

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Salem-Keizer School)
District # 24J)
)
)

FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 16-054-016

I. BACKGROUND

On May 16, 2016, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the parent (Parent) of a student (Student) residing in the Salem-Keizer School District 24J (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 on May 16, 2016.

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 in order to engage in mediation or local resolution or for exceptional circumstances related to the complaint.²

On May 18, 2016, 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 June 1, 2016.

On June 1, 2016, the District submitted a *Response* indicating they disputed all portions of the allegations in the Parent's Complaint. In total, the District submitted the following items:

Letter responding to each allegation in the Request for Response
Table of Contents of Documents Provided in Response to RFR

1. WESD fax referral from Medical Center, 06/21/2012
2. Language Sample, 08/07/2012
3. WESD Audiology, 08/07/2012
4. REEL-3, 08/07/2012
5. School Version Rating Form, 08/07/2012
6. Assessment Summary, 09/06/2012
7. Early Childhood Special Education Speech and Language Evaluation Report, 04/02/2013
8. Health, Hearing and Vision Annual Review, 05/01/2013
9. Early Childhood Special Education Speech and Language Evaluation Report, 05/01/2013
10. Assessment Summary, 06/03/2013
11. Administrative Policy—Discipline Students INS-A001, 09/16/2013
12. Assessment Summary, 04/28/2014
13. Medical Statement or Health Assessment Statement, 05/16/2014
14. WESD History Form completed by Parent, 07/16/2014
15. Procedure—Discipline Students INS-P028, 08/04/2014
16. WESD correspondence to physician, 11/18/2014

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

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

17. WESD correspondence from physician, 11/21/2014
18. Notice of IFSP Team Meeting, 01/20/2015
19. Prior Notice About Evaluation/Consent For Evaluation, 01/20/2015
20. Prior Notice About Evaluation/Consent For Evaluation (extra testing), 01/20/2015
21. Meeting Minutes, 01/22/2015
22. Child Behavior Checklist for Ages 1.5—5, 01/29/2015
23. Behavior Rating Inventory of Executive Function—Rater Teacher, 01/29/2015
24. Vineland-II—01/13/2015—Parent/Caregiver Rating Form, 01/31/2015
25. Caregiver—Teacher Report Form for Ages 1.5—5—Rater Instructional Assistant, 02/04/2015
26. Behavior Rating Inventory of Executive Function—Rater Parent, 02/05/2015
27. NEPSY-II, 03/17/2015
28. Progress Notes from Physician, 03/18/2015
29. Neurodevelopment Center for Children, 03/18/2015
30. Health, Hearing, and Vision Annual Review, 03/31/2015
31. Email—Transitioning IFSP, 03/31/2015
32. Family Outcome/Resources, 04/01/2015
33. Confidential Report: Evaluation Summary, 04/02/2015
34. Individualized Family Service Plan (IFSP), 04/02/2015
35. Level II AEPS 3-6 Data Recording Form, 04/05/2015
36. Prior Notice of Early Intervention or Early Childhood Special Education Action, 04/05/2015
37. Notice of IFSP Team Meeting, 04/30/2015
38. Think: Kids, 10/29/2014 & 05/11/2015
39. Notice of Team Meeting, 05/18/2015
40. Move-In Student Process Documentation, 05/18/2015
41. Individualized Education Program (IEP), 05/21/2015
42. Meeting Documentation Cover Sheet, 05/21/2015
43. Prior Notice of Special Education Action, 05/21/2015
44. Health Management Plan, 07/31/2015
45. Parent/Guardian Consent for Individual Evaluation, 09/24/2015
46. Authorization to Use and/or Disclose Educational and Protected Health Information & Medical Statement to Community and School Staff, 09/28/2015
47. Occupational Therapy/Physical Therapy, 09/28/2015
48. Sensory Profile and Report, 10/06/2015
49. VMI, 11/18/2015
50. Parent/Guardian Consent for Individual Evaluation, 11/18/2015
51. Measurable Annual Goals Progress, 11/20/2015
52. Physical Restrain/Seclusion Incident and Debriefing Report, 12/18/2015
53. Salem-Keizer School District 24J Occupational Therapy Initial Evaluation 2015-2016, 01/08/2016
54. Occupational Therapy, 01/08/2016
55. Conference Summary, 01/12/2016
56. Student Behavior Management Form, 01/12/2016
57. Evaluation Report; Disability Summary Statement; Other Health Impairment Criteria and Traumatic Brain Injury Criteria, 01/12/2016
58. Individualized Education Program Revision (IEP), 01/12/2016
59. Physical Restrain/Seclusion Incident and Debriefing Report, 01/14/2016
60. Student Behavior Management Form, 01/20/2016
61. Notice of Team Meeting, 01/22/2016
62. Prior Written Notice, 01/22/2016
63. Update Behavior Support Plan (BSP) & Functional Behavior Assessment (FBA) Meeting, 02/01/2016
64. Student Behavior Management Form, 02/16/2016
65. Student Behavior Management Form, 03/14/2016

66. Physical Restrain/Seclusion Incident and Debriefing Report, 03/14/2016
67. Measurable Annual Goals Progress, 03/21/2016
68. Notice of Team Meeting, 03/31/2016
69. Statement of Eligibilities for Special Education (traumatic brain injury & communication disorder), 04/02/2015
70. Consent For Assessment And Screening (Behavior Consultation Team), 04/06/2016
71. District Behavior Consultation Team Request, 04/08/2016
72. Student Behavior Management Form, 04/14/2016
73. Parent/Teacher Communication Logs, 11/2015—04/2016
74. Academic Kindergarten Readiness Skills, 04/29/2016
75. Prior Written Notice, 05/06/2016
76. Notice of Team Meeting, 05/17/2016
77. Memo—District Tutor, 05/17/2016
78. Individualized Education Program (IEP), 01/12/2016 (05/17/2016 & 05/19/2016)
79. Individualized Education Program (IEP), 05/17/2016 & 05/19/2016
80. Conference Summary, 05/17/2016 & 05/19/2016
81. Prior Written Notice, 05/20/2016
82. School—Student Incident, 2015—2016
83. School 2015—2016 Daily Attendance Profile
84. School 2015—2016 Daily Attendance Profile
85. School 2015—2016 Daily Attendance Profile
86. Elementary School—Student Discipline Profile, 2015—2016
87. Running Protocol—Elementary School
88. TBI Compared to Other Disabilities, (undated)
89. Comparing Pre-Injury Performance & Post-Injury Performance, (undated)
90. Assessment single page (social worker), (undated)
91. Caregiver Teacher Report Form for Ages 1.5—5
92. Cross—Informant Comparison—Problem Items Common to the CBCL 1.5—5/C-TRF1.5—5
93. Visual Perception
94. Motor Coordination
95. List of Staff Knowledgeable About the Circumstances of the Complaint

On June 13, 2016, the Complaint Investigator interviewed the District's School Psychologist, Building Principal, and Regular Education Teacher. The Complaint Investigator interviewed the Parent on June 28, 2016 and the Parent submitted materials for consideration at that time.

Documents submitted by Parent:

1. District Running Protocol, 06/2013
2. Behavior Support Plan (BSP), 05/21/15
3. Safety Plan Development Guide, 02/16/2016
4. Notes regarding Student's Functional Behavior Assessment (FBA)/BSP, 03/01/2016
5. Email – regarding IEP/ BSP Meeting, 04/27/2016
6. Purpose of Meeting, 03/01/2016

The Department's Complaint Investigator determined that on-site interviews were needed. 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.

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 May 17, 2015 to the filing of this Complaint on May 16, 2016.

	<u>Allegations:</u>	<u>Conclusions:</u>
1	<p><u>Content of the IEP:</u></p> <p>The Parent alleges that the District did not formulate an IEP that addresses the Student's disability.</p> <p>(OAR 581-015-2200(1)(b)(A) & (B), 34 CFR 300.209)</p>	<p><u>Not Substantiated:</u></p> <p>The District attempted to address the Student's behaviors when revising the Student's IEP on January 12, 2016. The IEP Team intended to gather additional information about the Student's behavior in order to develop an effect plan of action and make appropriate changes to the IEP; however, the Student missed at least twenty-three days of school between January 12, 2016 and April 18, 2016, so the District was unable to gather sufficient data to appropriately amend the IEP.</p>
2.	<p><u>IEP Team Considerations and Special Factors:</u></p> <p>The Parent alleges that the District failed to take the Parent's concerns about the Student's needs into consideration during IEP Meetings.</p> <p>(OAR 581-015-2205(1)(a), (b), & (d), 34 CFR 300.320, 34 CFR 300.324(a)(1) & (2), & (b)(2))</p>	<p><u>Not Substantiated:</u></p> <p>The record, as well as interviews with District staff members, demonstrates that the Parent fully participated in the IEP Meetings and that the District began to act on the Parent's concerns and suggestions.</p>
3.	<p><u>Review and Revision of IEP's:</u></p> <p>The Parent alleges that the District has not provided appropriate support for the Student, particularly as related to the Student's need for adult supervision and support because of a history of leaving school grounds.</p> <p>(OAR 581-015-2225, 34 CFR 300.116, 34 CFR 300.327)</p>	<p><u>Not Substantiated:</u></p> <p>There were numerous IEP Meetings to discuss the Student's behavior, and plans were made to gather additional data in order to amend the Student's IEP to meet the Student's individual needs. However, the Student missed at least twenty-three days of school between January 12, 2016 and April 18, 2016. This prevented the District from gathering sufficient data to effectively amend the Student's IEP to meet the Student's individual needs.</p>

<p>4. <u>Requirement for Least Restrictive Environment:</u></p> <p>The Parent alleges that the Student has been removed from the regular education environment in a variety of ways, due to behaviors resulting from the Student's disability.</p> <p>(OAR 581-015-2240(1) & (2), & 34 CFR 300.114)</p>	<p><u>Not Substantiated:</u></p> <p>The District's use of alternative recess as a result of the Student's behavior did not amount to a change in placement resulting in a more restrictive environment for the Student.</p>
--	--

Issues Outside the Scope of the Individuals with Disabilities Education Act (IDEA)

The Parent alleged that the violated portions of Division 21 of the Department's administrative rules, matters which do not implicate the IDEA. If the Parent wants to pursue complaints of issues related to state law and Division 21 rules concerning restraint and/or seclusion of the Student, the Parent must follow local complaint procedures pursuant to OAR 581-021-0570.

III. FINDINGS OF FACT

- 1) The Student in this case is a six year-old residing in the Salem-Keizer School District 24J. The Student will begin 1st grade during the 2016-2017 school year. The Student attended one elementary school from September 14, 2015 until October 13, 2015, and then transferred to a different elementary school at that time.
- 2) The Student was found eligible for Special Education services on April 2, 2015 due to a Traumatic Brain Injury (TBI) suffered when the Student was seven months old. The Student tested below expected levels in the areas of attention/executive functioning, language (comprehension of instruction), memory, and learning.
- 3) The Student is impulsive and tends to have limited problem-solving abilities with peers. The Student's disability manifests in some unsafe behaviors toward adults and peers. The Student works best with close adult attention and supervision. Without close supervision or physical contact, the Student will run from adults when outside. The Student can struggle with self-expression when frustrated or confused.
- 4) The IEP drafted on May 21, 2015 states within the Present Levels of Academic Achievement and Functional Performance (PLAAF) section that the Student needs "close adult proximity at all times to maintain safety. [The Student] can walk from one location to another with 60% accuracy. Currently [the Student] does not go outside with the group. [The Student] will dart off when outside if an adult is not holding his/her hand. [The Student] can be aggressive to both peers and adults. [He/she] feels remorse after hurting someone."
- 5) The Student's IEP at the outset of the 2015-2016 school year stated that the Student would be removed from participating with nondisabled students for more than 60% of the day to receive Specially Designed Instruction (SDI), and that the anticipated location for provision of SDI during the 2015-2016 school year would be a self-contained classroom. The District reduced the Student's schedule at the Parent's request to half days on or around November 2, 2015; however, the IEP was not amended to reflect this nor was a Prior Written Notice provided to the

Parent.

- 6) The Student had a Behavior Support Plan (BSP) in place for the 2015-2016 school year which was targeted to address the Student's impulsive actions, including entering areas off limits to children and aggressiveness toward peers. However, the BSP, while addressing the Student's aggressive behavior, is silent with respect to the Student's tendency to "dart off." The District also completed a Functional Behavioral Assessment (FBA) for the Student. The FBA makes no reference to the Student's tendency to "dart off" other than including the quotation from Paragraph 4 above. An entry on the "Measurable Annual Goals" page of the Student's IEP indicates that the Student was achieving his/her Behavior Goal of attending to and following safety rules with "80% accuracy w/prompting."
- 7) On January 12, 2016, the Student left the recess area requiring an adult to return the Student to the school building.
- 8) As a result, the Student's IEP was revised on January 12, 2016 to reflect that the IEP Team was continuing to identify and develop effective supports around outdoor safety.
- 9) During the January 12, 2016 IEP Meeting, the IEP Team also added a new category of eligibility, Other Health Impairment (OHI) for the Student due to a diagnosis of Attention Deficit Hyperactivity Disorder. Occupational Therapy Services were also added to the IEP at this time.
- 10) On January 20, 2016, the Student left the recess area requiring an adult to return him/her to the school building. The Parent and members of the IEP Team met that day to discuss this behavior.
- 11) On February 16, 2016, the Student left the recess area requiring an adult to return him/her to the school building. The Parent met with several IEP Team members to discuss this incident.
- 12) On or around March 1, 2016, IEP Team members including the Parent met to discuss the Student's needs for additional support to prevent the Student from running out of bounds while outside the school building. District personnel suggested the future use of 2-way radios to help track and report the Student's movement, as well as using cones and colored tape to mark appropriate boundaries for the Student on the playground.
- 13) During this meeting, the Parent was provided a copy of the District's running protocol, as well as a sample safety plan development guide bearing the name of another student. This safety plan was targeted toward Autism Spectrum Disorder rather than TBI or ADHD. The specific safety interventions included in this document include transition supervision, access to sensory breaks, line of sight supervision while using scissors, and keeping scissors in secure classroom locations. The document includes nothing related to preventing a student from running away from school property.
- 14) On March 14, 2016, the Student left the recess area, necessitating a meeting that day between IEP Team members, including the Parent.
- 15) The IEP Team addressed the Student's behavior with a mixture of responses, including alternative recess. During alternative recess, the Student remained in class with an adult where the staff member would engage in various strategies to help the Student communicate regarding behavior, model appropriate behavior, and maintain student safety.
- 16) The District surmised that because the Student only attended for half-days and frequently missed school due to health-related issues, many of the positive behavioral supports utilized in class were unavailable to the Student, and therefore the Student did not obtain maximum benefit from

the District's practices.

- 17) A review of the Student's attendance records provided by the District indicates that the Student missed at least twenty-three days of school between the time the IEP was revised on January 12, 2016 and April 18, 2016.
- 18) The Parent surmised that the Student was traumatized by the discipline methods and had withdrawn further due to the way District handled the Student's behavior.
- 19) On April 18, 2016, the Parent removed the Student from school in favor of in-home tutoring due to concerns for the Student's safety related to the Student repeatedly running away from school. This decision was made shortly after the Student ran from school grounds and into a nearby creek.
- 20) On May 17, 2016, the District and the Parent participated in the Student's annual IEP Meeting. At this meeting Speech and Communication goals were added back into the Student's IEP.
- 21) On May 16, 2016, the Parent filed this Complaint.

IV. DISCUSSION

1. Content of the IEP:

The Parent alleges that the District violated the IDEA when the District did not formulate an IEP that addressed the Student's disability. Specifically, the Parent alleges that despite numerous meetings regarding the Student's behavior and difficulties at school, the IEP was not changed to add services or supports to address the Student's needs. The Parent points to numerous times that the Student did, or attempted to leave school property, and that the IEP was not changed to address this behavior.

A student's IEP must include measurable annual goals, including functional goals designed to meet the student's needs that result from the student's disability enabling the student to make progress in the general education curriculum. IEPs must include measurable annual goals. The IEP must also include a statement of how the child's progress toward meeting the annual goals will be measured. That statement in the IEP must specify what services and aides will be provided.³ The aides and services chosen, to the extent practicable, must be based on peer-reviewed research.⁴ "Peer-reviewed" research generally refers to research that is reviewed by qualified and independent reviewers to ensure that the quality of the information meets the standards of the field before research is published.⁵ To enable the student to advance toward attaining the IEP goals, and make progress in the general education curriculum, this focus on scientific effectiveness is important.⁶ The IEP must also meet whatever other needs a student has resulting from the student's disability.⁷

22) In this case, the Student's May 21, 2015 IEP included the measurable annual goal that the Student "would attend to, and follow safety rules while in classroom and school surroundings, both with adult proximity and independently" and that the Student would accomplish this "100% of the time." An entry on the "Measurable Annual Goals" page of the Student's IEP indicates that the Student was achieving his/her Behavior Goal of attending to and following safety rules with "80%

³ OAR 581-015-2200(a)(d)

⁴ *Id.*

⁵ 71 Fed. Reg. 46664 (August 14, 2006)

⁶ 71 Fed. Reg. 46665 (August 14, 2006)

⁷ OAR 581-015-2200(1)(b)(B)

accuracy w/prompting.” Both the District and the Parent report that the Student’s behavior escalated upon the Student’s return from Winter Break. Part of this escalation included running from adults providing supervision, especially during recess. On January 12, 2016, the IEP Team met to discuss the Student’s behavior. The IEP Team also met on several occasions between January 2016 and March 2016 to discuss strategies to address this behavior; however, nothing was changed in the IEP or the BSP to specifically address the Student’s behavior.

During a March 1, 2016 meeting, the Parent was presented with suggested modifications to the Student’s BSP to address the Student running from school property. These proposed modifications included a running protocol and a safety plan development guide. The safety plan development guide presented to the Parent was originally drafted for a different student who was identified with Autism Spectrum Disorder. The District proposed to modify the Student’s IEP in April following a period of observation and data gathering around various strategies to deal with the Student’s continued attempts to run from campus. However, the District was unable to gather sufficient data due at least in part to the fact that the Student missed at least twenty-three days of school between January 12, 2016 and April 18, 2016. The District obtained the Parent’s “Consent for Assessment” on April 6, 2016. This assessment was to include a File Review and a Behavior Consultation Team. The Parent removed the Student from school on April 18, 2016 due to concerns about a lack of plan or strategy from the District to address the Student running from school property.

Considering the fact that the Student’s behavior did not escalate until after the end of Winter Break, it was impossible for the IEP Team to fully address these behaviors by January 12, when the IEP was revised. Additional data needed to be gathered to better understand these behaviors and determine what strategies might address these behaviors; however, the District was unable to gather this data due to the Student’s frequent absences.

The Department does not substantiate this allegation.

2. IEP Team Considerations and Special Factors

The Parent alleges that the District failed to take the Parent’s concerns about the Student’s needs into consideration during IEP Meetings.

The IEP team must consider a variety of factors in developing, reviewing, or revising an IEP. Among these considerations are, the strengths of the child, the parent’s concerns regarding the student’s education, and the student’s academic, developmental, and functional needs.⁸ School districts are required to provide parents an opportunity to participate in IEP meetings and must provide parents notice of the purpose of the meeting, including the proposed time and location as well as a list of attendees. Meeting notices must also contain other relevant information and statements of rights.⁹

The District and the Parent participated in an IEP Meeting on January 12, 2016. During this meeting the IEP Team discussed the Student’s educational needs, including behavior concerns such as running from staff during recess. The IEP Team determined that the District’s Behavior Team would be contacted for support, and the Student’s Physician would be contacted to obtain a medical statement. The Parent’s concerns regarding student safety were reflected in the IEP Meeting Notes.

The Parent subsequently met with the IEP Team members on an informal basis on five additional occasions to discuss the Student’s needs, especially regarding the Student running away from staff. The District began to put into place strategies to deal with the Student’s behaviors, including

⁸ OAR 581-015-2205(1)(d)

⁹ OAR 581-015-2190(2)(b)(B)

equipping staff with 2-way radios, distributing the District's running protocol among staff, and discussions regarding equipment (such as cones and colored tape) to delineate boundaries for the Student during recess. The District noted that the Student had numerous absences during January through March and often exhibited behaviors that prevented the Student from participating in recess.

The record and the Complaint Investigator's interviews with the District staff indicate that the Parent's concerns regarding the Student's behaviors, especially the Student's tendency to run away, were heard and known by District staff members. Numerous meetings were held to consider these issues. The Parent removed the Student from school on April 18, 2016; therefore it is impossible to know whether or not the most recent steps taken to address the Student's behaviors properly addressed the Student's needs.

The Department does not substantiate this allegation.

3. Review and Revision of IEPs

The Parent alleges that the District did not provide appropriate support for the Student, particularly as related to the Student's need for adult supervision and support because of a history of leaving school grounds.

Each district must ensure that a student's IEP is reviewed periodically, but not less than once every 365 days, to determine whether the annual goals for the child are being achieved, and revise the IEP if appropriate to address any lack of expected progress toward annual goals. Such revisions required that the updated IEP be made available to members of the IEP team and that they are informed of the changes. In addition, when making changes to the IEP, the parent and the district may agree not to hold an IEP meeting and instead develop a written document to amend or modify the child's current IEP. Rather than redrafting the entire IEP, the IEP may be changed by adding amendments to the original IEP document.¹⁰

The IEP Team met on January 12, 2016 to address the Student's behavior of running from school grounds. At that time, the Student's IEP was updated to note that the IEP Team would continue to develop and identify effective supports around outdoor safety. The IEP Team discussed adding additional staff, guiding the Student to model and showing staff members the boundaries for recess. The IEP Team noted that the Student loved to be chased; therefore pursuing the Student would often exacerbate the Student's running away. The IEP Team also observed that the Student typically ran toward the road or parking lot, and would dart between parked cars, but would not run into traffic.

During a March 1, 2016 meeting, the District discussed a variety of changes to address the Student's behavior, including providing 2-way radios worn by eight staff members, including the Principal. Staff members and the Parent were also provided with the District's running protocol, use of orange cones to mark the boundaries of the play area, and use of positive reinforcement and social narrative to reinforce the Student's positive behaviors in staying within the delineated boundary. The IEP Team at that time determined that the Student needed to exhibit consistent attendance for at least three weeks to determine whether or not any of these interventions were actually working. Due to illness, absences and limitations on the Student's access to recess, the Student did not participate in recess in a consistent manner from January through April.

On April 6, 2016, the District provided to the Parent a "Permission to Observe" form to authorize the District to gather additional data to address the cause of the behavior. Additional possible amendments to the Student's IEP were targeted for the Student's scheduled annual IEP Meeting in

¹⁰ OAR 581-015-2225(3)(a)

May. The Student successfully ran from school staff and into out-of-bounds areas, or off school grounds four times, three times following the January 12 IEP Meeting.

As evidenced above, the Student's IEP Team met formally and informally on numerous occasions to discuss the Student's behaviors and considered a variety of strategies to address these behaviors. The IEP Team planned to consider amending the IEP once additional data had been gathered, however the District was unable to gather this data due to the Student's numerous absences from school.

The Department does not substantiate this allegation.

4. Requirement for Least Restrictive Environment

The Parent alleges that the Student has been removed from the regular education environment in a variety of ways, due to behaviors resulting from the Student's disability.

School districts must ensure that to the maximum extent appropriate, children with disabilities are educated with children who do not have a disability. Furthermore, the District must also ensure that special classes, separate schooling or other removal of children with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.¹¹ Changes in placement as a result of disciplinary measures generally occur if the discipline results in a removal of more than 10 days.¹² Disciplinary removals of less than 10 days are not generally considered to be a change in placement.¹³

The Parent is specifically concerned with the removal of the Student from recess as the result of the Student's behavior, including running from staff into out-of-bounds areas and attempting to leave boundary areas. The Parent asserts that the Student lost recess privileges on numerous occasions due to behaviors that are likely caused by the Student's disability, which has resulted in a reduction in the amount of time the Student has contact with general education peers.

The District asserts that the removal of recess privileges was not disciplinary, but rather a safety measure, and that to address concerns about least restrictive environment, the Student was offered alternative recess. The Student's May 1, 2015 Behavior Support Plan (BSP) included strategies to help maintain the Student's safety. While the plan does not specifically mention removal of recess, the alternate recess involves implementing response strategies to the Student's demonstration of unsafe behavior such as modeling and prompting appropriate behavior, adult support to problem solve, and finding ways to communicate the Student's needs. The Student was not removed from school, nor was the Student's placement changed. Rather, consistent with the Student's BSP, the Student's behaviors were addressed within the current educational placement.

The Department does not substantiate this allegation.

5. Additional Finding

At the request of the Parent, the District reduced the Student's schedule on or around November 2, 2015. However, the Student's IEP was not being implemented as written as required by OAR 581-015-2220, nor did the Parent receive Prior Written Notice of this action as required by OAR 581-015-2310.

¹¹ OAR 581-015-2240(2)

¹² OAR 581-015-2415(1)(a) & (b)

¹³ OAR 581-015-2405(1)

V. CORRECTIVE ACTION¹⁴

In the Matter of Salem-Keizer School District #24J
Case No. 16-054-016

The Department Orders the following Corrective Action resulting from this investigation related to the additional finding:

No.	Action Required	Submissions ¹⁵	Due Date
1.	<p><u>Prior Written Notice</u> Professional development to Special Education staff assigned to the Student's school, on all requirements for Prior Written Notice found in 34 CFR 300.503.</p> <p>This training will be provided in conjunction with the County Contact for Marion County, and included relevant administrative staffs from the school who are involved with supporting the Special Education services.</p>	<p>Submit copies of proposed training materials to ODE for approval prior to implementing the training (see contact information below in footnote).</p> <p>Submit training roster that indicates all in attendance and their positions, and an agenda from the training indicating time and date to ODE.</p>	<p>September 21, 2016</p> <p>October 21, 2016</p>

Dated: this 15th Day of July 2016



Sarah Drinkwater, Ph.D.
Assistant Superintendent
Office of Student Services

Mailing Date: July 15, 2016

¹⁴ 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)).

¹⁵ 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: raeannray@state.or.us; fax number (503) 378-5156.