

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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

FINDINGS OF FACT,
CONCLUSIONS
AND FINAL ORDER
Case No. 19-054-050

I. BACKGROUND

On December 19, 2019, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from a Parent (Parent) of a student (Student) attending school at the Eagle Charter School (School) and residing in the Salem-Keizer School District 24J (District). The Parent 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 This order is timely.

On December 30, 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 January 13, 2020. The District requested an extension of time to submit its *Response*.

On January 17, 2020, the District submitted a *Response* disputing the allegations and explaining in detail the District's perspective on the issues raised in the Parent's Complaint. The District submitted the following items:

1. District response to allegations
2. District Exhibit List
3. Notes from Elementary School Principal
4. Student Cumulative File, Prior Elementary School
5. District response for 19-054-050
6. (Student) Incident [leading to ISS on 12/10/19]
7. Messages between Parent and School Staff
8. Email: Blue Car, 05/19/2019
9. Email: Re-review of Final Order, 08/16/2019
10. Email: (Student) and stealing, 09/09/2019
11. Email: Fwd. Good Afternoon from (Teacher), 09/17/2019
12. Email: Fwd: (Student) 9/11, 09/17/2019
13. Email: Fwd: (Student) Reset Today 9/13, 09/17/2019
14. Email: Fwd: (Student) 9/16, 09/17/2019
15. Email: Fwd: (Student) 9/17, 09/17/2019
16. Email: (Student) 9/18

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

17. Email: Reset, 09/19/2019
18. Email: Referral for (Student), 09/23/2019
19. Email: Referral, 09/27/2019
20. Email: Electives and dinosaurs
21. Email: PE today, 10/14/2019
22. Email: Request, 10/16/2019
23. Email: Fwd: Library help, 10/21/2019
24. Email: Student...-Referral, 10/22/2019
25. Email: 3rd Grade Today, 10/25/2019
26. Email: Friday, Nov. 8, 11/08/2019
27. Email: (Student) 11/14, 11/14/2019
28. Email: (Student) recess, 11/21/2019
29. Email: (Student) 12/3, 12/04/2019
30. Email: December 10th, 12/10/2019
31. Email: (Student), 12/11/2019
32. Email: Policies, 12/19/2019
33. Email: Re: Policies/incident reports, 01/06/2020
34. Email: Electives and dinosaurs, 10/03/2019
35. Email: Library help, 10/08/2019
36. Email: Request, 10/18/2019
37. 3rd Grade (Teacher) and (Teacher) communications
38. Meeting notes, 10/24/2019
39. Notice of Tort Claim, 10/23/2019
40. Student 2019 ISS Documentation
41. Student Academic Data (Student work examples)
42. Student Reset Data Sept. 2019
43. Student Referral Data, 2019-2020
44. Student Social Stories 2019
45. School—Parent Communication Plan, 2019-2020
46. School response to corrective action 2019: classroom support process; stoplight protocol; Micro Society description; School Code of Conduct
47. Student iReady Data
48. Student Attendance Data
49. Student Referral/Permission
50. Student Eligibility data
51. Student Eligibility Summary Statement, 05/19/2017
52. Student Evaluation Report, 05/19/2017
53. Student Prior Written Notices 2018-2019
54. IEP Team Meeting Notices 2018-2019
55. Student Fall 2019 Progress Report
56. Student IEP 09/09/2019 (Revision dates 10/17/2018, 11/13/2019)
57. Student IEP 09/09/2019 (Revision date 10/17/2019)
58. Student IEP Amendment, 09/09/2019 (Revision date:10/17/2019)
59. Student IEP 09/09/2019
60. Conference Summary, 09/09/2019
61. Parent Concerns, Student IEP 09/09/2019
62. Student Annual IEP/Placement Team Meeting, 08/09/2019
63. Student IEP Progress Report—Annual Goal, 06/04/2019
64. Student IEP Amendment (w/PBIS Reset Protocol) 09/20/2018
65. Student IEP Progress Report—Annual Goal, 03/20/2019
66. Conference Summary, 01/29/2019

67. Student IEP Amendment, 09/20/2018
68. Student IEP, 09/20/2018
69. Student Testing/Reports/Medical information
70. Final Order ODE Case 19-054-020
71. Letter from Parent to District: Request an IEP Review Meeting, 05/30/2019
72. Student contact log, 05/15/2018
73. Email: Re: Kindness Club Info, 01/31/2019
74. Email: Re; Urgent – IEP meeting needed, 04/17/2019
75. Email: (Student) think sheets, 05/06/2019
76. Email: (Student) OT screening form, 05/13/2019
77. Email: Pictures of fidget – (Student), 05/31/2019
78. Email: finalized documents, 05/13/2019
79. Email: Finalized Documents Follow Up, 05/15/2019
80. Email: Request For Information-(Student), 05/15/2019
81. Email: Re: Request for Complaint Investigation, 05/16/2019
82. Email: Ticket 145669 Open --> Parent Request, 05/16/2019
83. Email: Re: Phone Message, 05/16/2019
84. Email: 2nd request for IEP meeting – (Student), 05/30/2019
85. Email: Addition to (Student) brown file, 06/04/2019
86. Email: Parent concerns – IEP 9/9/2019 – (Student)
87. Email: (Student) Meeting Notes, 09/09/2019
88. Email: Re: NOTM, 10/15/2019
89. Email: Evaluation Request, 10/18/2019
90. Email: () and Student, 10/18/2019
91. Email: Evaluation Request, 10/21/2019
92. Email: Request for Evaluation Received, 10/21/2019
93. Email: Psych form for Eagle student, 10/22/2019
94. Email: Re: Voice mail from Fri, Oct 25
95. Email: Request for a Team Meeting (Notice), 10/29/2019
96. Email: (Student) PWN, 11/04/2019
97. Email: Iready, 11/08/2019
98. Email: 3yr Re-evaluation (Student), 11/14/2019
99. Email: BIP draft from (Student's) mom
100. Email: Re: 3yr Re-evaluation (Student), 11/14/19
101. Email: FW: BIP draft from (Student's) mom
102. Email: (Student)
103. Email: Documents, 11/20/19
104. Email: Report for (Student), 11/20/2019
105. Step1: General Information & Reading Data, 11/30/19
106. Email: Meeting at Eagle Charter, 12/05/19
107. Email: RE: 3yr Re-evaluation (Student), 10/06/19
108. Email: Meeting at Eagle Charter, 12/08/19
109. Email: New Student Starting on 12/12
110. Email (Student), 12/11/19
111. Email: IEP, 12/11/19
112. Email: RE: 3yr re-Evaluation (Student), 12/11/19
113. Email: (Student), 12/12/19
114. Email: Transition of student from Eagle Charter to 4-C, 12/12/19
115. Email: RE: 3yr Re-Evaluation (Student), 12/12/19
116. Email: Re: Transition of student from Eagle Charter to 4-C, 12/12/19
117. Email: (Student) Student Referral – Invitation to edit, 12/12/19

- 118. Email: Re: New student, 12/12/19
- 119. Email: re: Meeting at Eagle Charter, 12/12/19
- 120. Email: Canceled: 3yr Re-evaluation (Student), 12/12/19
- 121. Email: RE: IEP, 12/13/19
- 122. Email: Re: Meeting at Eagle Charter, 12/13/19
- 123. Email: New Student, 12/13/19
- 124. Email: REL IEP, 12/13/19
- 125. Email: (Student) Ipad mini, 12/16/19
- 126. Student Schedule
- 127. List of school staff trainings
- 128. Student draft schedule
- 129. List of knowledgeable staff

On January 14, 2020, the Parent submitted information in support of the Complaint. The Complaint Investigator interviewed the Parent on January 25, 2020. The Complaint Investigator determined that onsite interviews were necessary. On January 31, 2020, the Complaint Investigator interviewed the District’s Representative at the Student’s IEP meetings, the Student’s Case Manager, and School Psychologist. The Complaint Investigator also interviewed the School Administrator and General Education Teacher. The Complaint 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 Parent’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.

	Allegations	Conclusions
1.	<p><u>When IEPs Must Be In Effect/IEP Implementation</u></p> <p>The Parent alleges that the District violated the IDEA when the District failed to implement the Student’s IEP: (a) By neglecting to follow the behavior support plan in the Student’s IEP, and instead using a “school wide behavior plan” that was not individualized for the Student; and (b) By neglecting to provide accommodations in the Student’s IEP such as preferential seating, movement breaks, access to sensory devices, and others.</p> <p>(34 CFR §§ 300.323, 300.324; OAR 581-015-2220)</p>	<p><u>Not Substantiated</u></p> <p>The record does not support the allegation that the District or School neglected to implement the Behavior Support Plan components of the Student’s IEP. Moreover, incorporating aspects of the School’s MicroSociety into the Student’s academic experience did not inhibit implementation of the Student’s Behavior Support Plan.</p> <p>The School acknowledged that the behavior support/IEP accommodation of delivering “karate blue sheets” to the Student was not consistently implemented, but this discrepancy with the Student’s IEP was not a material</p>

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

		failure to implement the Student's IEP in violation of the IDEA. Other accommodations were provided in accordance with the Student's IEP.
2.	<p><u>Requirement for Least Restrictive Environment</u></p> <p>The Parent alleges that the District violated the IDEA when it failed to implement the behavior support plan in the Student's IEP, resulting in the Student's removal from the general education environment and peers on various occasions.</p> <p>(34 CFR § 300.114; OAR 581-015-2240)</p>	<p><u>Not Substantiated</u></p> <p>The Student did serve time in in-school suspensions outside of the general education environment during the Complaint period, but not for enough time to constitute a change in placement or impact the Student's time spent in the least restrictive environment as determined by the Student's IEP Team.</p>
3.	<p><u>Denial of a Free Appropriate Public Education (FAPE)</u></p> <p>The Parent alleges that the District's failure to implement accommodations in the Student's IEP violated the IDEA by denying the Student a FAPE.</p> <p>(OAR 581-015-2040, 34 CFR 300.101)</p>	<p><u>Not Substantiated</u></p> <p>Between September and December 2019, the IEP Team met three times to review and revise the Student's IEP to address a lack of expected progress. The investigative record does not support a finding that the District did not implement IEP accommodations, nor that the Student was denied a FAPE, despite making slow progress in the area of behavior.</p>

III. FINDINGS OF FACT

1. The Student⁴ in this case is in the third grade and attended Eagle Charter School, a state-sponsored K-5 elementary charter school.⁵
2. The Student enjoys hands-on projects, art, and thrives on receiving positive feedback. The Student is creative and empathetic.
3. The Student is eligible for special education services under the category of Other Health Impairment. The Student has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). The Student's disability affects their ability to focus for a sustained amount of time

⁴ The Parent previously filed a request for special education investigation on May 13, 2019 regarding this Student. The investigation covered the one-year period from May 14, 2018 through May 13, 2019. The Department issued a final order on July 12, 2019.

⁵ A school district must serve resident children with disabilities attending public charter schools located in the district in the same manner as the school district serves children with disabilities in other district schools, including but not limited to identifying, locating, and evaluating students, and implementing special education and related services according to each child's individual education program (IEP). (OAR 581-015-2075(1)-(2).)

on a single activity. The Student's disability causes them to move from designated spaces, lose eye contact, and display reduced effort toward classroom tasks. The Student has exhibited behaviors typical of a younger student, including scooting around the floor, being silly, hiding under tables, and refusing to leave locations.

4. School staff noted that the Student displayed more behavior issues in the morning. The Student's General Education Teacher observed that the school day often began with the Student on the floor or crawling in and around objects in the classroom, which complicated implementation of behavior supports.
5. The Parent described that the Student is beginning to understand their disability and how it affects their behavior. The Student had suffered some personal tragedies that impact the Student's behaviors.
6. Eagle Charter School (School) implements a MicroSociety model, "an environment where students create and operate businesses, produce goods, manage inventory, and sell products to other students during a time," referred to as "Market or Shopping Days." "[S]tudents create and take part in every aspect of a model society, including writing résumés, interviewing for a job, and becoming independent, tax-paying, law abiding members of [the] school society."
7. As part of this model, students implement a "modern-day mini-metropolis—complete with a government center, entrepreneurial hub, non-profit organization, and consumer marketplace—created and managed by students and facilitated by teachers/school staff." As part of this model, students have certain expectations as members of the MicroSociety to other members. Students also create and modify their own laws and create consequences for violations. Students may be cited for behavior violative of student behavior rules, and face consequences requiring some contribution back to the school community.
8. The Student's IEP Team met to review and revise the Student's IEP on September 9, 2019, October 17, 2019, and November 13, 2019. On October 17, 2019, the IEP Team met to discuss and revise the Student's IEP to clarify the Student's Behavior Support Plan (BSP).
9. The District and School developed behavior supports in response to the Student's unique needs. The Student had in place a stoplight protocol with reset opportunities throughout the day. The Student would be given multiple opportunities to reset (at least two per light), time to process, models to show examples, and self-selection time to make positive choices. If the Student reached the reset phase, the Student's behavior plan stated that they would spend no more than five minutes in reset.
10. Other components of the Student's BSP are as follows: (1) If the Student reached a red light issue, or a referral written for the Student, the Parent would be notified; (2) Daily behavior tracking sheets would be generated, documenting the goals of being on task, being safe, and being respectful of others' property. The Student earned points on these behavior tracking cards and would be rewarded based on positive behavior at school; (3) Items that the Student plays with during class time should be taken from the Student and placed out of the Student's sight so that the Student is not tempted to take the items back; (4) If the Student steals, the consequence would be a half day in-school suspension, with access to special education time and specials.

11. The Student's IEP Team also decided on a behavior support in collaboration with the Student's martial arts instructor. The Student's IEP included the behavior support that "[Student] will receive a daily ATA Karate blue sheet with positive comments (collaboration with [the Student's] martial arts instructor/program)."
12. The Student received Specially Designed Instruction in the areas of written language, adaptive/self-management, and mathematics. The Student also received a variety of supplementary aids, services and accommodations including but not limited to, flexible seating, access to written and verbal positive praise from teacher/adults when self-advocating needs, behavior tracking cards, prewarning of class transitions, embedded movements, and sensory fidgets.
13. On October 3, 2019, a School Administrator sent an email to the Parent relating that the Student had come to the office inquiring about a toy dinosaur. It was explained to the Student that they could not have the toy dinosaur. The Student later took the toy dinosaur from the office. The Administrator and the Parent discussed the expectations around theft in school, the School's expectation, and miscommunications the parties had regarding these incidents.
14. The District and School highlighted this incident as one of the many examples of the Student's disability manifesting in the Student taking items that did not belong to them, a common behavior issue exhibited by the Student.
15. On October 14, 2019, the Student received a referral for striking a classmate during physical education. The School assigned the Student to a structured recess for the remainder of the week to address the behavior. In-school suspension would have been the second level response should similar behavior recur. The Student would participate in physical education with a different grade level for the remainder of the week as a result.
16. On October 18, 2019, the Parent sent an email to the School inquiring about the behavior tracking forms exchanged with the Student's martial arts instructor. The next day, October 19, 2019, the School responded, noting they may have run out of forms and that more forms had been delivered the night before.
17. On October 24, 2019, the School held a meeting with the Parent, the Student, and other School staff to discuss the Student's toy dinosaur theft. The meeting was purportedly a facilitated discussion between School office staff and the Student regarding how they could "move forward in their Staff – Student relationship." Notes from the meeting show that the communications among attendees devolved over the efficacy of such a meeting.
18. The Student's IEP was revised again on November 13, 2019. The Student's IEP continued to include a BSP that utilized a stoplight visual reset guide to support the Student's positive behavior goals. The BSP provided "multiple opportunities, time to process, models to show examples, self-selection time to make the more positive choice." The BSP called for a "reset" opportunity of up to five minutes. School staff explained that teachers or the Student could choose a "reset" where the Student would sit in a separate chair facing away from the class until they felt ready to return to class and the assigned activity.
19. The BSP also specifies that "If a red light issue were to occur or a referral is written for [Student], Parents will be notified by email."

20. The Parent alleges that on at least one occasion they were not notified by email regarding the Student's office referral as specified in the IEP.
21. On November 21, 2019, the Student received a red light and office referral that resulted in an in-school suspension (ISS).
22. On November 22, 2019, the Parent sent a message to the Student's Special Education Teacher regarding the previous day's office referral and the consequence imposed upon the Student for the behavior leading to the referral and raised concerns about whether the consequence was appropriate for the Student. The Parent expressed having learned from the Student that the Student was disciplined for playing with sticks and required to collect trash from school grounds. The Special Education Teacher referred the Parent to the School Administrator for more information.
23. On November 22, 2019, the Parent sent an email to the Administrator inquiring about the Student's referral and discipline. On November 26, 2019, the Administrator responded, stating that the Student "was throwing sticks during recess time and engaging in unsafe behavior." The Administrator went on to explain, "[The Student] was not sent to the office but instead one of the supervisors spoke briefly about making safe choices and why we don't throw sticks and then had [the Student] and the others help clean up the recess area for a few minutes. [The Student] really enjoyed this and expressed excitement about helping the School by picking up the recess area. As you know, in a MicroSociety school when we do things that are not living up to our citizenship standards of safe, responsible, or respectful behavior, students are often asked to make amends and give back to the school community through an act of service."
24. On December 12, 2019, the Parent sent an email to the District inquiring about the conversation at the Student's IEP meeting. That Parent sought to clarify decisions around in-school suspensions (ISS). The Student's IEP Team members confirmed that the decision was for the Student to receive half of the usual ISS time when the Student's behavior resulted in an ISS.
25. On January 25, 2020, the Department Complaint Investigator interviewed the Parent. Among the concerns raised by the Parent were that the School did not appropriately document in-school suspensions or applied in-school suspensions in contravention of the Student's IEP. The Parent also observed that the School may not have complied with the Student's BSP by providing daily behavior reports to the Student's martial arts instructor.
26. During interviews with District staff, the inclusion of the Student's martial arts teacher was discussed. District staff explained that the Parent expressed hope that the Student would benefit from reminding the Student of the structured environment of martial arts classes during the school day. The hope was that the martial arts classes would in turn support the Student's behavior in school. The Student's IEP Team discussed sending behavior reports to the martial arts instructor, in hopes that the Student would model appropriate behavior during the day, to avoid consequences in their martial arts class.
27. District and School staff acknowledged having discussed and attempted the behavior support of completing daily "Karate blue sheets" and report not observing a measurable improvement in the Student's behavior as a result of this particular component of the BSP. District and School staff acknowledge that these daily sheets were not sent home

consistently.

28. Prior to the filing of this complaint, the Parent removed the Student from the School to attend a District neighborhood school.

IV. DISCUSSION

A. When IEPs Must Be In Effect/IEP Implementation

The Parent alleges that the District violated the IDEA when it failed to implement the Student's IEP. The Parent alleges that the District neglected to follow the Behavior Support Plan (BSP) in the Student's IEP, and instead used a "school wide behavior plan" that was not individualized for the Student. The Parent also alleges that the District neglected to provide accommodations in the Student's IEP such as preferential seating, movement breaks, access to sensory devices, and others.

A school district must ensure that at the beginning of each school year an IEP is in effect for each child with a disability within the school district's jurisdiction.⁶ School districts must provide special education and related services to a child with a disability in accordance with that IEP.⁷ Not every instance of a school district failing to implement a student's IEP constitutes a violation of the IDEA. Rather, it is a "material" failure to implement a student's IEP that violates the IDEA.⁸ A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP.⁹ A student's "educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided."¹⁰ When applying the materiality standard, courts have "focused on the proportion of services mandated to those actually provided, and the goal and import (as articulated in the IEP) of the service that was withheld."¹¹ Following the development of the IEP, the District must make special education and related services available to the student as soon as possible.¹²

1. Behavior Support Plan (BSP)

The Student's IEP includes a BSP. The BSP includes a stoplight system to help the Student recognize when they need to modify their behavior, with opportunities to "reset," should the Student's behavior escalate from green to red. Rather than exempt the Student from discipline, the Student's IEP specifies that Student's Parent will be notified in the case of the Student reaches a red light, or receives an office referral. The Parent noted that behavior tracking sheets did not reflect the discipline the Student actually received. The Parent alleges that on November 21, 2019, the Student was given a referral or red light, but that the Parent was not notified of this at that time it occurred. On November 26, 2019, the Administrator responded to the Parent that on the day in question, that Student was not given a referral. Rather, the Student engaged in unsafe behavior, and staff asked the Student to participate, along with other Students, in cleaning up school grounds in accordance with the School's MicroSociety protocols. During interviews with School and District staff, it was explained that the Student

⁶ OAR 581-015-2220(1)(a).

⁷ OAR 581-015-2220(1)(b).

⁸ *Van Duyn ex rel. Van Duyn v. Baker School Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Wilson v. District of Columbia*, 770 F. Supp. 2d 270, 276 (D.D.C. 2011).

¹² OAR 581-015-2220(2)(b)

enjoyed helping to clean up, and that such activities were common within the MicroSociety school. In this instance, the Student was redirected rather than given a referral for exhibiting certain behaviors. The implementation of the MicroSociety protocols did not nullify components of the Student's BSP. Similarly, the absence of each of the MicroSociety protocols from the Student's BSP does not lead to a conclusion that the District violated the Student's IEP when it implemented those protocols.

The Parent also alleges that the School failed to regularly fulfill the part of the Student's BSP that states the Student "will receive a daily ATA Karate blue sheet with positive comments (collaboration with [the Student's] martial arts instructor/program)." This behavior support was included in the Parent concerns portion of the Student's IEP, and included in the Student's IEP as a behavior support. School staff concede that sheets were not sent home every day. But this implementation shortfall was minor in relation to the services, aids, and accommodations in the Student's IEP that were delivered pursuant to the Student's IEP. Moreover, the Student's IEP Team removed the daily sheet practice on November 13, 2019 after it was observed that it had limited efficacy.

The District provided special education and related services in accordance with the Student's IEP, and while incorporating components of MicroSociety protocols added new layers to the Student's education program, it did not thwart implementation of the Student's IEP. The Department does not substantiate this allegation.

2. IEP Accommodations

The Parent contends that the School was not following the specific supports and interventions in the Student's Behavior Support Plan. The Parent specifically alleges the School failed to provide preferential seating, movement breaks, access to sensory devices, and other accommodations as evidenced by the Student's continued behavior referrals and in-school suspensions. School staff interviewed acknowledged often being shorthanded or having different staff available to work with the Student throughout the week. School staff reported that during class time the Student often crawled on the floor, took objects, or behaved in ways unsafe to the Student and others. The Student's Special Education Teacher observed that the Student did not exhibit these behaviors when receiving Specially Designed Instruction as they had the full attention of an adult. District staff noted that the Student's Behavior Support Plan was continually evaluated for improvement in the context of the School's MicroSociety model. Despite these challenges, the investigative record indicates that accommodations and aids such as preferential seating, movement breaks, access to sensory devices, and other accommodations were provided to the Student in accordance with their IEP.

B. Requirement for Least Restrictive Environment

The Parent alleges that the District violated the IDEA when it failed to implement the Student's BSP, which resulted in the Student's removal from the general education environment and peers on various occasions. The Parent alleges that such removal violated specific provisions of the Student's IEP.

School districts are required to ensure that to the maximum extent possible, children with disabilities are educated with children who do not have a disability.¹³ Special classes or schooling children separately should only be used if the nature or severity of the child's

¹³ OAR 581-025-2240(1).

disability impedes the delivery or use of supplementary aids and services in regular classes.¹⁴ School districts may remove a child with a disability who violates a code of student conduct from the student's current educational placement for up to ten school days in a school year to the same extent, and with the same notice, as for children without disabilities. These removals are not considered a change in placement.¹⁵

The time the Student spent in in-school suspensions did not rise to a change in placement and did not run afoul of the District's least restrictive environment responsibilities. When the Student was removed from the classroom, a teacher called for support. A staff member would remove the Student from the classroom either to the Learning Resource Center or to the office. The School reported that in-school suspensions were utilized only for repeated off-task behavior or unsafe behaviors. The Student's Special Education Teacher reported that the Student typically served in-school suspensions in the Learning Resource Center, the same location where SDI was delivered. The Administrator explained that when an in-school suspension was given, the Student would still participate in specials such as music and recess, and lunch. This report was confirmed by the Student's Regular Education Teacher and Special Education Teacher.

During the 2019-2020 school year, the Student was removed to an in-school suspension on two occasions: November 4, 2019, and December 10, 2019. On November 4, 2019, the Student spent an afternoon of in-school suspension in the office, but participated in lunch, recess, physical education, and Learning Resource Center activities because the behavior that prompted the in-school suspension was not deemed unsafe (stealing). On December 10, 2019, the Student received a "half-day" in-school suspension from 10:15 a.m. to 2:20 p.m. for acts of physical aggression, disrespect, and property destruction. The in-school suspension the Student received was significantly shorter than in-school suspension time spent by other students for comparable conduct, which is in accordance with the Student's IEP. The Department does not substantiate this allegation.

C. Denial of a Free Appropriate Public Education (FAPE)

The Parent alleges that the District's failure to implement accommodations in the Student's IEP violated the IDEA by denying the Student a FAPE. School districts are required to provide a FAPE to all school-age children with disabilities for whom the district is responsible.¹⁶ A student's IEP must be revised periodically, but at least yearly, to determine whether the student's annual goals are being achieved.¹⁷ School districts must revise IEPs as appropriate to address any lack of expected progress toward annual goals.¹⁸ A school district must offer an IEP "reasonably calculated" to enable the child to make progress appropriate in light of the child's circumstances.¹⁹ Indeed, a student's progress may be slow given their circumstances, but slow progress "is not necessarily indicative that [a student] did not receive a FAPE"²⁰

Between September and December of the 2019-2020 school year, the Student's IEP Team met three times—September 9, 2019, October 17, 2019, and November 13, 2019. During these meetings the Student's IEP Team discussed the Student's needs and modified the Student's IEP in an attempt to support the Student and promote the Student's academic progress, particularly in the area of behavior. At the November 13, 2019 meeting, the Student's IEP Team

¹⁴ OAR 581-015-2240(2).

¹⁵ OAR 581-015-2405.

¹⁶ OAR 581-015-2040(1)

¹⁷ OAR 581-015-2225(1)(a)

¹⁸ OAR 581-015-2225(1)(b)(A)

¹⁹ *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988, 999 (2017).

²⁰ *K.S. v. Fremont Unified Sch. Dist.*, 679 F.Supp. 2d 1046, 1058 (N.D. Cal. 2009).

revised the Student's BSP based on input from School and District staff, as well as the Parent. District and School staff noted that the stoplight protocol was being utilized, in addition to the other accommodations in the Student's IEP. Both District and School staff opined that the Student's struggles with executive functioning were frustrated in the context of the School's MicroSociety model. The District convened IEP team meetings and revised the Student's IEP to address lack of expected progress in the area of behavior. The Parent removed the Student from the School not long after the IEP Team's most recent revision of the Student's BSP. The evidentiary record for the 2019-2020 school year does not contain sufficient information to show that the District denied the Student a FAPE during this time for failing to implement accommodations in the Student's IEP. The Department does not substantiate this allegation.

V. CORRECTIVE ACTION²¹

*In the Matter of Salem-Keizer School District 24J
Case No. 19-054-050*

The Department does not order corrective action in this matter.

Dated this 14th Day of February 2020

Candace Pelt, Ed.D.

Candace Pelt, Ed.D.
Assistant Superintendent
Office of Enhancing Student Opportunities

Mailing Date: February 14, 2020

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).)

²¹ 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)).