

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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

FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER
Case No. 19-054-020

I. BACKGROUND

On May 13, 2019, the Oregon Department of Education (Department) received a written request for a special education complaint investigation from the Parent (Parent) of a student (Student) who receives special education services from the Salem-Keizer School District 24-J (District). The Student attends a charter school (Charter School) that is sponsored by the State Board of Education (SBE). The District provides special education services to the Student. The Department confirmed receipt of the Complaint and forwarded to the District and the Charter School.

Under state and federal law, the Department must investigate written complaints that allege violations of the Individuals with Disabilities Education Act (IDEA) and issue an order within sixty days of receipt of the complaint.¹ This timeline may be extended if the Parent and the District agree to an extension to engage in mediation or local resolution, or for extenuating circumstances. A complaint must allege a violation that occurred not more than one year before the date the complaint was received by the Department.² Based on the date the Department received the Complaint, the relevant period for this Complaint is May 14, 2018 through May 13, 2019.

On May 29, 2019, the Department's Complaint Investigator (Investigator) sent a *Request for Response* (RFR) to the District identifying the specific allegations in the complaint to be investigated and establishing a *Response* due date of June 12, 2019. The Final Order is due to be issued on July 12, 2019.

On June 12, 2019, the District submitted a packet of materials for the Investigator. The materials included in the submission are listed below:

1. 2011-05-16 Written Agreement
2. 2017-05-19 Behavior Assessment and Support Plan (2)
3. 2017-05-19 Behavior Assessment and Support Plan
4. 2017-05-19 IEP Amendment
5. 2017-09-25 Conference Summary
6. 2017-09-27 Notice of Team Meeting (NOTM)
7. 2017-09-27 Written Agreement
8. 2017-10-19 NOTM
9. 2017-11-15 Special Education Placement
10. 2018-01-09 NOTM
11. 2018-03-22 NOTM
12. 2018-04-12 Conference Summary

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

² 34 CFR § 300.152(b); OAR 581-015-2030(5).

13. 2018-04-12 Individualized Education Program (IEP) Amendment
14. 2018-04-12 IEP
15. 2018-04-12 Sped Determination
16. 2018-04-12 Tier 1 Competing Pathway Analysis
17. 2018-05-10 Written Agreement
18. 2018-09-11 NOTM
19. 2018-09-20 Conference Summary
20. 2018-09-20 IEP Amendment
21. 2018-09-20 IEP
22. 2018-10-10 Special Education Placement Determination
23. 2018-10-10 Sped Placement
24. 2018-10-22 NOTM
25. 2018-11-05 Conference Summary
26. 2019-01-29 Conference Summary
27. 2019-04-22 NOTM
28. 2019-05-07 Conference Summary
29. 2019-05-31 NOTM
30. 2019-09-20 IEP Amendment: Investigator's Note - Dated incorrectly. This document is the September 20, 2018 IEP; revised on November 5, 2018.
31. Student's Day
32. 2017-09-27 Prior Written Notice (PWN)
33. 2017-11-15 PWN
34. 2018-04-12 PWN
35. 2018-05-09 PWN
36. 2018-09-20 PWN
37. 2018-10-10 PWN
38. 2018-11-05 PWN
39. 2019-05-13 PWN
40. Check-ins
41. Student's Daily Successes
42. Progress Monitoring
43. 2017-2018 Communications
44. 2018-03-24 Annual IEP meeting-hold for
45. 2018-03-25 Annual IEP meeting
46. 2018-08-24 Student - Charter School
47. 2018-08-24 Re_ Student-
48. 2018-08-29 Re_ Student
49. 2018-2019 Staff communications with Parent
50. 2018-2019 Staff communications
51. 2018-2019 Staff communications with Parent
52. 2018-2019 Staff communications with Parent
53. 2018-2019 Staff communications with Parent

54. 2019-04-16 URGENT - IEP meeting needed
55. 2019-04-17 Re_ URGENT - IEP meeting needed (1)
56. 2019-04-17 Re_ URGENT - IEP meeting needed (2)
57. 2019-04-17 Re_ URGENT - IEP meeting needed
58. 2019-05-13 Email re finalized documents
59. 2019-05-30 Parent Letter to Charter School
60. 2019-06-04 Contact Log
61. 2017-11-20 IEP Progress Report - Annual Goal
62. 2017-2018 Grade 1 report card
63. 2018-03-19 IEP Progress Report - Annual Goal
64. 2018-05-31 IEP Progress Report - Annual Goal
65. 2018-06-08 Parent-Student Compact
66. 2018-09-19 IEP Progress Report - Annual Goal
67. 2018-2019 Attendance Report
68. 2019-03-20 IEP Progress Report - Annual Goal
69. 2019-05-21 Staff email
70. 2019-06-04 IEP Progress Report
71. Behavior Referrals
72. Data Reporting
73. Grade Think Sheets
74. Other
75. 3 Think Sheet
76. ClassDojo
77. Charter Positive Behavior Interventions and Supports (PBIS) Classroom Support (2)
78. Charter PBIS Classroom Support
79. 2017-05-19 Disability Statement
80. 2017-05-19 Eligibility Summary Statement
81. 2017-05-19 Evaluation Report
82. 2019-01-29 Authorization to Disclosure Information
83. 2019-05-02 Staff Letter from Parent
84. 2019-05-12 Letter from Parent
85. 2019-05-13 Occupational Therapy Referral
86. 2019-05-13 Referral Request
87. 2019-05-13 Social Emotional and Behavioral Supports
88. Psychologist - Test Results
89. 2018-2019 Staff who worked with Student

The Investigator determined that on-site interviews were necessary. On June 14, 2019, the Investigator interviewed the District's Special Education Coordinator, two Special Education Program Assistants, the Case Manager, and an Instructional Assistant.³ That same day, the

³ All of these individuals are District employees.

Investigator interviewed the Charter School Principal, four Charter School classroom teachers and the Charter School Counselor.⁴ On June 18, 2019, the Investigator interviewed the Parent.

The Investigator reviewed and considered all these documents, interviews, and exhibits in reaching the Findings of Fact and Conclusions of Law contained in this order. This order is timely.

II. ALLEGATIONS AND CONCLUSIONS

The Department has jurisdiction to resolve the Complaint.⁵ The Parent’s allegations and the Department’s conclusions are set out in the chart below. These conclusions are based on the Findings of Fact in Section III and on the Discussion in Section IV. This Complaint covers the one-year period from May 14, 2018 through May 13, 2019.

1.	When IEPs Must Be in Effect	Substantiated in Part
	<p>The Parent alleges the District violated the IDEA when it did not implement sections of the IEP as written. Specifically, the Parent alleges the District:</p> <ul style="list-style-type: none"> a. Did not provide access to alternative or indoor recess opportunities when the child showed unsafe actions on the playground. Instead the District required the child to attend a behavior intervention session and the child received no recess time; b. Did not provide the child additional time and/or multiple attempts to process a verbal or visual teacher request. Instead, the District held the child to the same standard expected of all students in the general education environment; c. Did not implement the goal of self-advocacy by allowing the child to initiate a two-minute reset verbally with staff, and; d. Did not provide the “reset time” as defined in the child’s IEP. The IEP specifies the child will move to an alternate location and use the reset time to become calm. 	<ul style="list-style-type: none"> a. The District did not develop an IEP that clearly describes whether or not the Student’s recess can be taken away. This allegation is substantiated. b. Charter School staff was not able to provide evidence to establish the Student received additional time/multiple attempts to process teacher requests. This allegation is substantiated. c. The District implemented the Student’s self-advocacy goal by creating space for the Student to initiate resets, but staff remained involved in assisting the Student with engaging in resets. This allegation is not substantiated. d. Within the process of completing a Think Sheet, the Student can and has taken advantage of the self-regulation reset IEP

⁴ The school counselor is a contractor with the charter school. The other individuals are employees of the charter school.

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

	<p>Instead, the District is requiring the child to complete “think sheets,” which require the child to write.</p> <p>(34 CFR § 300.323; OAR 581-015-2220(1)(b))</p>	<p>accommodation. This allegation is not substantiated.</p>
<p>2.</p>	<p>Content of the IEP</p> <p>The Parent alleges the District violated the IDEA when:</p> <ul style="list-style-type: none"> a. It did not include goals or accommodations to teach the child the requirements and expectations of the schoolwide PBIS system; and, b. It did not include positive interventions in the Behavior Intervention Plan. <p>(34 CFR § 300.320; OAR 581-015-2200)</p>	<p>Not Substantiated</p> <ul style="list-style-type: none"> a. The Student—along with other students at the Charter School—received instruction on the schoolwide system of Positive Behavior and Support Interventions. This allegation is not substantiated. b. The Parent filed this Complaint less than one week after the IEP Team replaced the Student’s BSP with the BSP – PBIS Reset Protocol. It is premature to conclude whether the District ought to have included the positive reinforcements that were featured in the Student’s previous BSP. This allegation is not substantiated.
<p>3.</p>	<p>Prior Written Notice</p> <p>The Parent alleges the District violated the IDEA when it did not provide the Parent Prior Written Notice after it refused to:</p> <ul style="list-style-type: none"> a. provide the child counseling services at the school for school-related issues; b. implement sections of the IEP as noted above; c. provide a quiet workspace for the child to complete assignments; and, d. allow the Parent to attend the Warrior Workshop with the child after school so that the Parent could provide support to the child. <p>(34 CFR § 300.503; OAR 581-015-2310)</p>	<p>Not Substantiated</p> <p>The District provided appropriate Prior Written Notice to the Parent where it was required. The Department does not substantiate this allegation.</p>

<p>4.</p>	<p>Free Appropriate Public Education (FAPE) and Age Ranges</p> <p>The Parent alleges the District violated the IDEA when it did not provide the child with FAPE. Specifically, the Parent alleges the District:</p> <ol style="list-style-type: none"> a. Failed to provide the child with counseling for school related issues; and, b. Assigned the child to In-School Suspension and gave the child negative behavioral referrals instead of implementing the child's IEP and BIP. <p>The Parent alleges that as a result of these actions and the others outlined above; the child did not receive FAPE.</p> <p>(34 CFR § 300.101; OAR 581-015-2040)</p>	<p>Not Substantiated</p> <p>Despite some District lapses in implementation and confusion regarding the execution of components of the Student's IEP, the Student made appropriate progress on Self-Advocacy, Self-Regulation, and Social Skills goals during the Complaint period. The District did not deny the Student a FAPE</p>
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<p>Requested Corrective Action</p>
<p>The Parent requests the following actions be implemented as resolutions to the Complaint:</p> <p>A. Suggestion to resolve issue:</p> <ol style="list-style-type: none"> 1. If child does attend warrior workshop during recess time, provide child equivalent time after workshop the same day to take a recess break in accordance with IEP accommodation. 2. Move warrior workshop for child to the morning time during micro, or during a portion of reading rotations. Child would still be able to attend a portion of reading rotations and entire LRC reading time. Move restorative workshop to micro time or music time on Thursdays. Due to child's sensory issues [the Student] struggles in music class. In accommodation for recess, define what entitles unsafe behavior specific to child. In accommodation for additional time, state concrete time allowance or steps to de-escalate child. <p>B. Suggestion to resolve issue:</p> <ol style="list-style-type: none"> 1. Add in supports / accommodations for child to be successful in PBIS. Teach child how to self-advocate [] by asking [the Student] at yellow light if [the Student] needs reset then after resets when discussing incidents encourage [the Student] to self-advocate [] next time. Create alternative to think sheet for child which allows for less writing and more drawing or includes emotions due to child's challenge in writing and working memory. When being reviewed with student assist child in writing in missing details. 2. Create specialized circumstances where child will obtain "think sheet", due to child's disability [the Student] is more susceptible to receive think sheets than [] counter students. Create communication log for all think sheets for teacher and parent collaboration in discussing incident with child with accurate dates / signatures from teacher and parent.

3. Create small, concrete, attainable and measurable goals for child to fulfill towards compliance of PBIS and concrete disciplinary actions that are appropriate for child's non-compliance.

C. Suggestion to resolve issue:

Provide child counselor check-ins. Perform a FBA; not noted in [the Student's] IEP one has occurred. Child has difficulty requesting [] needs; create a "break card" for child to use or ask child if [the Student] needs reset when specific behaviors arise before child demonstrates maladaptive behaviors and allow [] a chance to self-advocate []. Child won't learn how to do this unless [the Student] is taught how to do this. Providing alternative quiet location where child can do schoolwork and/or 1:1 assistance when child shows avoidance or defiance towards schoolwork; last option if these don't work - send homework home with child. Allow [the Parent] to participate as a support for child.

III. FINDINGS OF FACT

1. The Student is eight years old and recently completed second grade at an elementary charter school (Charter School) located within the District's geographical boundaries. The Student attended the Charter School for both first and second grade.
2. The Student is eligible for special education as a student with an Other Health Impairment (ADHD), established on May 19, 2017. The Student is bright and active, and reads at grade level. The Student has difficulty focusing and engages in defiant behaviors that impact progress in school. These include name-calling, use of inappropriate language and physical contact, and refusal to follow directions, particularly during transitions to non-preferred activities.
3. The Charter School is sponsored by the State Board of Education (SBE). The Salem-Keizer School District (District) provides special education services to eligible Charter School students.
4. The Student's April 12, 2018 Individualized Education Program (IEP) noted that the Student's behavior was a special factor. The IEP contains goals in the areas of Behavior, Social Skills, Mathematics, Reading/Language Arts, and Written Language.
5. The Student's IEP Team developed the April 12, 2018 IEP to include weekly specially designed instruction (SDI) in the areas of Behavior (30 minutes), Math (90 minutes), Social Skills (30 minutes), and Reading/Language Arts (40 minutes). The IEP noted the Student would be removed from the general education environment to receive SDI. The placement determination notes the Student will spend 80% of the day in the general education setting, with 20% of the day removed to the Learning Resource Center (LRC). The District provided the Parent with a Prior Written Notice (PWN) summarizing the decisions made in the meeting.
6. Accommodations in the Student's IEP included the following: Prompting about classroom routine changes; Adult assistance; Use martial arts language; Ability to leave general education class to continue academic work; Use of five-point scale throughout day; Behavior Support Plan (BSP); and Use of Visual Schedule.

7. The Student's Behavior Support Plan (BSP)⁶ included interventions such as providing the Student with a visual schedule, prompts for the Student to look at the visual schedule, and encouraged praise, referred to as including "let's have black belt behavior today." The BSP recommended antecedent interventions to include talking with a respectful and calm voice, limiting the Student's tasks to one step at a time, and allowing the Student to complete work in the LRC. The Team decided on behavior interventions that included breathing de-escalation techniques, allowing for movement breaks, incentivizing the Student with delivery of stickers and praise, and allowing the Student to complete a job/task. Consequence Interventions that were written down included, "Don't engage in power struggles," "Don't shame or take away activities including recess," and Incentive = candy."
8. The IEP Team met again on September 20, 2018, to revise the Student's IEP.⁷ The Team updated the Student's Present Level of Academic Achievement and Functional Performance (PLAAFP), noting that the Student was now reading at grade level. The Team noted that compared to peers, the Student needed more resets to complete tasks and manage transitions. At the end of first grade, the Student needed a reset one time per week. At the beginning of second grade, the Student required resets five times per week.
9. The IEP Team replaced the Student's Behavior goal with two goals focused on Self-Advocacy and Self-Regulation, and revised the Student's other goals. The Team updated the Student's SDI and added accommodations.
10. IEP accommodations written into the Student's September 20, 2018 IEP included the following: Adult assistance during transitions, access to self-regulation resets and personal learning environment until the Student reaches baseline, additional time and/or multiple attempts to process a teacher request – verbal and visual, and a Behavior Support Plan.
11. In response to Parent request, the Student's IEP Team met again on November 5, 2018. The Team discussed the Student's behaviors at school, particularly at recess and during physical education class, and the use of a daily tracking sheet.
12. The Parent asked for clarification about the use of resets, and school staff informed the Parent that the Student was becoming more independent asking for resets when frustrated, but still needed adult assistance on occasion. The Parent asked about recess and reminded school staff that the Student needed daily recess breaks or an alternative recess when safety was a concern. An accommodation in the Student's November 5, 2018 IEP is "[a]ccess to alternative or indoor recess opportunities when [the Student] shows unsafe actions the day prior at the 2nd grade playground.
13. In response to Parent request, a meeting convened on January 29, 2019. Previous to this, the Parent had obtained a private psycho-educational evaluation of the Student and had discussed the results with the outside evaluator. At the January 29, 2019 meeting, the Parent asked the School Psychologist to interpret the results of the outside evaluation. The School Psychologist primarily discussed the lower-than-average results of a "Working Memory" subtest. The Team discussed the effects ADHD has on working memory. The Student's classroom teachers reported the Student was doing well in the general education environment, making progress in Math, albeit with occasional struggles, and demonstrating strong reading skills.

⁶ The terms Behavior Support Plan (BSP) and Behavior Intervention Plan (BIP) are used interchangeably in this Order.

⁷ In a PWN written on the same date, the Case Manager wrote that the Team met again to revise the IEP because the previous IEP (from April 12, 2018) "did not describe the Student's current abilities or needs."

14. In response to Parent request, the IEP Team met again on May 7, 2019. The Parent was concerned about recent behavioral referrals the Student had received. Additionally, the Parent asked to review the Student's BSP and possibly add some clarifications to it. The Parent expressed concern that the school's new PBIS system contradicted the Student's IEP and asked for consistency implementing the Student's BSP.
15. In or around March 2019, the Charter School began implementing a schoolwide positive behavioral interventions and support (PBIS)⁸ behavior management program. Part of the program is a green, yellow and red stoplight system. A student who displays disruptive behavior in the classroom is given a non-verbal reminder of the correct behavior expectations. This might consist of a teacher holding up a sign with a keyword on it. If the student needs a second reminder, now verbal, the teacher displays a green light sign. A yellow light sign follows a verbal reminder, and a red light sign signifies the student must take a break or move to an alternate seat for a reset. Once the red light sign has been shown, the student must complete a Think Sheet⁹ or receive a behavior slip. Parents are contacted each time a student receives a Think Sheet or behavior slip. If a student's behavior has not improved after the implementation of this process, the teacher may call another staff for support, or may give the student a referral. After a student receives a certain number of Think Sheets, the student must attend a Warrior Workshop.
16. Warrior Workshop takes place during lunch with the Charter School Counselor. It is aimed at identifying problem behavior and putting supports in place to ensure a student can be successful. In the Warrior Workshop, students are taught specific replacement behaviors.
17. The May 7, 2019 IEP Team discussed the Warrior Workshops, which Charter School staff explained the Student had attended as Tier One PBIS interventions in the general education behavior management system.
18. The Parent asked the Charter School staff to provide the Student with regular check-ins with the School Counselor to reinforce the schoolwide PBIS system. The Counselor expressed a willingness to discuss a support goal with the Student's outside counselor. The LRC teacher noted that in the past 30 days, in 195 opportunities, the Student had followed school expectations 94% of the time. This exceeded the 80% objectives contained within the Student's Self-Advocacy and Self-Regulation goals.
19. The Reading teacher shared that the Student was particularly physically active during the Reading Rotations, and the Team decided to add snack and a calming break after recess and before Reading Rotation. The Reading teacher reviewed the use of the stop light reset process, known as the "PBIS Reset Protocol." After discussion, the IEP Team added the PBIS Reset Protocol to the Student's IEP, presumably replacing the Student's previously-developed Behavior Support Plan.
20. The Parent expressed concerns about the use of the Think Sheets and their interference with the Student engaging in resets. The Charter School staff noted the Student could either write or draw on a Think Sheet to explain the Student's inappropriate behaviors. Finally, the Parent

⁸ PBIS is an approach schools use to improve school safety and promote positive behavior. It also helps schools determine how to respond to a child's behaviors.

⁹ A think sheet involves a student writing or drawing a response to questions or statements. Examples include: "What expectation did I not meet?" "Write or draw a picture about my behavior." "Write or draw what I need to do instead." "Do you need to apologize to anyone?" "Did you apologize?"

signed a release giving the Counselor permission to talk with the Student's private counselor about a goal that could be addressed in the school setting.

21. On May 13, 2019, the District sent the Parent a Prior Written Notice (PWN) encapsulating the discussion and decisions from the May 7, 2019 IEP Meeting. The District stated that it refused the Parent's request for counseling sessions to be provided at school, but that "[s]chool counseling sessions and possible goal(s) are pending the outcome of the consultation with the outside counselor. The Charter School emphasized that it "wants to ensure the school wide values are acknowledged by the school staff and private counselor for alignment purposes."
22. On May 13, 2019, the District emailed the Parent a copy of the completed IEP, including the PBIS Reset Protocol document. The Parent emailed the District Case Manager, stating that the Parent did not agree with having the PBIS Reset Protocol added to the IEP as the Student's Behavior Support Plan. The next day, May 14, 2019, the Parent emailed an image of the PWN to the Principal, the Case Manager and the District Special Education Supervisor. On the bottom of the form, the Parent wrote, "Parent declines adding PBIS reset protocol until Parent receives copy of protocol to review. Requested copy May 10th and 13th from LRC Teacher via email. Not received."
23. On May 15, 2019, the Parent spoke with the Special Education Supervisor to discuss the protocol and the Parent's concerns with it. The Parent reports the Special Education Supervisor told the Parent that the District had amended the Student's IEP and removed the PBIS Reset Protocol. There is no documentation of this in the record that the District sent to the Investigator, and the Parent did not receive an amended copy of the Student's IEP with Behavior Support Plan – PBIS Reset Protocol removed.
24. Over the course of the 2018-2019 school year, the Student was asked to complete Think Sheets on nine occasions.¹⁰ On each of these nine occasions, the Student wrote sentences and drew pictures on the Think Sheets.
25. The Student received twelve Behavior Referrals over the course of the 2018-2019 school year. On the Behavior Referral forms, staff noted they gave warnings before writing the referrals, and in two cases also asked the Student to take a time-out. In one situation, the Student was assigned to the LRC to complete classwork. In three cases, the Charter School contacted the Parent. In one case, the Student was assigned to In-School Suspension and had to be accompanied by an escort during transition times. In seven of the situations, the Student received a referral for refusing to follow staff directions or to cooperate with staff requests.
26. The Charter School does not have records indicating how many times the Student attended a Warrior Workshop or how many times the Student was provided with an alternative recess.
27. The Parent filed this Complaint on May 13, 2019.

¹⁰ The District identified ten times that the Student completed a Think Sheet, but one of them was written by another student.

IV. DISCUSSION

A. When IEPs Must Be in Effect

The Parent alleges the District violated the Individuals with Disabilities Education Act (IDEA) when it did not implement particular sections of the Student's IEP. Each school district must have each student's IEP in effect at the beginning of each school year and must provide special education and related services to the eligible child in accordance with the child's IEP.¹¹

1. Access To Alternative Or Indoor Recess

The Parent alleges the District did not implement the Student's IEP when it failed to provide the Student with access to alternative or indoor recess opportunities after the Student demonstrated unsafe actions on the playground. When a team convenes to develop an IEP, it is appropriate to discuss a range of possible services, but it is ultimately the school district's responsibility to make an offer of a free appropriate public education (FAPE). A school district violates the IDEA when it fails to articulate a clear, coherent offer of FAPE that a parent can reasonably evaluate and decide to accept or challenge.¹²

Here, the IEP does not clearly describe whether or not the Student's recess can be taken away. The Student's September 20, 2018 IEP contains a "Behavior Support Plan" as an accommodation. Included in the Student's BSP, under "Consequence Interventions," is the statement, "Don't shame or take away activities including recess." The Student's November 5, 2018 IEP includes "Behavior Support Plan" as an accommodation. There is no indication that the Student's BSP was revised or replaced at this time, so it seems the "Don't shame or take away activities including recess" directive persisted on November 5, 2018. However, appearing for the first time in the Student's November 5, 2018 IEP is the following accommodation: "Access to alternative or indoor recess opportunities when [the Student] shows unsafe actions the day prior at the 2nd grade playground." This same accommodation can be found in the Student's May 7, 2019 IEP. The May 7, 2019 IEP appears to replace the Student's BSP with the Behavior Support Plan – PBIS Reset Protocol, which allows for assignment to a Warrior Workshop during recess, but is silent about whether alternative recess opportunities must be provided. To further complicate matters, the Behavior Support Plan – PBIS Reset Protocol allows for assignment to a Warrior Workshop during recess for conduct that is not unsafe, but is nevertheless disruptive to the learning environment. Add to this the fact that the PBIS Reset Protocol seems to have been implemented schoolwide beginning in March 2019, when the Student's BSP was still in effect, at least according to the Student's November 5, 2018 IEP.

The District notes in its *Response* that the Student participated in a Warrior Workshop during lunch recess on April 12, 2019¹³ and then attended an afternoon recess as an alternative. However, Charter School staff could not confirm that the Student actually received an alternative recess that day. More importantly, the Student's Behavior Support Plan, Behavior Support Plan – PBIS Reset Protocol, IEP accommodations, and the schoolwide PBIS program are not clear with respect to whether the Student's recess can be taken away, for what kinds of transgressions, and whether alternative recesses have or should be provided. This must be clarified through the efforts of the IEP Team. The Department substantiates this portion of the Parent's allegation.

¹¹ 34 CFR §§ 300.320, 300.323; OAR 581-015-2200 and OAR 581-015-2220.

¹² *Glendale Unified Sch. Dist. v. Almasi*, 122 F.Supp.2d 1093, 1108 (C.D. Cal. 2000).

¹³ The District wrote April 12, 2018, but presumably meant April 12, 2019, as in its *Response* it refers to a disciplinary event that occurred on April 11, 2019.

2. Additional Time And/Or Multiple Attempts To Process a Verbal Visual Teacher Request

The Parent alleges that the District held the Student to the same standard of response to a teacher request as it held all students in the Charter School. The Student's IEP was revised on at least three occasions during the 2018-2019 school year (September 20, 2018, November 5, 2018, and May 7, 2019). Each IEP iteration contained the following accommodation: "Provide additional time and/or multiple attempts to process a teacher request – verbal and visual." In each case, the accommodation was designated to the "General Ed Teacher." General education staff who worked with the Student at the Charter School were able to articulate the PBIS Reset Protocol that involves the green, yellow, and red stoplight system. However, these same teachers were not able to provide evidence to establish the accommodation of providing additional time/multiple attempts was embedded into the PBIS Reset Protocol program for the Student in particular. The Department substantiates this part of the allegation.

3. Self-Advocacy

The Parent alleges the District did not implement the goal of self-advocacy by allowing the Student to initiate a two-minute reset verbally with staff. This goal was added to the Student's IEP on September 20, 2018. On the Student's March 20, 2019 IEP Goals Progress Report, the LRC Teacher noted the Student was at Mastery Level 4 (Progress has been made, it appears the goal will be met by the next IEP review) on this goal and that Self-initiation was not completed as resets "are not typically needed at this time." The LRC Teacher included a note that the Student had made "Huge Progress!" On the Student's June 4, 2019 IEP Goal Progress Report, the teacher noted again that the Student was at Mastery Level 4. The Student underwent five resets as recorded on tracking sheets, one of which was initiated by the Student, and four were initiated by the teacher. The record shows that the District implemented the Student's self-advocacy goal by creating space for the Student to initiate a reset, but staff remained involved in assisting the Student with engaging in resets. The Department does not substantiate this part of the allegation.

4. Reset Time

The Parent alleges the District did not provide reset time as defined in the Student's IEP. The IEP specifies the Student will move to an alternate location and use the reset time to become calm. Instead, the Parent alleges the District required the Student to complete Think Sheets and provide a written response. The Charter School staff did assign Think Sheets to the Student over the course of the 2018-2019 school year. However, the two practices can coexist. In the Student's April 12, 2018 IEP, the Team developed a "Social Skills" goal whereby the Student worked toward identifying feelings and explaining those feelings in words or by coloring. The Student became familiar with the Think Sheet philosophy during the preceding year. According to the Student's general education teacher, the Student does well with Think Sheets, chooses to write them without delay, and they have proved to be an effective tool for the Student draw or write their thinking. Within the process of completing a Think Sheet, the Student can still take advantage of the self-regulation reset IEP accommodation. The Department does not substantiate this part of the allegation.

B. Content of the IEP

The Parent alleges that the District violated the IDEA when: (1) it did not include goals or accommodations to teach the Student the requirements and expectations of the schoolwide Positive Behavioral Interventions and Supports (PBIS) system; and (2) when it did not include positive interventions in the Student's Behavior Support Plan. A school district must develop an

IEP that contains a statement of measurable annual goals designed to meet the needs that result from the student's disability so that the student can be involved in and make progress in the general education curriculum.¹⁴ Additionally, the District must consider the "use of positive behavioral interventions and supports to address the needs of a student whose behavior impedes his or her learning or that of others."¹⁵

1. PBIS System Goals Or Accommodations

The Charter School uses a PBIS system throughout all grades to teach students how to manage their behavior in a positive way. When the Charter School began the program, it provided instruction to all students about the expectations of the schoolwide system and how the system would be implemented on a daily basis. This Student received this instruction along with other Charter School students. The record does not support a finding that the District should have developed IEP goals for the Student around teaching the requirements and expectations of the schoolwide PBIS system. The Department does not substantiate this part of the allegation.

2. Positive Interventions

The IEP written for the Student on April 12, 2018 included a BSP with various elements that provided positive behavioral support for the Student. These included teaching breathing de-escalation techniques, allowing movement breaks, and the use of stickers and frequent praise. The BSP suggested the use of candy as an incentive, and encouraged staff strategies such as speaking to the Student in a calm and respectful voice. The Student's IEP was revised on September 20, 2018, November 5, 2018, and May 7, 2019. In May 2019, the Student's BSP appears to have been replaced with a generalized BSP – PBIS Reset Protocol document.

With limited exception, the PBIS Reset Protocol does not include positive interventions. The only mention of positive reinforcement in the PBIS Reset Protocol is where teachers are directed to thank the Student for following expectations. The schoolwide PBIS Reset Protocol was not individually tailored for the Student. However, the sparseness of positive reinforcement in the Student's BSP – PBIS Reset Protocol does not directly conflict with other portions of the Student's IEP, as it replaced the Student's BSP from April 2018. The Parent filed a Complaint in this matter less than one week after the IEP Team replaced the Student's BSP with the BSP – PBIS Reset Protocol. It is premature to conclude whether the District ought to have included the positive reinforcements that were featured in the Student's previous BSP. The Department does not substantiate this part of the allegation.

C. Prior Written Notice (PWN)

The Parent alleges the District violated the IDEA when it did not provide Prior Written Notice after it refused to: (1) Provide the child with counseling services; (2) Implement sections of the IEP as noted above; (3) Provide a quiet workspace for the Student to complete assignments; and (4) Allow the Parent to attend the Warrior Workshop with the child after school so that the Parent could provide support to the Student.

A school district must give the parent of an eligible child prior written notice when the school district is proposing or refusing to initiate or change the identification, evaluation, educational placement, or provision of a free appropriate public education. This notice must describe the

¹⁴ 34 CFR § 300.320; OAR 581-015-2200.

¹⁵ 34 CFR § 300.324(a)(2)(i); OAR 581-015-2205(3)(a).

proposed action, explain why the school district is choosing this action, and also describe what elements the school district team considered in making this decision.¹⁶

At the May 7, 2019 IEP Meeting, the District refused the Parent's request to provide the Student with individualized in-school counseling. On May 13, 2019, the District sent the Parent a Prior Written Notice. In it, the District summarized the discussion and decisions from the previous week's IEP Team Meeting. The District noted that it refused the Parent's request for counseling sessions to be provided at school, but that "[s]chool counseling sessions and possible goal(s) are pending the outcome of the consultation with the outside counselor. The Charter School emphasized that it "wants to ensure the schoolwide values are acknowledged by the school staff and private counselor for alignment purposes."

The District's failure to implement particular accommodations enshrined in the Student's IEP, as described above, do not rise to the level of the District changing the provision of a free appropriate public education to the Student. Similarly, the District was under no obligation to issue a PWN when it refused to allow the Parent to attend the Warrior Workshop with the Student. Such a refusal did not constitute a change in the identification, evaluation, educational placement, or provision of a free appropriate public education.

The District provided the Parent with appropriate Prior Written Notice in circumstances where it was required. The Department does not substantiate this allegation.

D. Free Appropriate Public Education (FAPE) and Age Ranges

The Parent alleges that the cumulative effect of the allegations in the Complaint resulted in a denial of FAPE to the Student. Additionally, the Parent alleges that when the District refused to provide in-school counseling to help the Student understand the PBIS system, and when the District did not implement the Student's Behavior Support Plan, these actions also resulted in a denial of FAPE. A school district must provide a FAPE to all school-age children with disabilities for whom the District is responsible.¹⁷ The IDEA defines FAPE¹⁸ as special education and related services that: (1) are provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the state education agency; (3) include an appropriate preschool, elementary school, or secondary school education; and (4) are provided in conformity with an individualized education program (IEP). A District meets its FAPE obligations to an eligible student when it constructs an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."¹⁹

The record does not support a finding that the District denied the Student a FAPE during the Complaint period. The Parent's allegations focus on how the District addressed the Student's behavior in school. For the 2018-2019 school year, the Student's IEP Team agreed to develop goals in the areas of Social Skills, Self-Advocacy, and Self-Regulation. Despite the absence of counseling as a related service (something proposed by the Parent at the May 7, 2019 school year), and the unwieldy nature of how the Charter School navigated the schoolwide PBIS protocols with provisions of the Student's IEP, the Student made appropriate progress. On the Student's June 4, 2019 IEP Progress Report, the Student's LRC Teacher reported that the Student had made "Huge progress" in Self-Advocacy, "Great improvements" in Social Skills, and was on track to meet the IEP's Self-Regulation goal. At the May 7, 2019 IEP Team Meeting, the LRC Teacher noted that over the previous thirty days, in 195 opportunities, the Student had

¹⁶ 34 CFR § 300.503; OAR 581-015-2310.

¹⁷ 34 CFR § 300.101; OAR 581-015-2040

¹⁸ 20 USC §1401(9); 34 CFR § 300.17.

¹⁹ *Andrew F. v. Douglas County School District Re-1* 580 U.S. __ (2017).

followed school expectations 94% of the time. This exceeded the 80% objectives contained within the Student’s Self-Advocacy and Self-Regulation goals.

Despite some District lapses in implementation and confusion regarding the execution of components of the Student’s IEP, the District did not deny the Student a FAPE during the Complaint period. The Department does not substantiate this allegation.

V. CORRECTIVE ACTION²⁰

In the Matter of Salem-Keizer School District 24-J
Case No. 19-054-020

	Action Required	Submissions²¹	Due Date
1.	A representative of the Charter School and the District will consult with Department staff, including the County Contact, to assess the intersection of the behavior strategies and tools in use, remove contradictions, and address omissions. The IEP Team will use the assessment results to inform the Team’s decisions regarding behavioral goals, specially designed instruction, and accommodations for this Student. (Documents to review include: PBIS strategies and protocols, Think Sheets, and any other behavioral monitoring and improvement systems used by the Charter School, including those associated with the Charter School’s micro-community approach.)	Submit names and positions of Team Members, copies of materials reviewed, and the assessment results	August 14, 2019
2.	Following consultation with Department staff, reconvene the IEP Team - <ul style="list-style-type: none"> to review and revise the Student’s IEP to ensure that accommodations and supports are specifically written to 	Submit a copy of the complete IEP with revisions, if any, highlighted and a copy of the prior written notice.	August 30, 2019 or prior to the first day of school

²⁰ 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)).

²¹ Corrective action submissions and related documentation as well as any questions about this corrective action should be directed to Rae Ann Ray, Oregon Department of Education, 255 Capitol St. NE, Salem, Oregon 97310-0203; telephone – (503) 947-5722; e-mail: raeannray@state.or.us; fax number (503) 378-5156.

	<p>support the Student in regulating behavior .</p> <ul style="list-style-type: none"> • to specifically address the provision of a daily recess period, and • to consider if changes in behavioral supports are needed to aid the Student's successful transition to school from the summer break. 		
3.	<p>Prior to the first day of school, inform staff members of any specific responsibilities they have related to implementing this Student's IEP accommodations and supports in general education classes and activities.</p>	<p>Submit, with the IEP copy, a list of staff members informed of specific responsibilities.</p>	<p>August 30, 2019 or prior to the first day of school</p>

Dated: this 12th day of July 2019

Candace Pelt, Ed.D

Candace Pelt Ed.D
Assistant Superintendent
Office of Student Services

Mailing Date: July 12, 2019

Appeal Rights: Parties may seek judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order with the Marion County Circuit Court or with the Circuit Court for the County in which the party seeking judicial review resides. Judicial review is pursuant to the provisions of ORS § 183.484. (OAR 581-015-2030 (14).)