

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Woodburn School
District 103

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FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 19-054-028

I. BACKGROUND

On June 18, 2019, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from a teacher (Teacher) of students (Students) residing in the Woodburn School District 103 (District). The Teacher requested that the Department conduct a special education investigation under Oregon Administrative Rule 581-015-2030. The Department confirmed receipt of this Complaint and forwarded it 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 complainant and the District agree to an extension to engage in mediation or local resolution, or for exceptional circumstances related to the complaint.²

On June 24, 2019, the Department's Complaint Investigator (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 July 8, 2019.

On July 3, 2019, the District submitted a *Response* disputing the allegations and explaining in detail the District's perspective on the issues raised in the Teacher's Complaint. The District submitted the following items:

1. District response to allegations in case 19-054-028
2. Student A IEPs
3. Student B IEPs
4. Student C IEPs
5. Student D IEPs
6. Student E IEPs
7. Student F IEPs
8. Student G IEPs
9. Student H IEPs
10. Student I IEPs
11. 2018-2019 schedule for Student A
12. 2018-2019 schedule for Student B
13. 2018-2019 schedule for Student C
14. 2018-2019 schedule for Student D
15. 2018-2019 schedule for Student E

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

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

16. 2018-2019 schedule for Student F
17. 2018-2019 schedule for Student G
18. 2018-2019 schedule for Student H
19. 2018-2019 schedule for Student I
20. Email: ODE Special Education Complaint # 19-054-028, 06/19/19
21. Email: Thanks again [Staff] Request for one hour meeting with the Director of instructional services., 04/24/2019
22. Letter from District outlining communications with complainant
23. Email: fyi motivation Leverage-7th grader (student) monitoring ELL, 09/04/2018
24. Email: Follow-up = [Staff] request to change ESOL period
25. Email: Suggestion Please get [Student] involved in esol walk Attachment/Link]
26. Planned Course Statement—Content Area
27. Email: Fwd: Re: ELD, 07/25/2019
28. Email: Fwd: Social Studies/ELD Class, 06/25/2019
29. Email: New student schedule, 06/25/2019
30. Email: Fwd: Follow-up, 06/25/2019
31. List of knowledgeable staff

The Investigator interviewed the Teacher on July 19, 2019. The Investigator determined that onsite interviews were necessary. On July 31, 2019, the Investigator interviewed the District’s Director of Student Services and Director of Instructional Services. 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 this Complaint.³ The Teacher’s 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 June 19, 2018, to the filing of this Complaint on June 18, 2019.

	Allegations	Conclusions
1.	<p>Content of the IEP</p> <p>The Teacher alleges that the District violated the IDEA when English Speakers of Other Languages (ESOL) curricula provided to students with disabilities by the District was not aligned with peer-reviewed research, specifically State- and District-approved curriculum materials, and the District’s own ESOL standards.</p> <p>(34 CFR § 300.320; OAR 581-015-2200)</p>	<p>Not Substantiated</p> <p>The ESOL classes provided to the Students at issue were not part of the Student’s IEP services or specially designed instruction. The District considered the language needs of the Students when developing each Student’s IEP. The main concerns raised by the Teacher fall predominately outside the scope of the IDEA complaint investigation process.</p>

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

<p>2.</p>	<p>When IEPs Must Be In Effect</p> <p>The Teacher alleges that the District violated the IDEA when Student IEPs included full year English for speakers of other languages, but the District did not provide Students with a full year of ESOL classes. The Teacher further alleges that Students were not immediately placed in ESOL classes, with some missing a full semester of ESOL services in contravention with their IEPs.</p> <p>(34 CFR §§ 300.323 & 300.324; OAR 581-015-2220)</p>	<p>Not Substantiated</p> <p>ESOL classes were not services or specially designed instruction prescribed in the Students' IEPs. Despite this, Students at issue for whom such instruction was appropriate were provided ESOL curriculum throughout 2018-2019 school year.</p>
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III. FINDINGS OF FACT

1. The Students identified in this case were seventh grade students during the 2018-2019 school year and attended school in the District. The complainant in this matter—a District Teacher—identified nine students affected by the Teacher’s allegations. Those Students are identified in this Order as Student A through Student I.
2. Students A-I were all identified at some time as students with limited English proficiency and IEPs, requiring each respective IEP team to consider the language needs of the Students and how those needs relate to their IEPs.
3. Student A is identified as a student with limited English proficiency. Student A is eligible for special education under the category of Other Health Impairment. Student A received specially designed instruction (SDI) in a special education classroom in the areas of reading, written language, and math.
4. Student B is identified as a student with limited English proficiency. Student B’s November 2, 2018 IEP indicated that Student B’s English Language level is Early Intermediate. Student B is eligible for special education services under the category of Other Health Impairment and Specific Learning Disability. As a seventh-grade student, Student B worked at a third-grade level. Student B is classified as an Early Intermediate Language Learner, and during the 2018-2019 school year received ESOL services.
5. Student C was previously identified as an English Language Learner. As of the date of Student C’s December 13, 2018 IEP, Student C no longer qualified for services as an English Language Learner. Student C is eligible for special education under the category of Autism Spectrum Disorder. Student C demonstrated limited skills in reading, writing, math and communication that limit Student C’s ability to succeed in the general education classroom. By December 13, 2018, Student C no longer benefitted from the ESOL program, and the IEP team determined that Student C’s needs were not attributable to second language acquisition.

6. Student D is identified as a student with limited English proficiency. Student D's April 25, 2019 IEP indicates that Student D's English Language level is Early Advanced-4. Student D was enrolled in the District's dual language program and had an ESOL class. Student D is eligible for special education under the category of emotional disturbance.
7. Student E is a student with limited English proficiency. Student E's April 25, 2019 IEP indicates that Student E's English Language level is ESOL-3 – Intermediate. Student E is eligible for special education under the category of Specific Learning Disability. Student E exhibits a pattern of strengths and weaknesses in the areas of reading comprehension, math calculation skills, math problem solving skills and written expression. Student E receives specially designed instruction in reading, written language, and math, as well as a variety of supplementary aids, services, and accommodations.
8. Student F is a student with limited English proficiency. Student F's January 17, 2019 IEP indicates that Student F's English Language level is ESOL-3 – Intermediate. Student F is eligible for special education under the category of Specific Learning Disability. Student F's achievement is consistent with a cognitive weakness in the areas of processing speed. Student F demonstrates a pattern of weakness (Phonological Awareness) that is consistent with students who have difficulties reading. Student F receives specially designed instruction in reading and math, and a variety of supplementary aids, services, and accommodations.
9. Student G is a student with limited English proficiency. Student G's December 13, 2018 IEP indicates that Student G's English Language level is ESOL-3. Student G demonstrates deficits in reading fluency and comprehension, and math that may hinder Student G's ability to access grade level reading curriculum. Student G is eligible for special education under the category of Specific Learning Disability. Student G receives specially designed instruction in reading and math, and a variety of supplementary aids, services and accommodations.
10. Student H is a student with limited English proficiency. Student H's March 7, 2019 IEP indicates that Student H's English Language Level is ESOL-3. Student H has difficulty maintaining focus throughout the class period. Student H was placed in the District's dual language program and receives instruction in English and Spanish. Student H is eligible for special education under the category of Communication Disorder. Student H receives specially designed instruction in reading, math, written language, communication, and a variety of supplementary aids, services, and accommodations.
11. Student I is not a student with limited English proficiency. Student I was enrolled in the District's dual language program. During the 2018-2019 school year, Student I demonstrated proficiency on the English Language Proficiency Assessment (ELPA) and exited ESOL services. Student I's April 18, 2019 IEP indicates that Student I requires support in the areas of basic reading and reading fluency. Student I has difficulties with short term memory that impact performance in reading, writing, and math. Student I is eligible for special education under the category of Specific Learning Disability. Student I receives specially designed instruction in reading, written language and math, and a variety of supplementary aids, services and accommodations.

12. The District provided the Investigator with copies of Student A-I's class schedules for the 2018-2019 school year. According to the schedules provided by the District:
 - Student A was enrolled in a course titled "SS 7 – English" during the fall semester, and ESOL class during the spring semester;
 - Student B was enrolled in a course titled "SS 7 – English" during the fall semester, and ESOL class during the spring semester;
 - Student C was enrolled in a course titled "SS 7 – English" during the fall semester, a Spanish Literacy class during the fall semester, and an ESOL class during the spring semester;
 - Student D was enrolled in a course titled "SS 7 – English" during the fall semester and an ESOL class during the spring semester;
 - Student E was enrolled in a course titled "SS 7 – English" during the fall semester, and an ESOL class during the spring semester;
 - Student F was enrolled in a course titled "SS 7 – English" during the fall semester and an ESOL class during the spring semester, along with Spanish Literacy and bilingual coursework during the fall and spring;
 - Student G was enrolled in a course titled "SS 7 – English" and Spanish Literacy in the fall semester, and an ESOL class during the spring semester;
 - Student H was enrolled in a course titled "SS 7 – English" during the fall semester and enrolled in an ESOL class during the spring semester; and
 - Student I was enrolled in a course titled "SS 7 – English" during the fall semester, and an ESOL class during the spring semester, along with Spanish Literacy.
13. The Teacher reports that Students A-I were not provided with ESOL classes during the fall semester of the 2018-2019 school year. The Teacher further reports that the ESOL coursework provided to the Students was not aligned with State and District standards.
14. The District reports that the Teacher raised these concerns previously, and that the Student's schedules were explained.
15. The 2018-2019 class schedules for Students A-I show that each were enrolled in ESOL classes throughout the 2018-2019 school year. During interviews with the Investigator, District staff highlighted the difference in how the ESOL courses were listed on student schedules. The District noted that while listed under different names in the Fall and Spring semesters, the classes were in fact the same throughout the school year.
16. The District reported that all the IEP meetings of Student's A-I were attended by District Language Program Coordinators, and/or District staff who had knowledge of the Students and second language acquisition.
17. On June 18, 2019, the Department received this Complaint.
18. During interviews, District staff explained how ESOL classes were labeled on student schedules. The "SS 7 – English" classes were ESOL classes, but due to a computer glitch, bore a different title than the "ESOL – Social Studies" title given during the spring semester.
19. District staff noted that many of the Students in question had disabilities that impacted their testing skills and would likely result in them not passing exams to exit from ESOL, despite

proficiency in the English language.

20. The Department independently confirmed that the IEP teams of Student's A-I included teachers with ESOL endorsements. The District noted that the Students' IEP teams were generally staffed with Language Program Coordinators. The District further highlighted their practice of considering student language needs throughout the identification, IEP formulation, and delivery of instruction through the utilization of teachers with ESOL certifications.

IV. DISCUSSION

A. Content of the IEP

The Teacher alleges that the District violated the IDEA when the English for Speakers of Other Languages (ESOL) curricula provided to Students A-I (each of whom are students with disabilities) by the District was not aligned with peer-reviewed research, specifically State- and District- approved curriculum materials, and the District's own ESOL standards. The Teacher alleges that the District created a class for these Students that did not comply with State or District standards.⁴ The Teacher alleges that this resulted in Students receiving less effective language instruction.

Each student's individualized education program (IEP) must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.⁵ The IEP must also include a statement of the specific special education and related services and supplementary aids and services to be provided to the child, and a statement of the program modifications or supports for the child.⁶ Among the factors the IEP team must consider in the development of the child's IEP is the language needs of the child as those needs relate to the child's IEP.⁷

During the Complaint period, Students A-I were identified as students needing ESOL instruction. The IEPs of Students A-I did not include ESOL as a service or part of any specially designed instruction to be delivered to Students A-I. To appropriately consider each Student's language needs as part of their respective IEPs, the District included Language Program Coordinators in IEP team meetings for Students A-I. Also, the IEP team meetings for Students A-I were attended by District staff who are knowledgeable about the Students' abilities and who hold ESOL endorsements. Those same staff are responsible for delivering instruction to Students A-I in accordance with their IEPs. As a result of these considerations in staffing IEP teams, the District fulfilled its responsibility to consider the language needs of these students when formulating their IEPs and delivering SDI.

⁴ Whether the District failed to comply with State- and District- approved curriculum falls outside the scope of this special education complaint investigation and will not be explored in this Order.

⁵ OAR 581-015-2200(1)(a).

⁶ OAR 581-015-2200(1)(d).

⁷ OAR 581-015-2205(3)(b).

B. When IEPs Must Be In Effect

The Teacher alleges that the District violated the IDEA when each Student's IEP called for a full year English for Speakers of Other Languages (ESOL) courses, but the District did not deliver such instruction to Students A-I. The Teacher further alleges that Students were not immediately placed in ESOL classes, with some missing a full semester of ESOL services in contravention of their IEPs.

At the beginning of each school year, a school district must have an IEP in effect for each child with a disability within its jurisdiction.⁸ The school district must provide special education and related services to children with disabilities in accordance with their IEP.⁹ As soon as possible following the development of the IEP, special education and related services must be made available to the child in accordance with their IEP.¹⁰ The school district must ensure that each regular and special education teacher is informed of their responsibilities for implementing the IEP.¹¹

The Teacher provided the Department with copies of the schedules of Students A-I in the forms of grade and attendance reports from the District's electronic scheduling system. The Teacher observed that the schedules did not show that the Students were enrolled in ESOL classes for fall semester of the 2018-2019 school year. In its response to the Complaint, the District asserted that the records provided by the Teacher reflected a computing error. The District provided the Department with grade reports for Students A-I showing that each of the Students was enrolled in ESOL classes during both semesters of the 2018-2019 school year. The course names differed between the fall and spring semesters of the 2018-2019 school year, but the District consistently provided ESOL courses to Students A-I during the 2018-2019 school year. Furthermore, none of the Students' IEPs included ESOL classes as part of the Student's services or specially designed instruction. The Department does not substantiate this allegation.

⁸ OAR 581-015-2220(1)(a).

⁹ OAR 581-015-2220(1)(b).

¹⁰ OAR 581-015-2220(2)(b).

¹¹ OAR 581-015-2220(3)(b).

V. CORRECTIVE ACTION¹²

*In the Matter of Woodburn School District #103
Case No. 19-054-028*

The Department does not order corrective action in this matter.

Dated this 16th Day of August 2019

Candace Pelt, Ed.D

Candace Pelt, Ed.D.
Assistant Superintendent
Office of Student Services

Mailing Date: August 16, 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).)

¹² 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)).