to consider such interventions and supports has impeded the child's learning.</p> <p>(34 CFR § 300.324(a)(2)(i); OAR 581-015-2205(3)(a))</p>	<p>Not Substantiated</p> <p>The District provided a variety of positive behavioral interventions, strategies and supports for the Student across the classroom and school environment.</p>
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Issues Outside the Scope of This Investigation

The Parent alleges the District has refused to allow either Parent to visit and observe the child in the school setting.⁴ The IDEA does not provide for parents of children with disabilities to observe their children in any current classroom or proposed educational placement. The determination of who has access to classroom may be address by state and/or local policy. The Parent may file a complaint with the District about this issue using the District's complaint policy.⁵

The Parent requests the following action be implemented as a resolution to the Complaint:

Change of classroom

III. FINDINGS OF FACT

1. The Student is fifteen years old and began attending school in the District midway through the 2017-2018 school year. The Student's family immigrated to the United States from Brazil.
2. The Student fluently understands three languages, but has limited expressive communication. The Parent reports that the Student rates in the very low range in the area of adaptive skills with the exception of home living and self-care, which the Parent rates as only slightly below average.
3. The Student was born in Brazil, but from the time the Student was two years old to kindergarten age, the Student's family resided in the United States. During that time, the Student was diagnosed with Autism Spectrum Disorder and received some Early Childhood Special Education services.
4. The family returned to Brazil around the time the Student was in kindergarten. The Student attended a public elementary school that did not offer special education services. The Student

⁴ The investigative record shows that at the April 29, 2019 IEP team meeting, the District expressed that it was agreeable to the stepparent observing the Student's classroom for a period of thirty minutes, but would not agree to the stepparent's proposal—that the Student's classroom teacher be removed from the classroom so the stepparent could teach the classroom teacher how to work with the Student.

⁵ *Letter to Mamas*, 42 IDELR 10 (OSEP 2004).

was assigned a full-time educational assistant and also spent time receiving homeschooling while in Brazil.

5. In the spring of the 2017-2018 school year, the Parents notified the District that their child would be eligible for special education services and asked the District to evaluate the Student and then write an Individualized Education Program (IEP), if appropriate.
6. The Student lives with their Parent and stepparent. The Student's other biological parent lives outside the United States and shares custody.
7. The Student's stepparent registered the Student and a sibling with the District. According to District policies and procedures, only a biological parent can give the District permission to grant educational rights to a non-custodial parent. At the time of registration, the Student's stepparent was not listed as someone who could receive educational information about the Student.
8. On April 19, 2018, the Parents⁶ met with a team⁷ of educators from the Student's home middle school. The Parents provided a history of the Student and the team agreed to conduct an evaluation to determine special education eligibility. While the evaluation was underway, the District offered to develop an academic program and support the Student in the general education environment. The Parents declined the District's offer and opted to homeschool the Student until the District evaluation was complete and a plan was in place for the start of the 2018-2019 school year. The Parents signed a consent for the evaluation.
9. In May 2019, as part of the evaluation, the Student was observed during a cooking activity at the family's home and on a community grocery shopping trip with the Parents. The District team also conducted assessments, obtained a developmental history, medical statement, and information gathered on an Adaptive Scale and an Autism Rating scale completed by the Parent.
10. On May 31, 2018, the team met to consider the results of the District evaluation. Test results suggested significant weaknesses in the areas of reading comprehension, math calculations, math problem solving and written expression, and relative academic strengths in basic reading skills, spelling, counting, and identifying shapes.
11. Cognitive testing indicated the Student's overall skills were in the extremely low range, except for a relative strength in the area of Matrices—recognition of patterns. The Student tested in the extremely low range in overall adaptive skills, with isolated strengths in Home Living and Self-Care. The Student was found to be in the very elevated range of areas associated with Autism Spectrum Disorder, including social/communication, peer socialization, and social/emotional reciprocity. The Student was elevated in the areas of unusual behaviors, adult socialization, behavioral rigidity, sensory sensitivity, and attention.
12. Information gathered during the evaluation suggested that it is difficult for the Student to initiate tasks. The Student responded well to schedules and prompting, as well as opportunities to practice skills in the community.

⁶ The term "Parents" in this Final Order refers to the Parent and stepparent.

⁷ Special Education Administrator, School Psychologist, Speech Language Pathologist, Learning Specialist and Autism Consultant.

13. The team found the Student eligible for special education as a student with Autism Spectrum Disorder and at the May 31, 2018 meeting developed an IEP for the Student.
14. The IEP Team determined that the Student had behaviors that impeded the Student's learning.
15. The Team developed goals in the areas of Functional Communication, Functional Reading, Functional Math, Adaptive Physical Education, Self-Direction/Independence, Social Skills, and Functional Written Language.
16. The Team decided on providing the Student with specially designed instruction in the areas of Communication (90 minutes per month), Adapted PE (45 minutes per week), Functional Academics (60 minutes per week), Self Direction/Independence (30 minutes per week), and Social Skills (45 minutes per week) The IEP's supplementary aids and services included a visual schedule with supports and verbal reinforcement.
17. The District offered a placement for the Student in the Structured Routines Center (SRC)⁸ for the remainder of the 2017-2018 school year, but the Parents declined the offer of placement in favor of home schooling.
18. The Student began attending school on September 4, 2018 in the SRC. As reported on November 9, 2018, February 1, 2019, and April 5, 2019 progress reports, the Student made continuous progress on IEP goal short-term objectives, with the exception of one objective in Functional Written Language. The Student maintained a 93% attendance rate and received no disciplinary referrals that necessitated action outside of the SRC.⁹
19. The IEP Team met again on March 15, 2019 and increased the expected skill level in the goals for Functional Communication and Social Skills. The Student's classroom teacher presented a document with some suggested Functional Goals for communication, self-direction/independence, social skills and academics. The Functional Academics goal embedded reading, math and writing in real-life situations, with visuals. At the bottom of the document, the Student's classroom teacher included a sample list of activities that served as proposed short-term objectives for the academic goal. The list erroneously included the first name of another student in the SRC.
20. The Team reviewed all areas of the IEP at that meeting, and in the meeting minutes the recorder notes the Parents stated they liked the goals. On April 19, 2019, the District sent the Parents a copy of the March 15, 2019 IEP.
21. On April 19, 2019, the Parents sent an email to the Student's classroom teacher and asked that the Parents be allowed to observe and evaluate some alternative placements for the Student in other schools. Also in this email, the Student's stepparent informed the teacher that the stepparent had not received a copy of the March 15, 2019 IEP.
22. After a lengthy exchange of emails, and at the Parents' request, the IEP Team met again on April 29, 2019. The Parents asked to address the communication between home and school, dietary restrictions, and questions they had about the Student's placement and location. The

⁸ By its design, the Structured Routines Center has social skills, behavioral management, functional living skills, and positive reinforcement techniques embedded in the daily program of academic instruction.

⁹ The Student was involved in some isolated behavior incidents during the 2018-2019 school year. On September 4, 2018, the Student pulled the school's fire alarm. On September 8, 2018, the Student hit himself. On April 19, 2019, the Student slapped a District staff member, then quickly calmed when the staff member was "switched out."

District offered to amend the Student's IEP to include home-school communications and to consider and possibly conduct a Functional Behavioral Assessment and Behavior Support Plan. The Team discussed adding a section to the Home-School Communication Plan reporting what the Student eats at school.

23. District members of the IEP Team proposed adjourning the meeting after the stepparent used profanity and refused to acknowledge comments made by the District Special Education Facilitator. The meeting continued for a brief period of time, in which the District noted it was agreeable to the stepparent observing the Student's classroom for a period of thirty minutes, but would not agree to the stepparent's proposal—that the Student's classroom teacher be removed from the classroom so the stepparent could teach the classroom teacher how to work with the Student.
24. The Parents asked for another placement and expressed frustration that they were not allowed to spend time in the classroom "transferring information" about the Student to the teacher. The meeting concluded with the District offering again to institute a Home-School Communication Plan, to conduct a Functional Behavioral Analysis and establish a Behavior Support Plan for the Student.¹⁰ District staff offered the Parents the opportunity to write down ideas, reinforcers, and suggestions about the Student for the staff.
25. At the very end of the meeting the Student's stepparent complained about not receiving emails about the Student and the teacher explained the Student's stepparent was not listed on the official District information page as someone who could receive educational information about the Student. The District administrator took the Parents to the office and the Parent authorized the Student's stepparent to receive the information.
26. Throughout the Complaint period, the Parent and the Student's stepparent were in regular email communication with District personnel. The Parent and the Student's stepparent attended each of the three IEP Team Meetings that convened during the Complaint period.
27. The Parent filed this Complaint on May 23, 2019.

III. DISCUSSION

A. Additional Parent Participation Requirements for IEP and Placement Meetings

The Parent alleges the District violated the Individuals with Disabilities Education Act (IDEA) when it did not give the Parent a copy of the child's IEP after the IEP meeting. A school district must give the parent a copy of the IEP at no cost to the parent.¹¹ Neither IDEA nor Oregon Statute or Administrative Rules establish a timeline within which the District must give the Parents a copy. Nineteen school days elapsed between the March 15, 2019 IEP Team Meeting and when the Parent received a copy of it. The record demonstrates that the District was not prompt in providing the Parent a complete copy of the Student IEP. However, there is no indication that such delay hindered the Parent's opportunity to meaningfully participate in the IEP process, nor that any of the Student's services pursuant to the IEP were held up by the delay. The Department does not substantiate this allegation.

¹⁰ Staff added the Parents concerns to the PLAAFP statement in the IEP, changed the academic SDI to Functional Academics for a total of 360 minutes weekly to be provided in the Special Education classroom, and added parent school communication as an accommodation.

¹¹ 34 CFR § 300.327(f); OAR 581-015-2195(5).

B. Content of the IEP

The Parent alleges the District violated the IDEA when it suggested goals to the IEP Team that were not based on the Student's abilities and needs. A school district must write an IEP that contains a statement of measurable annual goals designed to meet the needs that result from the child's disability so that the child can be involved in and make progress in the general education curriculum.¹² Additionally, the District must consider the "use of positive behavioral interventions and supports to address the needs of a student whose behavior impedes his or her learning or that of others."¹³

On March 15, 2019 the Student's classroom teacher suggested modifying the Student's academic goals to combine them into one functional goal that addressed the Student's needs in reading, math, and writing in real world situations. As a part of this process, the Student's classroom teacher included a sample list of activities that served as proposed short-term objectives for the Student's academic goal. The classroom teacher inadvertently and erroneously included the first name of another student in the SRC. At a subsequent IEP Team Meeting on April 29, 2019, the Parents expressed a belief that the list was not actually written for their child.

Despite the incorrect student being named on the list, the Parents approved of the functional goal's development. A review of the record along with interviews with District staff and the Parents confirmed that this goal was an appropriate one that was written specifically for the Student. The Department does not substantiate this allegation.

C. IEP Team and Definition of Parent

The Parent alleges the District violated the IDEA when it informed one of the biological parents of the child that the stepparent was not allowed to participate in the IEP process. Stepparents are included in the IDEA's description of "Parent."¹⁴ The Student's stepparent consistently communicated by email with the District during the Complaint period. Also, both the Parent and the Student's stepparent attended and actively participated in each of the three IEP Team Meetings that convened during the Complaint period. When the Student's stepparent pointed out that the District was not sending the stepparent certain communications, District staff noted that the District's information system only included the Parent as eligible for receipt of IEPs. Once this issue was raised, the District obtained authorization from the Parent so that the Student's stepparent would receive the same information as the Parent. The Department does not substantiate this allegation.

D. IEP Team Considerations and Special Factors

The Parent alleges the District failed to consider the use of positive behavior interventions and supports to address the Student's behavior, and such a failure has impeded the Student's learning. In developing, reviewing, and revising a student's IEP, the IEP team must consider certain special factors. For a student whose behavior impedes the student's learning or the learning of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies to address that behavior.¹⁵

¹² 34 CFR § 300.320; OAR 581-015-2200.

¹³ 34 CFR § 300.324 (a) (2) (i) and OAR 581-015-2205 (3) (a)

¹⁴ 34 CFR § 300.321(a)(1); 300.30(a)(4); OARs 581-015-2210(1)(a), 581-015-2000(26)(a)(D).

¹⁵ 34 CFR § 300.324(a)(2)(i); OAR 581-015-2205(3)(a).

School districts can develop and implement any number of positive behavioral interventions, supports, and strategies. They can exist in the school or class environment as well as in a Student's IEP. In this case, the IEP Team placed the Student in the SRC, where many positive behavioral interventions, supports, and strategies are embedded into the program. Additionally, the Student's IEP contained goals oriented toward independently completing preferred and non-preferred tasks, engaging in turn-taking with peers, respecting personal boundaries, and identifying and initiating appropriate signs of affection for District staff and peers. The record shows that the Student was involved in some isolated behavior incidents, but nevertheless consistently made progress on IEP goals related to behavior during the 2018-2019 school year. At the April 29, 2019 IEP Meeting, the District agreed to conduct a functional behavioral assessment and consider the development of a behavior support plan. The District provided a variety of appropriate positive behavioral interventions, strategies, and supports for the Student. The Department does not substantiate this allegation.

CORRECTIVE ACTION¹⁶

In the Matter of Beaverton School District 48J

Case No. 19-054-023

The Department does not order corrective action in this matter.

Dated: this 22nd day of July, 2019

Candace Pelt, Ed.D

Candace Pelt Ed.D
Assistant Superintendent
Office of Student Services

Mailing Date: July 22, 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).)

¹⁶ 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)).