

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of:) FINDINGS OF FACT,
Bethel School District 52) CONCLUSIONS,
AND FINAL ORDER
Case No. 19-054-009

I. BACKGROUND

On March 8, 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 lives in and receives special education services from the Bethel School District 52 (District). The Department confirmed receipt of the Complaint and forwarded it to the District on March 8, 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 is March 9, 2018 through March 8, 2019.

On March 18, 2019, the Department's Complaint Investigator (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 April 2, 2019. The Final Order is due to be issued on May 7, 2019.

On April 2, 2019, the District submitted a packet of materials for the Department's Complaint Investigator (Investigator). These materials are listed below:

1. Table of Contents
2. February 5, 2019 IEP, including meeting notice, meeting minutes, written notice, and placement. Also includes meeting notice for a meeting scheduled for April 2, 2019
3. February 9, 2018 IEP, including meeting notice, meeting minutes, written notice and placement
4. November 14, 2017 IEP Amendment, including meeting notice, meeting minutes, written notice and placement
5. September 20, 2017 IEP Amendment, including meeting notice, meeting minutes, written notice and placement

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).

6. February 15, 2017 IEP, including meeting notice, meeting minutes, written notice and placement
7. Schedules
8. District calendars
9. Current FBA, BSP, point sheets
10. 2018 FBA, BSP, data
11. Report cards, benchmark data, on-track reports
12. Communication
13. District staff

The Investigator determined that on-site interviews were necessary. On April 8, 2019, the Investigator interviewed the Parent. On April 9, 2019, the Investigator interviewed the Special Education Director, District Behavior Consultant, two resource room teachers, a general education teacher and the Principal. On April 26, 2019, the Investigator interviewed by phone a staff member from a community service organization that supports the family.

The Investigator reviewed and considered the previously-described 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. This complaint covers the one-year period from March 9, 2018 through March 8, 2019.

1.	<p><u>When IEPs Must Be in Effect</u></p> <p>The Parent alleges the District violated the IDEA when:</p> <p>a. It did not provide the requisite amount of specially designed instruction, supplemental aids and services and related services as specified in the Student’s IEP. The Parent alleges the services were not provided in a consistent manner so that the Student made reasonable progress considering the Student’s personal circumstances; and,</p>	<p><u>Not Substantiated</u></p> <p>The Student’s IEP was appropriately ambitious in light of the Student’s circumstances. The Student’s IEP was consistently implemented and data collected by the District demonstrated that the Student’s behavior improved in the general education classroom, as did the Student’s academic achievement, specifically in reading and math.</p>
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³ 34 CFR §§ 300.151-153; OAR 581-015-2030.

	<p>b. It did not inform each teacher and provider who is responsible for implementing the IEP about changes in the Student's IEP or the plan for implementing the IEP.</p> <p>(34 CFR §300.323 and OAR 581-015-2220(1)(b)(3))</p>	
<p>2.</p>	<p><u>Review and Revision of IEPs</u></p> <p>The Parent alleges the District violated the IDEA when it did not review and revise the Student's IEP after the Student's placement was changed from full-time in the Educational Resource Room to full time in a general education environment. Specifically, the Student's Behavior Support Plan (BSP) was not revised until an IEP Meeting on February 5, 2019, at which time the BSP had been out of date for a year.</p> <p>(34 CFR § 300.324 (b)(ii)(E); OAR 581-015-2225(1)(E))</p>	<p><u>Substantiated in Part</u></p> <p>During the period under investigation, the Student's BSP was consistently effective and contained flexibility to allow for District staff to adjust components of the BSP within its existing structure. The Department does not substantiate this allegation.</p> <p>Although it did not negatively affect the Student's educational plan, and both the District and the Parent were in agreement with the decision-making, the District did not timely amend the Student's IEP to reflect the Student's change in placement. The Department substantiates this allegation.</p>

<p><u>Requested Corrective Action</u></p>
<p>The Parent requests the following actions be implemented as resolutions to the Complaint:</p> <ol style="list-style-type: none"> 1. I would like the school and District to make up for their lack of support by offering and paying for tutoring to get [the Student] caught up to grade level. 2. I'd like them to possibly support [the Student] 6th to 8th grade or pay for [the Student] to go to another program. We can then discuss how our family will be compensated for this.

III. FINDINGS OF FACT

1. The Student is nine years old and in the fifth grade. The Student is eligible for special education as a student with an Emotional Disturbance, re-established on February 5, 2019.⁴ The Student also has a medical diagnosis of Anxiety and Oppositional Defiance Disorder.
2. Currently, the Student attends a K-8 school which has two Extended Resource Rooms⁵ (ERR). The ERR is designed to support students who need a more restrictive placement than a resource room. The ERR offers more specialized instruction in academics and behavior for students requiring a higher level of support.⁶ Students in this program receive special education services and are mainstreamed into the general education environment to the extent they can be successful. Additional adult support is frequently provided when ERR students attend general education classes, but instructional assistants are not assigned to specific students.
3. At the beginning of this complaint period, the Student received services under a February 9, 2018 Individualized Education Program (IEP). The Student is described as a friendly person who cares about peers, does well in physical education and recess, and is extremely gifted at working with younger peers. The Student's reading Lexile was 615. The IEP reports that as of February 2018, the Student was able to read 61 cwpm⁷ with one error at the third grade level and 52 cwpm at the fourth grade level.
4. The Student could solve grade level math problems and equations with prompting and adult support. At that time, writing was a non-preferred activity for the Student, who needed adult support for writing sentences and spelling.
5. Behaviorally, the Student needed the greatest amount of support. When the Student perceived academic work to be difficult, the Student would argue, yell, talk-out, make rude comments, and leave the work area. In February 2018, the Student was achieving an overall average of 91% on three⁸ daily behavioral goals.
6. The Student's February 9, 2018 IEP contained goals in the following five areas: (1) Accept adult feedback without comment or negative response; (2) Communicate needs using pro-social ways; (3) Increase overall reading skills by reading at least 90 cwpm on a grade level passage; (4) Write at least a five-sentence paragraph; and (5) Demonstrate fluency in digit multiplication.

⁴ During the 2015-16 school year, the Student was placed in a residential program for 90 days and then received services in a Day Treatment Program. Since then, the Student and family have continued to receive "Wrap-Around" support services from the same program. The Student attends counseling sessions and has an In-School Behavioral Skills Trainer who provides support several times per week.

⁵ One classroom each for students in grades 1-3 and 4-5. Other schools in the District have ERR programs for students in grades 6-8.

⁶ <http://www.bethel.k12.or.us/specialservices/extended-resource-room/>.

⁷ Correct Words Per Minute (cwpm)

⁸ Be Safe, Be Responsible, Be Kind.

7. The Student's February 9, 2018 IEP outlined the provision of specially designed instruction (SDI) for 60 minutes in written language, 150 minutes each in reading and math, and 60 minutes in behavior—all to be provided weekly at the school site. The IEP also references a Behavior Support Plan (BSP). The primary behaviors of concern in the BSP are identified as arguing with teachers, name calling, rudeness to peers and adults, and avoiding non-preferred work. In addition, the Student leaves work groups, gets in teachers' spaces, reacts to peers, and provokes and threatens to hurt staff. The BSP outlines where and when these behaviors are most likely to occur and provides specific instructions to staff for skills to be taught, prevention and consequences of behavior, and positive reinforcement to be provided to the Student. Finally, the team wrote that the Student would be removed from the general education classroom for 74% of the school day to receive SDI. The team identified the Student's placement as the Extended Resource Room.
8. On April 27, 2018, the District ERR Teacher⁹ suggested to the Parent that they change the Student's placement to spend more time in the general education environment with ERR staff support. The ERR Teacher noted the Student "still seems to do better in the general education setting", as opposed to the more restrictive ERR. The Parent agreed, and on May 7, 2018, the Student began attending more time in a fourth grade general education classroom with adult support from the ERR. The District did not amend the Student's IEP or provide a Prior Written Notice to memorialize this significant reduction in time spent outside of the general education environment.¹⁰ The District's stated reason was because the Student still received specially designed instruction from ERR instructional assistants while in the fourth grade general education classroom.
9. ERR staff maintained daily data regarding the Student on a point sheet. ERR staff recorded the Student's behavior in three main areas: safety, responsibility, and kindness. The Student received 1, 2, or 3 points (3 points signified the Student met the goal completely) each 30-minute period of each day. A month before the placement change to the general education classroom, the Student earned 80-90% on 11 of 29 days. After the change, the Student earned 80-90% on 25 of 26 days.
10. The Parent and District staff agreed to maintain the general education schedule when the Student began fifth grade on September 4, 2018. The ERR Teacher who had worked with the Student during the 2017-2018 school year transferred to another position and the District hired a new teacher for that program. The new teacher left the District several months after the school year began, at which time the program was staffed by substitute teachers until January 2019. In addition to the change in ERR teachers, several instructional assistants left the program and were replaced by new instructional assistants.

⁹ The ERR Teacher and the Parent maintained almost daily texting contact throughout the 2017-2018 school year.

¹⁰ The Student's February 9, 2018 IEP notes that the Student will be removed from the general education environment for 74% of the day. The Student's February 5, 2019 IEP notes that the Student would be removed from the general education environment for only 15% of the day. The description of the Student's placement in the ERR remained the same in both IEPs.

11. From September 2018 through January 2019, the Student continued to attend a general education fifth grade classroom and received SDI from the ERR assistants. District staff continued to monitor the Student's behavior using the same point sheet that had been used during the Student's fourth grade year.
12. From October 9, 2018 through November 1, 2018, District staff collected data on the three positive behaviors: safety, responsibility, and respect. On November 5, 2018, District staff added a fourth behavior, "Task Completed."
13. Between January 22, 2019 and February 4, 2019 District staff collected data on two negative behaviors (eloping classroom and disrespect) and one positive behavior (completed assignment). During this time, District staff noted an average of ten negative behaviors per day; with a low of 3 on one day, and a high of 17 on another day. On February 6, 2019, District staff returned to charting the positive behaviors. Between October 9, 2018 and March 19, 2019, the Student averaged a daily 92% on positive behaviors. The data sheets note a significant number of times staff recorded the Student having difficulty but being able to take a break and get "back on track."
14. On December 3, 2018, the Parent requested that the District conduct a Functional Behavior Assessment (FBA), develop a BSP, and hold an IEP meeting. The District Behavior Specialist informed the Parent on December 6, 2018 that a consent form was ready for the Parent to sign, and that the evaluation and IEP meeting would be organized. The team conducted the FBA between January 23 and January 31, 2019. Again, the team focused on the primary behaviors of arguing with teachers, name calling, rudeness to peers and adults, and avoiding non-preferred work. The team noted that the Student's disruptive behavior is often triggered when academic work becomes too difficult for the Student.
15. The revised BSP identified specific changes to be made in the Student's environment to prevent the Student from disrupting the class. For example, the Student volunteered in a class for younger students as a peer helper. The Behavior Specialist prepared a one-page "CliffsNotes" version for the general education staff, which listed the behavioral goals, phrases or strategies to use, the Student's break plan, and triggers. This was distributed to all staff who worked with the Student. The team also included the development of a middle school transition plan as part of the BSP.
16. The resource room teacher who was providing SDI in reading and writing to the Student reported that in the middle of January 2019 the Student decided to no longer attend that class. The Student was argumentative with District staff and refused to leave the general education classroom to go to the resource room. The team tried a variety of strategies to persuade the Student to continue to attend, but the Student refused. After several weeks, the resource room teacher and the ERR teacher rearranged the plan and an instructional assistant began providing reading and writing SDI 1:1 to the Student in the general education setting.
17. The IEP Team met on February 5, 2019. In the IEP, the Team noted the Student continued to demonstrate good humor, the ability to be a great help to younger students and a good sibling. The Student had made strong progress in math over the

course of the year, improving a ready assessment score in math from 426 in September 2018 to 479 on January 24, 2019.

18. The Student also improved on Oral Ready Fluency probes, increasing from 72 cwpm at 90% accuracy in the fall to 98 cwpm with 97% accuracy midyear. The team noted the Parents expressed concern about a lack of follow-through on the District's part in implementing the Student's plan. The Parents also expressed dissatisfaction with the current daily point sheets, believing them to be a negative influence and consequently setting the Student off. Finally, the team noted the Student continues to struggle with negative and disruptive behavior when an academic task is perceived to be too difficult to complete.
19. The February 5, 2019 IEP Team agreed to drop the Student's math goal and the math SDI as the Student was making positive progress. The Team kept the writing and behavior goals the same but increased the reading goal to 120 cwpm with 97% accuracy and maintained the same amount of SDI for each goal area. The IEP Team revised the amount of time the Student was removed from the general education setting to 15% of the school day. This reflected the amount of success the Student was having in the general education classroom with the support of an instructional assistant¹¹ from the ERR class. The IEP Team identified the Student's placement as the Extended Resource Room.
20. On February 8, 2019, the Student's Principal sent an email to all members of the IEP Team reminding them of tasks that needed to be completed as a result of the decisions made at the Student's IEP meeting. On February 12, 2019, the Student's Assistant Principal sent the Parent an email about changes to the Student's point sheets. On February 13, 2019, the resource room teacher sent another email to the IEP Team outlining the progress the Team had made on completing the various tasks.
21. The Parent filed this Complaint on March 8, 2019.

IV. DISCUSSION

A. When IEPs Must Be in Effect

The Parent alleges the District violated the IDEA by not providing the requisite amount of specially designed instruction as specified in the Student's IEP. Additionally, the Parent alleges the District did not provide services in a consistent manner so that the Student made reasonable progress considering the Student's personal circumstances. The Parent also alleges the District did not inform providers responsible for implementing the IEP about changes in the IEP or the implementation plan.

A school district must have an IEP in place for each eligible student at the beginning of each school year and must provide special education and related services to a child with

¹¹ The instructional assistant was not specifically assigned to the Student but was available in the classroom if the Student needed more support than the general education teacher could provide.

a disability in accordance with that IEP.¹² School districts must ensure that each teacher or service provider responsible for implementing the IEP is informed of their responsibilities.¹³ Each student's educational program must be appropriately ambitious in light of the student's circumstances and every student should have the chance to meet challenging objectives.¹⁴

From March 2018 until the end of the 2017-2018 school year, the Student consistently received a high level of support and an organized plan. The Student's ERR Teacher communicated daily with the Parent and other staff who served the Student. District staff kept daily behavior monitoring records, implemented the Student's plan with fidelity and provided services as outlined in the IEP. The Student's academic achievement and behavior improved during this time. When the 2018-2019 school year began, the District experienced staff turnover among the ERR Teacher and some instructional assistants. The District Behavioral Specialist stepped in and became the Student's Case Manager. The Student's general education and resource room teacher provided additional support. These individuals provided other staff with the necessary IEP information.

The Student's record shows that the Student's IEPs were appropriately ambitious in light of the Student's circumstances. The Student's IEP was consistently implemented and data collected by the District demonstrated that the Student's behavior improved in the general education classroom, as did the Student's academic achievement, specifically in reading and math.¹⁵ The Department does not substantiate this allegation.

B. Review and Revision of IEPs

The Parent alleges the District violated the IDEA when it did not review and revise the Student's IEP after the decision was made to increase the amount of time the Student spent in the general education environment. Also, the Parent alleges the Student's Behavior Support Plan (BSP) was not revised until an IEP meeting on February 5, 2019, at which time the BSP had been out of date for a year.

A school district must review a student's IEP at least once per year to determine whether the Student's annual goals are being achieved, or to consider the IEP in light of new evaluation information or information provided by the parent or any other matters which might be affecting the student's education. Further, the District and the Parent may agree to amend or modify the IEP, between annual IEP meetings, without holding a meeting but by documenting the changes in writing.¹⁶

During a conversation on April 27, 2018, the Parent and the ERR Teacher agreed to change the Student's daily schedule to significantly reduce the Student's time in the ERR

¹² OAR 581-015-2220(1)(b)(3).

¹³ OAR 581-015-2220(3)(a).

¹⁴ *Andrew F. v. Douglas County School District Re-1*, 137 S. Ct. 988 (2017).

¹⁵ In January 2019, the Student decided to stop going to the resource room for SDI in reading and writing. District staff and Parents believe this was because the Student preferred to remain in the general education classroom. Over a two-week period, District staff implemented different strategies to encourage the Student to return to the resource room. After these were unsuccessful, District staff arranged for the Student to receive services in the general education classroom from an instructional assistant.

¹⁶ OAR 581-015-2225.

classroom, and increase the amount of time the Student spent in the fourth grade general education classroom. The Student was successful behaviorally and academically in the less restrictive environment, so the change in placement continued into the 2018-2019 school year when the Student entered fifth grade. The Parent and the District staff agreed with this decision in a conversation, but the District did not record these decisions in a written IEP amendment or by documenting them on a Prior Written Notice. Although it did not negatively affect the Student’s educational plan, and both the District and the Parent were in agreement with the decision-making, the Department substantiates the allegation that the District did not timely amend the Student’s IEP to reflect the Student’s change in placement.

As to the Behavior Support Plan (BSP), the District consistently collected data on the implementation of the Student’s BSP throughout the pendency of the time under investigation. District staff fully implemented the BSP during this time, and the Student’s behaviors improved. When the Parent requested a new FBA and BSP, the District responded promptly and the team agreed on a revised plan at the February 5, 2019 IEP meeting. There was no reason to revise the Student’s BSP previous to that, as the plan was effective and contained flexibility to allow for District staff to adjust components of the BSP within its existing structure. The Department does not substantiate this allegation.

V. CORRECTIVE ACTION¹⁷
In the Matter of Bethel School District 52
 Case No. 19-054-009

Action Required	Submissions¹⁸	Due Date
The IDEA and OAR 581-015-2250 require that a child’s placement be based on the IEP. With assistance from the county contact, review the District’s policies and procedures for making placement changes, including those made between annual IEP meetings.	Submit to ODE the policies and procedures, with suggested edits showing.	June 7, 2019
Following ODE review and approval, review the information	Submit evidence of completed review/professional development including date, agenda, copy of	September 6, 2019

¹⁷ 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)).

¹⁸ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: raeann.ray@ode.state.or.us fax number (503) 378-5156.

with all special education staff members.	materials reviewed, and sign-in sheet with names/positions.	
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Dated: this 7th day of May 2019

Candace Pelt, Ed.D

Candace Pelt Ed.D
Assistant Superintendent
Office of Student Services

Mailing Date: May 7, 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).)