

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of Salem Keizer)
School District No. 24J)
)
) FINDINGS OF FACT,
) CONCLUSIONS,
) AND FINAL ORDER
) Case No. 08-054-007

I. BACKGROUND

On February 13, 2008, the Oregon Department of Education (Department) received a letter of complaint from the parent of a student attending school and residing in the Salem-Keizer School District No. 24J (District). The parent requested that the Department conduct a special education complaint investigation under OAR 581-015-2030. At the time this letter of complaint was received, the Department was already investigating a letter of complaint received by the Department from the same parent on January 4, 2008, with closely related issues.¹ Under federal and state law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue a final order within 60 days of receiving the complaint, unless exceptional circumstances require an extension. The Department determined that exceptional circumstances warranted consolidating the two related complaint investigations, with the Department’s investigation timeline beginning February 13, 2008. This order is timely within the consolidated timeline.

On February 25, 2008, the Department sent a *Request for Response* to the District identifying the specific allegations in the complaint the Department would investigate. The District submitted its timely *Response* to the allegations, and made a copy available to the parent. The Department’s complaint investigator reviewed all of the information submitted by the parent and the District, and determined the need for on-site interviews. On March 12, 2008, the Department’s complaint investigator conducted on-site interviews with the parent, the student’s grandparent, and the student.² On March 13, 2008, the Department’s complaint investigator conducted on-site interviews with the following District staff: EGC teacher; social studies teacher; PE teacher; behavior specialist; instructional assistant; occupational therapist A, and; occupational therapist B. The Department’s complaint investigator also discussed the issues in this complaint with the District’s special education coordinator, who was present during interviews with District staff.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve this complaint under 34 CFR 300.151-300.153 and OAR 581-015-2030. The allegations and the Department’s conclusions are set out in the chart below. The Department based its conclusions on the Findings of Fact (Section III) and the Discussion (Section IV).

¹ See Oregon Department of Education, 08-054-001 (January 4, 1008).

² The Department’s complaint investigator also conducted on-site interviews with the parent, the student’s grandparent, and the student on February 12, 2008, in connection with the previous complaint investigation.

	Allegations	Conclusions
(1)(a)	<p>IEP Implementation: (April 10, 2007 IEP). The complaint alleged that the District violated IDEA by not implementing the student’s IEP modifications and accommodations, specifically:</p> <ol style="list-style-type: none"> (1) to provide access to a keyboard for written assignments, 6.5 hours per day; (2) to provide a “dictation tape recorder”; and (3) to allow the student to dictate while in Social Studies class on December 6, 2007. 	<p>Not Substantiated.</p> <ol style="list-style-type: none"> (1) The Department did not find persuasive evidence of a violation. (2) The Department did not find persuasive evidence that the District was obligated to provide a dictation tape recorder for the student. (3) The Department did not find persuasive evidence that the student was not allowed to dictate to an adult assistant during his December 6 social studies class.
(1)(b)	<p>IEP Implementation: (April 10, 2007 IEP). The complaint alleged that the District violated IDEA by not fully implementing the student’s IEP modifications and accommodations to provide parent/teacher communications, once per day. Specific examples cited by the parent related to the use of an EGC travel card, as follows:</p> <ol style="list-style-type: none"> (1) <u>EGC Travel Card</u>: The parent alleges that the District should have communicated the reasons the student received “no’s” on his EGC travel card. For example, the parent asserts that the student’s EGC travel card showed he received “no’s” in Social Studies on September 14, October 17, 25, November 6, 7, 14, and 20, without explanation, “no’s” in physical education on September 14 without explanation, “no’s” in writing on September 17 and 26, “no’s” in Math on September 13, and additional “no’s” on his EGC travel card on September 10, October 5, 18, 30, 31, November 9, 16, and 19, without explanation. The parent also alleges that the District should have informed the parent if the student was respectful towards staff and peers and if the student timely completed his tasks in Social Studies on September 7, or timely completed his tasks in Math class on November 14. The parent further asserts that the District did not provide parent communication in PE on September 26, and should have informed the parent whether the student handled transitions successfully on November 5, and why the student received a rating of “4” on his 	<p>Not Substantiated.</p> <ol style="list-style-type: none"> (1) The Department does not find that the District failed to implement the daily parent/teacher communication required by the student’s IEP. (2) The Department does not find that the District failed to communicate to the parent concerning the October 17, 2007 classroom disruptions. (3) The Department does not find that the District failed to inform the parent concerning the November 26, 2007 behavior incidents or related discipline action. (4) The Department does not find that the District violated IDEA by not informing the parent until October 30, 2007 that the student was refusing to utilize occupational therapy accommodations on his IEP.

	<p>EGC travel card on December 17;</p> <p>(2) not informing the parent that the student's writing class was disrupted by ongoing conversations in the EGC class on October 17, 2007;</p> <p>(3) not informing the parent that the student received a citation, detention and referral on November 26, 2007; and</p> <p>(4) not informing the parent of the student's refusal to utilize Occupational Therapy accommodations included in the IEP.</p>	
(1)(c)	<p>IEP Implementation: (April 10, 2007 IEP): The complaint alleged that the District violated IDEA by not implementing the student's Behavior Support Plan (BSP), specifically:</p> <p>(1) by placing the student in a separate room ("Cool Down Room") in which there was no doorknob on the inside of the room;</p> <p>(2) by not placing the student in the separate room when his behavior warranted such placement on October 2, 2007; the parent cited a specific example of October 2, 2007 when the student needed a "cool down/time out" in writing and math;</p> <p>(3) the parent cited several specific dates alleging the BSP was not implemented in Social Studies class, including September 19, 24, October 8, 10, 16, 17, 19, or 26, 2007, November 6, 8, December 4, 11, and 17, 2007, and not implemented in writing or math on November 16, 2007;</p> <p>(4) in 6th period on October 15, 2007, and on November 7, 2007; and</p> <p>(5) by District staff grabbing the student's shirt on September 10, 2007 instead of using strategies contained in the BSP.</p>	<p>Not substantiated:</p> <p>(1) The Department found that the door handle to this room was broken as alleged by the parent, but concluded that this was a safety issue and not a violation of IDEA.</p> <p>(2) The Department does not find that the District violated IDEA by not providing a cool down/time out for the student on October 2, 2007.</p> <p>(3) The Department found that the District implemented the student's BSP in his social studies, writing, and math classes.</p> <p>(4) The Department found that the District implemented the student's BSP on October 15, 2007 and November 7, 2007.</p> <p>(5) The District investigated the incident and the Department does not substantiate a violation of IDEA.</p>

III. FINDINGS OF FACT

1. The student resides within the District and is enrolled in the eighth grade.³ The student is eligible to receive special education and related services as a child with other health impairment, related to several diagnosed medical conditions (fetal alcohol syndrome, attention deficit hyperactivity disorder (ADHD), oppositional

³ The student was being home schooled at the time of the Department's on-site investigation. He attended school in the District during the times relevant to the allegations in this complaint investigation.

defiance disorder (ODD), reactive attachment disorder, juvenile bipolar disorder, a history of failure to thrive, and a seizure disorder).

2. The student receives all of his academic instruction and services except for P.E. and social studies in the Emotional Growth Center (EGC). The EGC teacher acts as the student's case manager and provides direct services to the student in several areas including fifty minutes of daily behavioral instruction. The EGC teacher also ensures that the school staff implements the student's IEP.

April 10, 2007 IEP

3. On April 10, 2007, the District held a meeting and developed an IEP for the student. The student's IEP provided for specially designed instruction in behavior, reading, math, and written language, and provided for transportation and OT consultation as related services.
4. The student's IEP identified the following supplementary aids and services, and modifications and accommodations: parent/teacher communication (one time per day), Behavior Support Plan (6.5 hours per day), assignments at ability level (6.5 hours per day), access to keyboard for written assignments (6.5 hours per day), and teacher-provided notes (for courses requiring intensive notes).
5. The April 10, 2007 team also included a non-participation justification statement in the student's IEP, requiring that all of the student's academics be provided in special education classrooms in order to meet the student's need for extra academic and behavioral structure.
6. The IEP included a Behavior Support Plan (BSP), with the following description of the student:

“[The student] is a bright young man. He is interested in many school-related topics, and is eager to participate in discussions and activities. [The student] also has a strong desire to make friends. [The student] is distractible and has a lot of difficulty following instructions. He often begins working before directions are given, and seems unable or unwilling to stop and listen in order to do assignments correctly. [The student] has poor impulse control, and frequently distracts others in class with noises and off-topic conversation. [The student] has trouble with inappropriate peer interactions, specifically horse-play and name-calling, especially in PE class.”
7. The student's BSP recommended the following teaching strategies for the student to have success, including: “[The student] does well working in small groups. He frequently needs to have directions repeated to him after he has had a chance to focus on the teacher. [The student] needs more time and assistance on written assignments.” The BSP identified positive consequences teachers may provide as: “[The student] enjoys working with others, helping out in the classroom, and working on the computer. He also loves to be active.” The BSP identified negative consequences as “time out/cool down time” and “loss of points, level, and freedom.”

8. The student's BSP stated that the student would follow the discipline code for the District. The BSP stated that the student would receive pre-teaching in mainstream classes. "In mainstream classes, [the student] will receive pre-teaching according to the following format: here is the activity you will be doing; here are the rules of the activity; here's what could happen; how will you handle this; here is the signal for you to come out of the activity for a cool down; and, if you don't respond to the signal, you will be removed for re-focusing at a different location."
9. The IEP had one annual measurable goal for behavior: "[The student] will consistently adhere to the behavioral expectations of his teachers, consistently achieving Level 3 or 4 in the EGC, and avoiding citations and referrals in all classes, by 4/10/08. Six short-term instructional objectives related to this goal. The first short-term objective stated: "Given classroom expectations, speak and act in a respectful manner towards adults, including using appropriate language."
10. The District determined the student's placement on April 10, 2007, placing him: "More than 60% resource room (or special class)" noting the benefits of the placement as "Structured classroom, no unsupervised transitions, most behavioral support." The team described possible harmful effects of the selected placement as: "With atypical peers, limited access to grade appropriate activities" and included as services to reduce these harmful effects: "Increase time with typical peers as behavior allows." The team considered and rejected placing the student in the regular classroom due to lack of adequate academic support and also considered and rejecting placing the student in the regular classroom with 21-60% resource room (or special class) support.
11. District staff took notes of the IEP meeting. The special education teacher present at the meeting commented that: "Handwriting gets in the way of his transfer of ideas to paper." The IEP meeting notes state that the parent suggested using a tape recorder, and the occupational therapist "talked about writing short notes & keyboarding." The regular classroom teacher participant also talked about the student's use of keyboarding, stating that he works for about 25 minutes a day, has educational assistant support, and a variety of avenues available for the student to express himself.
12. The parent brought an advocate to the April 10, 2007 IEP meeting who kept notes at the meeting. The advocate's notes indicate that the team agreed that the student would have a tape recorder and computer keyboard.
13. Occupational therapist A also took notes at the April 10, 2007 IEP meeting. Occupational Therapist A stated that the IEP team discussed dictation but viewed keyboarding as the better option. At the IEP meeting, occupational therapist A agreed to research dictation options available and meet with the District assistive technology team.
14. On May 3, 2007, the assistive technology team recommended that the student use a Co-writer, a word prediction program together with the current notes modification on the student's current IEP.

Occupational Therapy Evaluations

15. On February 15, 2007, the District conducted an evaluation of the student's occupational therapy needs. In the area of fine motor skills, occupational therapist A wrote:

"Though [the student] dislikes keyboarding, it can be an excellent strategy for improving legibility and quality. Also, as indicated by testing, [the student's] visual perception skills are a strength for him, while fine-motor coordination and integration are a greater challenge. Keyboarding significantly reduces the amount of motor control necessary for written communication. However, keyboarding is often only a frustration if one is not proficient. As such, if keyboarding is considered, it would be beneficial for [the student] to gain typing proficiency prior to attempting to complete a writing assignments (sic) using keyboarding."

16. Occupational therapist A and occupational therapist B agree that they do not expect to see much change or improvement in the student's handwriting. They also agree that the student should utilize some form of assistive technology, such as keyboarding and/or dictation. Occupational Therapist A asserts that keyboarding is often required in the workplace and generally more accepted in the workplace than dictation. She does note that the student has very poor keyboarding skills but reports that the student was enrolled in keyboarding classes during the 2006-07 school year and was doing well in those classes.
17. Occupational therapist B reports that the Co-writer program has been available for the student's use in class, and the student has also used dictation (with an adult assistant, not a tape recorder). Occupational therapist B reports that the student is able to independently use the keyboarding equipment, including the laptop and Co-writer program, and that it is the student's preference to use his handwriting. Occupational therapist B stated that this has not been a concern for her because the student has been successful academically using his handwriting. She contends that the goal of the services is to accommodate the student's handwriting sufficiently for him to be academically successful. Therefore, since the student was being successful through shortened assignments, and the impact of the student's poor handwriting on his academic performance was alleviated, the goal was being met. Occupational A agrees with this assessment of the student's functional handwriting and the purpose of the accommodations.

IEP Implementation: Access to a Computer

18. The District did not continue the student's keyboarding instruction for the fall semester of the 2007-08 school year, but made a computer available to the student

to use for his writing assignments, 6.5 hours per day as stated in his IEP.⁴ The computer available to the student has the Co-Writer word prediction program installed, to further assist the student with writing. The computer available for the student's use is located in the rear of the EGC classroom, near the desk of an educational assistant who works with the student. Staff noted that the student preferred to stay with the other students, and not go to the rear area of the classroom to access the computer. Staff arranged for the student to have access to a laptop computer with the Co-Writer program, accessible to the student directly behind his desk. Occupational therapist B communicated with the EGC teacher on September 28, 2007 asking whether the student was using the Co-writer program. The EGC teacher responded that same day, reporting that the use of the Co-writer was offered to the student, but he hadn't used it yet, and wasn't too interested. On October 17, 2007, the EGC teacher again communicated with occupational therapist B concerning this issue, noting: "We have made [keyboarding with the Co-writer program] available to [the student], but he prefers to practice his handwriting. So far, though, there hasn't been a big writing assignment where there would be a lot of handwriting – so we will remind him again when that happens."

19. The parent contends that access to a computer for 6.5 hours per day is not enough to fulfill the keyboarding accommodation specified on the student's IEP. He notes that his son's keyboarding skills are poor, and contends that the District should have continued to teach his son to write his assignments utilizing the keyboarding. The parent points to a May 9, 2007 assessment of the student's need for assistive technology, in which it was stated: "His keyboarding skills are not yet strong enough [to] support academic performance." The parent points to May 17, 2007 communication between occupational therapist A and the student's former special education teacher, stating:

"I think it's a very good idea for him to continue to practice keyboarding, but this [Co-writer program] will make things faster for him when completing assignments as he's learning to type." [Interview; P30; P32; P35]

20. The parent reports that his son likes working with computers and wants to be taught to use them. He contends that the District should have continued teaching his son keyboarding skills during the 2007-08 school year, as was done during the 2006-07 school year. The parent notes that he did not receive any copies of assignments his son typed during the 2007-08 school year.

IEP Implementation: Access to Dictation Recorder

21. The parent states that the District should have provided a tape-recorder for his son's use in dictating his writing assignments. He reports that use of a tape-recorder was discussed at length at the April 10, 2007 IEP meeting, and believes the team agreed to have this provided as assistive technology. He points to April 25, 2007 communication between the student's former special education teacher and occupational therapist A, stating: "I've been looking into tape recorders for [the

⁴ The District indicated during the on-site investigation that the keyboarding class was available to the student, and were the student to return to school his participation in the keyboarding class would be encouraged.

student] to use. (although he seems to prefer dictating and/or writing the rough draft and then having me type it- he then edits the paper on the computer)."

22. The parent also points to a May 9, 2007 assessment of the student's need for assistive technology, in which it was stated: "Dictation strategies have been discussed, including a mini-recorder, which may be a good solution. A more extreme, but potentially effective option may be dictation software until his keyboarding becomes proficient. We are looking for a long-term solution as writing demands will increase through high school and his handwriting skills are not expected to improve secondary to his diagnoses."
23. The District asserts that use of a dictation tape recorder is not an accommodation/modification listed on the student's April 10, 2007 IEP. The District notes that supports available to the student include use of an educational assistant as a scribe.

IEP Implementation: Availability of Educational Assistant for Dictation

24. An educational assistant worked directly with the student providing adult assistance and support typically in a small group setting or as adult support in the Social Studies and P.E. classes. The educational assistant noted that she always reminded the student that she was available to assist him with writing notes and assignments. The educational assistant reported that the student consistently preferred to write his own work rather than have her do it for him. The educational assistant did note that the student sometimes did dictate to her. The educational assistant also noted that the student's assignments were modified for him such as multiple choice tests instead of written exams.
25. The social studies teacher reported that the educational assistant often took notes for the student, and would write for the student. The student, however, mostly completed his own work. The social studies teacher stated that the student could use a laptop in his class, but never did, although another student in his class did use a laptop. The social studies teacher also reported that the student turned in messy written work, but that he could read it.
26. The parent states that on December 6, 2007 his son injured his left thumb in P.E. and the District failed to provide his son with dictation support in social studies class as required in the IEP.

EGC Classroom

27. The EGC teacher taught all of the student's subjects, except PE and social studies. She made numerous accommodations and provided assistance for the student's writing during the 2007-08 school year, including: assignment modification; pre-assessment to determine instructional level; pencil grips; assisted technology (specialized computer software for sentence completion; Smart type laptop availability; application for laptop for use in classroom, to include Co-Writer software to assist in sentence completion; 3 hours with occupational therapist addressing issues and district options, including consultation with student); pre-written

assignments for math; modification of daily calendar in social studies to assist with larger writing; education assistant in inclusion classes to assist with writing assignments as necessary; graphic organizers for writing assignments; dictation of answers for reading assignments for those questions which require in depth analysis and abstract thinking; extended assignment time; coordination with inclusion teachers to ensure assistance and accommodation availability; note-taking assistance; options of electronic assignments when available; grading with separation of writing and content; alternative assignment format if warranted.

28. The EGC teacher used the EGC Card to track the student's behavior and his progress towards the behavioral goals and objectives on his IEP. The EGC travel card had several areas for the teachers in each of the student's class periods to indicate with a "Y" or "N" whether the student met the stated criteria. The areas measured included: "On Time & Prepared to Learn"; "Respect Towards Staff and Peers"; "Student Completes Tasks Timely"; and, "Handles Transition Successfully." There was also a small space for the teacher to write "Teacher Comments," where the teachers sometimes wrote comments concerning the student's performance. The EGC travel card also measured the student's behavior in different areas for the morning and afternoon bus rides.
29. The EGC teacher reports she implemented the student's BSP throughout each school day. She stated that the student always received a prompt concerning the expected behavior. The student was redirected and reminded of the rules and consequences (including time out). If the inappropriate behavior continued he was removed from the situation for a cool down period. The EGC teacher reported that each activity was reviewed with the student, and expectations discussed. She also used a levels system in the EGC classroom, with increased or decreased privileges dependent on the student's level, and the impact of the student's behavior on his level, and privileges, was discussed.

Cool Down Room, Behavior Support Plan (BSP), and Supports

30. The EGC center has a small "Cool Down Room" (also referred to by staff as: "Time-out Room") available to students. The door does not lock; however, the inside door handle was broken by a student and had a piece of the handle missing for the first part of the 2007-08 school year. The remaining piece of handle consisted of a straight piece of pipe that students in the Cool Down Room could grasp and twist to open the door. The EGC teacher verified that the student could open the door utilizing the broken handle. The room is small, equipped with a desk, a student chair, a teacher chair, a window and vent, and the door. The room also contains some safety equipment, including a fire extinguisher.
31. The student reported that he rarely went into the room and closed the door. The student stated that he could open this door utilizing the broken handle, although it "takes a lot of thought to open" as it was difficult to grasp and twist the remaining piece. The student went into the Cool Down Room twice on November 26, 2007, and reported that the door did close on him. He also reported that he was not required to stay in the Cool Down Room.

32. The parent asserts that the broken handle on the door made the room unsafe for the use of any child, including his son. The parent points to the broken handle as a barrier to exiting the room, and a safety issue, and he went to the school principal and voiced his concerns regarding the door handle. The District replaced the broken handle with a new one after receiving this complaint.
33. The educational assistant described the Cool Down Room as a place for students to quietly gather themselves, get themselves on task, and study. She reported that the Cool Down Room was not used for discipline. The educational assistant reported that the Cool Down Room did have a partial door handle, as another student had broken it, but that the door did not lock and the student could and did open the door using the broken handle.
34. The educational assistant supervised the student, prompting him on his behavior, reminding him of consequences, and implementing the student's required BSP under the supervision of the EGC teacher and the classroom teacher. The educational assistant described the student's behavior as constant, low-level disruption (mostly noise) that sometimes escalated. She reported that she prompted the student by quietly talking to him, and asking him to be quieter, and that this sometimes worked. The educational assistant further reported that the student's classroom teacher also prompted the student, and this sometimes resulted in the student being quieter. She stated that if the student did not quiet down, she would remind the student of the expectations, and ask him if he needed a break. The educational assistant further reported that she reminded the student of the consequences of not complying with his behavior plan, but noted that this did not seem to bother him. The educational assistant sometimes filled out the student's EGC travel card, reporting to the EGC teacher who sometimes wrote teacher comments. The educational assistant stated that if there were no written comments it meant there was nothing out of the ordinary.
35. The social studies teacher described the student's behavioral issues in his class as mostly low-level noise, and not that large a distraction. He stated that the student listened and attended to instruction in class, raised his hand and contributed to discussion with appropriate comments. The social studies teacher reported that he was able to check the student's understanding through his comments and participation in class. The social studies teacher is familiar with the student's BSP, and reported that either the educational assistant or himself would prompt the student's behavior if he was too noisy or creating too much interruption. He reported, however, that this did not happen often, and he never had much trouble with the student in his class. The social studies teacher reported that the educational assistant typically intervened before the student's behavior escalated to a discipline issue. The educational assistant removed the student from class for a cool down period if he were persistently disruptive. The social studies teacher described the student as engaging, talkative, and participating in class, and believed that the student enjoyed learning about history.
36. The PE teacher also reported that the student's BSP was consistently implemented during PE. He described the student's BSP, noting that there were also educational

assistants assisting the student in PE. The PE teacher outlined the implementation of the student's BSP during PE, stating that generally the student's inappropriate behavior consisted of roughhousing and being overly boisterous, somewhat outside the boundaries for expected behavior for his peers. The PE teacher reported that he (or an educational assistant) would say the student's name, call him over and talk to him, review the expectations for the student's behavior, and identify the student's inappropriate behavior. The PE teacher reported that this intervention worked for the student, and he never once actually had to send the student to time-out. In his opinion, the BSP was implemented and the student participated in PE without any discipline issues.

EGC Travel Card and Behavior Incidents

37. The EGC teacher used the EGC travel card to track the student's behavior and his progress towards the behavioral goals and objectives on his IEP. She also used the EGC travel card to communicate with the student's parent, sending a copy of it home each day. The parent signed and returned the form the following day. The parent also used the same EGC travel card to write questions, remarks, or comments for the EGC teacher. The EGC teacher reported that she only made a written comment for the "Y" or "N" marks the student received if the student's behavior was significantly outside the norm. For example, she wrote "Lots of talking" as a comment on the student's October 16, 2007 EGC travel card to indicate that the student's talking behavior was significantly outside the behavior expectations for him. The EGC teacher also responded to the parent's letters and inquiries, held meetings with the parent, and communicated with him by telephone to address his concerns about his son's educational program.
38. The District asserts that sending home the EGC travel card fulfilled the IEP requirement concerning daily communication with the parent, regardless of whether the student's teachers made any additional comments on the card beyond indicating "Y" or "N."
39. The PE teacher filled out the student's EGC travel card whenever the student brought it to PE. He stated that if the student's behavior in class was out of the ordinary, he made a written comment concerning the behavior. The PE teacher also reported that after a particular incident when the student jumped on the back of a second student, he sent an email to the parent concerning the student's behavior.
40. The student's September 7, 2007 EGC travel card reflected an "N" behavior mark for "Respect Towards Staff and Peers" in PE, with a teacher comment: "Roughhouse during play time." For social studies, the September 7, 2007 EGC travel card had two "N" marks, with the teacher comment: "[The student] won't listen when told to do something." This EGC travel card had no marks for the student's behavior in history in the areas "Respect Towards Staff and Peers" and "Student Completes Tasks Timely." This EGC travel card also had three "N" behavior marks in writing, with the teacher comment: "Off task a lot, eventually pulled it together." There were no marks for the student's behavior during lunch, leaving a total of six empty out of the possible twenty-eight behavior marks.

41. An instructional assistant assigned to work with the student took hold of the student's collar during a September 10, 2007 PE class, to gain his attention after multiple unsuccessful attempts to gain his attention verbally. The educational assistant reported that she took hold of the student's collar very lightly, and withdrew her hand as soon as she had his attention, and that she took this action in order to support the safety of the students during PE. The parent contends that there was no need to grab hold of his son's shirt; rather, the parent contends that his son's BSP required pre-teaching of the expectations for the activity, redirection, with discussion of expectations and consequences, and then removal for a cool down period.
42. The parent submitted a complaint to the District concerning the September 10, 2007 incident. The school principal initiated an investigation, including a referral to the school resource officer. The District determined that the actions of the educational assistant were not inappropriate and did not place the student at risk.
43. The student's September 14, 2007 EGC travel card included all "N" marks for behavior in social studies and PE, with the comment for PE: "Changed to another class for today" and no teacher comment for social studies. The student received "N" marks for his behavior in his writing class on his EGC travel card for September 17 and 26, without a teacher comment or explanation concerning why the student did not meet behavioral expectations. The student received "N" marks for his behavior in his math class on his EGC travel card for September 10, October 5, 18, 30, and 31, and November 9, 16, and 19, without a teacher comment or explanation concerning why the student did not meet behavioral expectations. The student also received additional "N" marks for his behavior on his EGC travel card on September 10, October 5, 18, 30, and 31, and November 9, 16, and 19, without explanation.
44. The District held a meeting on September 19, 2007 to discuss parent concerns regarding the PE class, and certain bullying/harassing behavior towards the student. The team discussed the actions taken at school, concluding that the situation had been adequately dealt with. The IEP team reviewed the process in place for PE, involving the student changing for PE in the classroom, participating in PE, and returning to class. The team agreed that no changes were needed. The team also discussed the supervision of the student during PE, concluding that supervision was adequate. The team reviewed the student's BSP and agreed that no changes were needed. The team also discussed communication between staff and the parent, and the need for a clear channel of communication. The principal suggested a regular bi-monthly meeting to discuss any issues or concerns the parent had with his son's education.
45. The parent further asserts that the District did not provide parent communication about PE class on September 26, 2007. The parent states that the school should have informed him as to whether the student handled transitions successfully on November 5, and why the student received a rating of "4" on his EGC travel card on December 17, 2007. The parent also asserts that the District should have informed him that the student's writing class was disrupted by on-going conversations in the EGC class on October 17, 2007.

46. On October 2, 2007, the student received “N” marks on his EGC travel card in the area of “respect towards staff and peers.” The EGC travel card for that day includes teacher comments in other subjects, but no explanation for the “N” marks in writing or math. The EGC teacher’s notes for the day also state, however, that during 6th period the student: “worked really hard and turned his behavior around – he focused on catching up his missing social studies.” The EGC teacher’s notes for the day also include the comment that: “During writing [the student] lost another point for lacking respect for teachers and others and this happened again during math.” The EGC teacher recorded in her notes that during the passing time at the end of 5th period, the student was at his desk violently shaking his head to the music playing during the passing time, and spinning his hair around as well, for the entire four minutes. At the end of the passing time, the student hit his head on the desk, and then rolled into the aisle on the floor reporting to the EGC teacher that he felt dizzy. The EGC teacher took the student to visit the nurse, and the student vomited several times. The incident was reported to the parent. The parent asserts that the student’s BSP was not implemented, and that the lost points indicate staff disciplined his son without providing him with an opportunity to “cool down” and refocus in another location.
47. The student’s October 10, 2007 EGC travel card had three “N” behavior marks in social studies, with the teacher comment: “Very off task not working.” The parent contends that staff should have implemented the student’s BSP, provided re-teaching of expectations and consequences, and removal from class for re-focusing in a different location.
48. The student’s October 15, 2007 EGC travel card had four “N” behavior marks in the 6th period social skills class (EGC classroom), with the teacher comment: “[The student] chose not to work in study hall.” The EGC teacher’s behavior notes for the student state that: “6th Period did not go well for [the student] ~ he lost all his points for this period. [The student] was not ready when the period began, he was disrespectful to staff by refusing to be redirected, and continuously interrupting class. [The student] had social studies as well as spelling to work on and instead chose (sic) to do nothing.”
49. On October 16, 2007, the student’s EGC travel card had three “N” behavior marks in social studies, with the teacher comment: “Lot’s of talking off task.” The parent asserts that the BSP was not implemented, and that his son should have received the re-teaching, and removal for refocusing, described in the BSP. The EGC teacher’s notes for this day include the comment for social studies that:
- “[The student] didn’t do the journal or the warm ups and was 15 minutes into class prior to him starting to work. [The student] had a day where he was yelling out funny remarks to get others to laugh while the teacher was instructing; he was redirected several times and yet continued with misbehavior. It was discussed with [the student] that he may want to think about what not to say prior to blurting out things just for attention. Instead of doing his map today and working in class [the student] choose (sic) to continue to talk out with random things off topic, disruptive to others. Lunch went well for [the student] today ` as well as most of the rest of the day. [The student]

did however lose points each period after lunch for not working on his work and completing it in a timely manner.”

50. The student received “N” marks for his behavior in social studies on his EGC travel cards for October 17, 19, 25 and 26, and November 6, 7, 14, and 20, some without a teacher comment or explanation concerning why the student did not meet behavioral expectations. The parent points to comments in the EGC teacher’s notes indicating that his son’s behavior in social studies class was disruptive, and contends that his son needed to be refocused on appropriate behavior. The EGC teacher’s behavior notes for the student on October 17, 2007 state that the student would not stop talking about an incident in PE, was redirected several times “which he chose to ignore” and “was loudly talking and laughing” in his social studies class to the point where the social studies teacher also had to redirect him. The EGC travel card for October 17, 2007 has three “N” marks for social studies, with no mark for “transitions” and a teacher comment that the student was “off task, talking.”
51. The parent also asserts that the student should have been removed from his social studies class on October 19, 2007 due to his disruptive behavior, and given the opportunity to refocus in a different location. The EGC teacher’s October 19, 2007 notes include the observation that:

“During [social studies] class today [the student] was digging in the colored pencil can during instruction time, making it difficult for him and others to hear the instructions. [The social studies teacher] was required to repeat his instructions for everyone to hear. [The student] was asked to stop, but instead choose (sic) to continue to disrupt. During the word search today in class [the student] found the word “Gay” and choose (sic) to show it around disrupting others. The class watched a video today and instead of watching and taking notes, [the student] continued with his fun worksheets and missed most of what he needed in terms of information off the video...”
52. The parent points to behavior notes for October 26 indicating that his son had trouble following along and therefore repetitively asked the social studies teacher the answers to the previous question, interrupting the classroom, and that although the notes indicate the student was redirected several times, a cool down opportunity was never presented.
53. The parent wrote a note back on the student’s October 30, 2007 EGC travel card asking: “Why are the comment areas on the other side not being filled in now, I find them informative and helpful?” The parent also asked about parent conferences.
54. On October 31, 2007, the EGC teacher responded to concerns raised by the parent by writing a letter to him concerning the various issues the parent raised. The letter notes that in September OT services installed a computer program for the student’s use, and the student is offered the use of the computer, but refuses stating he would rather write instead. She noted that the student’s participation in class is supported by an education assistant, who works with the student “in verbally answering the questions and at times writing his verbal response in an effort to ease the stress of writing [for the student].” The EGC teacher noted that daily assignments are copied

for the student so that he does not have to write them down. She also provided a detailed explanation of the scoring for the EGC travel card, noting that: "if there are no comments then there were no outstanding events that warranted comments at that time." The EGC teacher also responded to the parent's inquiry concerning parent conferences.

55. On October 31, 2007, the EGC teacher made notes concerning the student's behavior at school, stating that he was on a level 2 (meaning he was permitted to talk to other students at level 2 or above during lunch). She noted that the student was upset as there were no other students permitted to talk with him. The student started making loud noises, ignored requests made several times by adults to stop making the loud noises, and was asked to visit the time out room. The EGC teacher noted that the student was welcomed back once his behaviors were appropriate.
56. The student's November 7, 2007 EGC travel card reflected "N" marks for "On time & prepared to learn" in reading, and PE, an "N" marks for ""Handles transition successfully" for PE, and "N" marks in all areas for history (social studies). The travel card did not have teacher comments or explanations concerning any of these "N" marks. The EGC teacher's file notes, which do not go home to the parent with the copy of the EGC travel card, reported that in social studies the student repeatedly chose to not answer staff when they needed his attention, and then refused to comply when instructed to leave the room with staff. The notes report that the staff made the decision to remove the student from class after the social studies teacher asked him several times to get on task. The notes also describe the student's disruptive behavior, and note that his poor behavior continued through lunch. However, the student did well for the rest of the afternoon. The parent points out how his son was choosing not to follow directions or comply. The parent asserts that staff did not implement his son's BSP.
57. The student's November 20, 2007 EGC travel card had three "N" behavior marks in social studies without a teacher comment or explanation.
58. On November 26, 2007, the EGC teacher changed the EGC travel card from the "Y" or "N" marks to a rating scale of 1-10, continuing to provide a space for teacher comments.
59. The student received two behavioral citations, or referrals, and was disciplined with detention on November 26, 2007. His travel card that day reflected a "3" in social studies, with the teacher comment: "Rough time. Put his head down on desk. Was asked 4x's to pay attent." In writing, the student received a behavior mark of "2" with the teacher comment: "Had to move – disrupting class. Talking out earned L.D. tomorrow." For math and study hall, the student received behavior marks of "1" with these teacher comments: "Spent entire period playing "ninja's" & disrupting class. Redirected several times & he said, "No". Escorted out of EGC 5th period – 6th period in PASSroom." The EGC teacher kept extensive notes concerning the student's behavior that day. Including the following excerpts:
[First period] "[The student] refused to fill out his Travel Card's personal goals section and was unable to begin reading as he choose (sic) to not finish his

first task.”; [PE] “During PE today it was necessary to have [the student] sit out due to inappropriate choices and his behaviors. When [the student] was asked why he was making poor choices, he replied, “I’m just tired...” [Social studies] “During Social Studies in [the social studies teacher’s] class [the student] began making noises with his mouth and interrupting class when redirected, [the student] chose to make turkey calls. [The student] was redirected several times, and continued to talk out and disrupt class. [The student] instead chooses to not work on his warm-up, did not fill out his planner, and again asked off topic questions while continuing to talk and reply to himself. Finally, [the student] put his head down on his desk and needed to be asked four times to sit up and pay attention.”

60. The EGC teacher’s notes concerning the student’s November 26, 2007 behavior during writing included these comments for his behavior during writing:

“During Writing today after lunch ([the student] again choose (sic) not to eat), [The student] would not stop disrupting class. He was redirected several times and failed to comply. At one point through the rule of proximity, I stood next to [the student] and whispered that if he didn’t stop I would have to write him a citation and he would not be allowed to gain a level tomorrow....[The student] continued, therefore, at about 11:42 am [the student] was asked to move to the time-out room so that he could work quietly while getting himself back under control, and he was informed that he had earned lunch detention tomorrow with a citation. [The student] remained in the Time-Out room until the end of class at 12:12 pm – where he worked with the door open. [The student] also participated in the classroom activity from the Time-Out Room where students choose other students to make corrections on punctuation practice sentences on the overhead. At the end of class [the student] asked if he could return to his seat. I replied, “sure, as long as you can control yourself.” [The student] agreed he could. However, while returning to his seat he again caused a disruption by crawling into his seat through the side with the bar and crawling into his chair. [The student] was redirected to walk back to where he started and sit down properly ~ [the student] complied.”

61. The EGC teacher’s November 26, 2007 notes concerning the student’s behavior during math included these comments:

“During Math which began at 12:17 pm [the student] continued to be disruptive. Again [the student] was redirected a minimum of six times to stop talking and requested to get to work. [The student] continued to choose making noises and distracting others instead of being on task. At around 12:30 pm [the student] was asked to go back to the Time-Out room and gather himself. [The student] refused to move. [The student] was asked three additional times, and still refused to comply. I walked back to [the student’s] desk and while approaching closer, [the student] got up and moved without taking his supplies. I directly requested to [the student] that he get his pencil and paper as we were in Math, and [the student] refused. Upon entering the Time-Out room, [the student] began making turkey gobbles. I asked [the student] to stop, and instructed him that he wasn’t allowed to disrupt class and if he couldn’t stop then the door would need to be closed until he was able to

control himself so as to not disrupt the entire class. [The student] continued and I closed the Time-Out door approximately 12:35 pm.

While behind the closed door [the student] sang, made continuous bird calls, gobbled like a turkey, screamed high-pitch screeches, and played “ninaj’s” by having a loud conversation with himself between two ninja’s. When asked directly to stop, [the student] replied “No”. Occasionally, [the student] heard other student’s (sic) reacting to him and on at least three occasions he continued with his bird calls and gobbles louder as if to purposefully disrupt others. However, as a whole, the rest of the class was very on task and ignored much of what [the student] was doing. ”However at approximately 12:45 pm’ish, after disrupting the class for almost two periods I spoke with administration and wrote [the student] a referral...” [D124-125]

62. The student’s November 26, 2007 behavior continued to escalate after he received the referral, and was removed from the EGC classroom. The EGC teacher’s notes stated:

“While in PASSroom [the student] was removed by [a teacher] as he was disrupting that class. [The teacher] talked with [the student] for a while out in the hall (I returned to class and do not know exactly how long), around the middle of 6th Period an extremely loud high pitch screech was heard from the PASSroom. It was loud enough were (sic) every student in the EGC stopped working and immediately looked up toward the PASSroom. It was recognizably [the student’s] voice. I went into the PASSroom to see if I could help [the staff] (PASSroom supervisor) and was told that [the student] had jumped onto the top of [the PASSroom supervisor’s] desk and screamed directly into his ear. This caused [the PASSroom supervisor] to lurch backwards turning his head, and injuring his neck. [The PASSroom supervisor] wrote an additional referral for this incident...”

[The student] was escorted out of the PASSroom to the AP’s office where additional consequences for his second referral were distributed, and [the student] received two days additional After School Detention on Tuesday and Wednesday. [The student] was escorted back to the EGC at the end of school and he was placed on his bus. While preparing to get onto the bus [staff] asked [the student] about his travel card. It was learned that the AP was in possession of [the student’s] Travel Card and that a copy had been made and mailed to [the parent].”

63. The parent asserts that he was not fully informed of the circumstances of the student’s November 26, 2007 behavior at school, and he should have been contacted before disciplinary action was taken at school with respect to his son’s behavior. The parent also called the school because he believed his son was injured at school. The parent talked to the school assistant principal (referenced as “AP”) involved in the discipline, and discussed concerns regarding communication, discipline, his son’s behavior at school, and the injury his son reported. The parent also objected to the mailing of his son’s travel card for that day, noting that he did not receive it for another 3-4 days. The parent also called the school and asked to speak to the EGC teacher, who did not return his call that day as the assistant principal had just talked to the parent. The parent also points to the referral form, which does not state that

the EGC teacher took any action (including not contacting the parent) prior to making the referrals.

64. On January 3, 2008, the principal provided a written response to questions and requests received from the parent earlier that day. The principal addressed several of the parent's concerns in the letter. The principal stated that it would be appropriate to address other concerns at an IEP meeting, and asked for possible dates in January for such a meeting. The parent removed his son from school, and started home schooling him.

2007-08 Progress Reports

65. The District provided the parent with an October 7, 2007 report concerning the progress the student was making towards the goals and objectives on his IEP. The report consisted of a copy of each of the goals pages on the student's April 10, 2007 IEP, with the note: "Progressing toward goal/objective" written for each page.
66. The student received an October 11, 2007 progress report with passing grades in all areas. The student received three "B" grades and one "C" grade in social skills from the EGC teacher. The student received a "C" in PE with the PE teacher noting: "irregular attendance." The student received a "C" in social studies with the social studies teacher noting "Dependable worker."
67. On November 21, 2007, the District again provided the parent with a report concerning the progress his son was making towards the goals and objectives on his IEP. This report also consisted of copies of each page of goals and objectives on the student's April 10, 2007 IEP, with the note: "Progressing toward goal/objective" written for each page.
68. The student received a November 21, 2007 progress report with passing grades in all subject areas. He received three "C" grades and one "D" in social skills from the EGC teacher, noting that the student's "work and efforts improving." The student received an "A" in PE, with the PE teacher commenting: "Curriculum modified." The student received a "C" in social studies with the social studies teacher making the comment: "Class/homework not completed."

IV. DISCUSSION

In a complaint investigation, the Department looks at all the available information to determine whether a school district or other program has met the requirements of the IDEA. The Department will substantiate an allegation if the evidence supporting it is more persuasive than the evidence denying it. If the evidence on both sides is equally persuasive, the Department will not find a violation.

Under the IDEA, school districts must develop and implement an IEP for each eligible student designed to ensure that the child receives a free appropriate public education

(FAPE).⁵ A school district meets its obligation to provide FAPE by complying with the procedural requirements of the IDEA; and providing the student with an IEP that is "reasonably calculated to enable [the student] to receive educational benefit."⁶ A written IEP must be in effect for each eligible child at the beginning of each school year.⁷

A student's IEP must include a statement of the specific special education and related services and supplementary aids and services that are required to help the student: (a) achieve his or her annual goals; (b) make progress in the general curriculum; (c) participate in the extracurricular and other non-academic activities; and, (d) participate in all these activities with children without disabilities as well as children with disabilities.⁸

In addition, school districts must provide the special education and related services listed on the IEP.⁹ Furthermore, school districts must ensure that: a) the IEP is accessible to each regular education teacher, special education teacher, related service provider and other service provider who is responsible for its implementation, and (b) inform each teacher and provider of his or her specific responsibilities for implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for or on behalf of the child in accordance with the IEP.¹⁰

IEP Modifications and Accommodations

1. Access to a Computer

The parent alleges that the District failed to implement the computer accommodation required on his son's IEP. The IEP defined computer accommodation as "access to keyboard for written assignments for 6.5 hours a day." The parent contends that the District should have provided keyboarding instruction for his son for the fall semester of the 2007-2008 school year. Although the student had taken keyboarding classes in the 2006-2007 school year, he still has poor keyboarding skills. The District maintains that the school complied with the IEP requirement for computer access by making a laptop computer with the Co-Writer word prediction program accessible to the student directly behind his desk. The District also points out that the student could independently use the keyboarding equipment but preferred to complete his written assignments in handwriting.

The Department also notes that the District has indicated that the keyboarding class remains available to the student and that staff would encourage the student to participate in the keyboarding class when the student returns to school. The student has been successful academically using modified assignments and an educational assistant for dictation. The Department does not find persuasive evidence of a violation.

2. Dictation Tape Recorder

⁵ OAR 581-015-2220.

⁶ *Board of Educ. v. Rowley*, 458 U.S. 176,192 S.Ct. 3034, 72 L.Ed. (1982).

⁷ OAR 581-015-2220.

⁸ OAR 581-015-2205.

⁹ OAR 581-015-2220.

¹⁰ OAR 581-015-2220.

The parent alleges that the April 10, 2007 IEP requires that the District provide his son with a tape recorder for dictation as an accommodation for his son's difficulty with handwriting. The parent contends that notes taken by a parent advocate at the IEP meeting indicate that the IEP team agreed to provide the student with a tape recorder as an assistive technology device. The District states that a dictation tape recorder is not an accommodation listed on the April 10, 2007 IEP. Occupational therapist A also took notes at the IEP meeting. Occupational Therapist A stated that the IEP team did discuss dictation options but that keyboarding was viewed as a better long term accommodation for the student. Occupational Therapist A's notes show that she agreed to research the dictation options and follow up with the assistive technology team. On May 7, 2007, the District's assistive technology team recommended the Co-writer word prediction program to support the student's keyboarding and to continue the use of an educational assistant for dictation. The Department does not find persuasive evidence of a violation.

3. Dictation in social studies class on December 6, 2007

The parent alleges that on December 6, 2007 the District did not provide dictation support in social studies class for his son who had an injured left thumb. An educational assistant went with the student and other students from the EGC class to his social studies class. The educational assistant reported that she was available to assist the student as a scribe and always asked the student if he wanted or needed her help. The educational assistant noted that the student did have modified assignments such as multiple choice tests instead of written exams. The social studies teacher reported that the educational assistant often took notes for the student and wrote for the student. The Department does not find persuasive evidence that the student was not allowed to dictate while in social studies class on December 6, 2007.

Parent/Teacher Communications

1. EGC travel card

The parent alleges that the District did not implement the daily parent/teacher communication required by the student's April 10, 2007 IEP. The parent provides numerous examples related to the EGC travel cards sent home each day, where the student brought home travel cards that had missing marks or "N" marks without teacher comments or further explanation. The District contends that it met the IEP's requirement for daily communication with the parent by sending the EGC travel card home each day, in which teachers marked "Y" or "N" to indicate whether the student met behavioral expectations. The District notes that the inclusion of teacher comments was discretionary.

The EGC card provides daily data on the student's progress in achieving behavioral objectives such as "On time and prepared to learn" and "Student completes tasks timely." The behavioral marks clearly relate to the overall goal for the student's behavior to "consistently adhere to the behavioral expectations of his teachers ..." Thus, a mark of "N" communicates that the student did not meet the teacher's expectation in that category. The student brought home some EGC travel cards with missing data without

explanation. The September 7, 2007 card for example had six unmarked areas for the lunch period out of the twenty-eight areas of "Y" and "N" on the card. Missing data like this may have some effect on the EGC teacher's measurement of the student's progress towards his behavior goal, as tracked by the student's ability to maintain a level of "3" or "4".

However, the Department is not persuaded by the argument that the daily parent/teacher communication was not implemented, when the EGC travel card went home on some days without being completely filled out for every subject, or with "N" behavior marks without further explanation. The parent had the opportunity each day to use the EGC travel card to write questions or request clarification, and the EGC teacher responded with additional clarification. The Department also notes that the District addressed the parent's concerns, either through responses to the comments on the EGC travel card, or by telephone calls, and letters. The school staff held a meeting with the parent on September 19, 2007 to address the parent's concerns about communication. The Department does not find persuasive evidence that the District failed to implement the daily parent/teacher communication requirement on the student's IEP.

2. October 17, 2007 classroom disruptions

The parent alleges in his complaint that school staff should have informed him about the student's disruptive behavior in class on October 17, 2007. The EGC travel card sent home to the parent that day had several "N" behavior marks, including three for social studies with the comment: "off task, talking." This brief teacher comment, and the feedback from the "N" behavior marks, are clearly not as thorough an explanation as the EGC teacher's own behavior notes for October 17, 2007. The teacher's notes indicate that the student would not stop talking about an incident in PE, and was loudly talking and laughing in social studies to the point the social studies teacher redirected him. However, the EGC card clearly communicated to the parent. The student did not meet behavioral expectations that day, related to his being off-task and talking. The Department does not find a violation.

3. November 26, 2007 citation, detention, and referral

The parent alleges that the District did not implement the parent/teacher communication required by the student's IEP with respect to behavior incidents on November 26, 2007. The student was disciplined with detention on November 26, 2007, and received two behavioral citations or referrals. The EGC teacher kept detailed notes of the student's behavior that day, and staff efforts to implement the student's BSP. Before referring the student to detention, school staff went through all the steps of the BSP: refocusing student on behavioral expectations, explaining the consequences for his continued behavior, and providing opportunities for the student to utilize the cool down room and have time out.

The assistant principal mailed the student's EGC travel card to the parent rather than sending it home with the student that day (resulting in the parent not receiving it for another 3-4 days). The parent called the school and talked to the assistant principal about the discipline his son received, and the behavior incidents of the day. The parent

asserted that he should have been contacted before his son was given the behavioral referral, or detention. However, the BSP on the student's IEP does not require that the school contact the parent before referring the student to detention. The BSP stated that the student would follow the discipline code for the District. The Department does not find persuasive evidence that the District failed to inform the parent of the discipline incident, or failed to fully implement the daily parent/teacher communication required by the student's IEP.

4. Student's refusal to utilize Occupation Therapy accommodations

The parent alleges that the District failed to inform him of the student's refusal to utilize occupational therapy accommodations on his IEP. This allegation specifically refers to the student not using the keyboarding, or using the writing assistance offered by the educational assistant. The parent reported that he did not learn of his son's refusal to use these accommodations until October 31, 2007. In response to the parent's October 30, 2007 inquiries, the EGC teacher wrote that the student preferred to use his own handwriting rather than keyboarding to complete his written assignments.

The District delayed two months before informing the parent that his son was not using the keyboarding accommodation for his written assignments. The Department notes that the interview with the social studies teacher indicates that the student occasionally did use the dictation accommodations provided by the educational assistant. The EGC teacher could have communicated to the parent about the student's reluctance to use keyboarding by making a note on the daily EGC card. Further, the student's reluctance to use the computer related to an accommodation specifically listed on the IEP and was of particular importance to the parent.

The Department notes, however, that District staff made several efforts to engage the student in using a computer. The EGC teacher worked with an occupational therapist to encourage the student's use of keyboarding. When staff determined that the student did not want to be separated from his peers by going to the back of the classroom to access the computer, staff obtained a laptop for his use. Staff installed the Co-writer, a word prediction program, to make keyboarding and writing longer assignments easier for the student. Staff also provided other accommodations such as modified assignments which allowed the EGC teacher and social studies teacher to check the student's understanding of course material.

The Department also notes that the EGC teacher communicated with the parent by phone and responded to his letters and inquiries. The Department does not find that the district's delay in informing the parent of his son's reluctance to use the computer and dictation accommodations constituted a failure to implement the daily parent communication requirement of the IEP.

Behavior Support Plan

1. Placing student in "Cool Down Room"

The parent alleges that the District effectively restrained his son in the Cool Down Room,

by requiring him to use the room when the door handle was broken. The Department found that while it was true that the door handle was broken, the door did not lock and the student could still use the remaining piece of door handle to open the door. Further, the room was not used to discipline or restrain the student: he could open the door and come out. The District repaired the door handle in response to the parent's contact with the principal concerning the matter. The Department concludes that this was a safety issue, and not a violation of IDEA.

2. Not placing the student in "Cool Down Room" on October 2, 2007

The parent alleges that the District did not implement his son's BSP on October 2, 2007, because his behavior in writing and math that day indicated that he needed a "cool down/time out." The EGC travel card for that day had "N" marks for the student's behavior during writing and math, with problems in the areas of "respect towards staff and peers." The EGC teacher noted that the student showed a lack of respect for the teacher and others during writing and math and that the student lost points on the EGC classroom levels. The EGC teacher's notes also state, however, that the student later worked really hard, turned his behavior around, and focused on his schoolwork. The student's BSP identified two specific negative consequences for the student's teachers to apply when appropriate: "time out/cool down time" and "loss of points, level, freedom." The EGC teacher chose to apply loss of points on the levels system, rather than a cool down time, in response to the student's behavior, consistent with implementation of the student's BSP. The Department does not find persuasive evidence that the District violated IDEA on October 2, 2007 by not providing the student with cool down time.

3. Implementation of BSP in social studies, writing, and math

The parent alleges that the District did not implement his son's BSP in the student's social studies, writing and math classes. The parent points out that the student brought home EGC travel cards on thirteen days with many "N" marks for social studies and for one day with "N" marks for both math and writing. As an example, the parent refers to the documentation provided by the EGC travel cards and the EGC teacher's notes for October 16, 2007 and October 19, 2007. The EGC travel cards for these days document that the student received "N" behavior marks with a teacher comment noting "lots of talking off task." The EGC teacher's notes document that the student continued disrupting the class after being redirected several times on October 16 and October 19. The teacher's notes indicate that the student lost points on October 16 and presumably on October 19 as well which is consistent with the implementation of the behavior levels system in the EGC classroom. The parent also notes that on November 7, 2007, staff allowed the student to continue disrupting social studies class before intervening and providing the student for a time out/cool down period to refocus.

School staff has established a behavior plan which has enabled the student to be involved in the general curriculum and to be educated and participate with his peers. The EGC teacher informed the educational assistant and the teachers in social studies and P.E. of their responsibilities for implementing the BSP. The EGC teacher noted that she implemented the BSP throughout the day using the prompts, redirection and if necessary a cool down period. Both the social studies and the P.E. teachers report that

overall the BSP was consistently implemented in their classes. The social studies teacher reported that either he or the educational assistant would prompt the student's behavior if the student was too noisy or creating too much interruption. The social studies teacher reported that the educational assistant typically intervened before the student's behavior escalated to a discipline issue. The social studies teacher described the student's behavioral issues in his classes as mostly low-level noise. The social studies teacher stated the student listened and attended to instruction in class and raised his hand and contributed to discussion with appropriate comments. The P.E. teacher reported that he or the educational assistant would call the student over, review the behavioral expectations and identify the inappropriate behavior. The P.E. teacher noted that this behavioral intervention worked for the student and the student participated in P.E. without any discipline issues after September 10, 2007. Progress reports from October and November, 2007 show that the student was progressing on his IEP goals and objectives and making passing grades in his coursework.

The Department does not find persuasive evidence that the district failed to implement the BSP in the student's social studies, writing and math classes. Although there is evidence that district staff did not implement the BSP perfectly in every situation, District staff consistently implemented the BSP on a daily basis to support the student's placement and services.

4. Implementation of BSP on October 15, 2007 and November 7, 2007

The parent also alleges that the District did not implement his son's BSP in the student's 6th period class on October 15, 2007, or on November 5, 2007. The student's October 15, 2007 EGC travel card noted that the student's 6th period was in the EGC classroom. The student received all "N" behavior marks with the teacher comment: "[he student] chose not to work in study hall," indicating that the student's behavior was out of the ordinary, warranting a teacher comment. The EGC teacher's notes for that day state that the student lost all of his points for the 6th period. The loss of level system points for behavior is consistent with the student's BSP. The EGC teacher decided to apply the negative consequence of loss of points, rather than the cool down time, consistent with implementation of the student's BSP. The student's November 7, 2007 EGC travel card had all "N" marks for social studies, without a teacher comment. The EGC teacher's behavior notes for that day, however, indicate that the student's behavior was very disruptive, with the student interrupting the social studies teacher, being off-task for several minutes, and refusing to comply when directed to leave the room with staff. Staff decided to apply the time-out negative consequence in this case, rather than loss of points, consistent with implementation of the student's BSP. The Department does not find persuasive evidence that the District failed to implement the BSP on October 15, 2007 or November 7, 2007.

5. September 10, 2007 shirt grabbing

As alleged by the parent, on September 10, 2007 an educational assistant assigned to work with the student did take hold of the collar of the student's shirt in P.E. class. The educational assistant first attempted (unsuccessfully) to gain the student's attention verbally, and then took hold of his collar, gained his attention, and provided prompts and

redirection in accordance with his BSP. District investigation of the incident concluded that the actions of the educational assistant were not inappropriate and did not place the student at risk. However, in response to the parent's concern, the school principal instructed staff to avoid using such strategies in the future with the student.

On September 19, 2007, the District held a meeting to discuss parental concerns about the P.E. class. The school staff and the parent reviewed the student's BSP and agreed that no changes were needed in the behavior plan. The Department does not substantiate a violation of IDEA.

V. CORRECTIVE ACTION

In the Matter of the Salem-Keizer School District 24J
Case No. 08-054-007

The Department did not substantiate the allegations. Therefore, no corrective action is ordered.

Dated: April 14, 2008

Nancy J. Latini, Ph.D.
Assistant Superintendent
Office of Student Learning & Partnerships

APPEAL RIGHTS: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which you reside. Judicial review is pursuant to the provisions of ORS 183.484.