

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-109

PROCEDURAL HISTORY

On November 13, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Central Kitsap School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On November 13, 2018, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on November 14, 2018. OSPI asked the District to respond to the allegations made in the complaint.

On December 6, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on December 7, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On December 18, 2018, OSPI received the Parent's reply and forwarded it to the District on December 19, 2018.

OSPI considered all of the information provided by the Parent and the District as part of its investigation.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation time period, which began on November 14, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUES

1. Did the District follow procedures for developing/amending the Student's behavioral intervention plan (BIP) during the 2017-2018 and 2018-2019 school years?
2. Did the District follow procedures for responding to the Parents' request for an independent educational evaluation (IEE)?
3. Did the District provide the Parents with prior written notices as required by WAC 392-172A-05010 during the 2017-2018 and 2018-2019 school years?
4. Did the District follow procedures for developing the Student's individualized education program (IEP), including addressing the Student's placement and addressing the Parents' request for physical outlets?

LEGAL STANDARDS

Behavior: When considering special factors unique to a student, the IEP team must consider the use of positive behavioral interventions and supports, as well as other strategies, to address

behavior in the case of a student whose behavior impedes the student's learning or that of other. WAC 392-172A-03110(2)(i).

Behavioral Intervention Plan (BIP): A behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031.

Independent Educational Evaluation (IEE): Parents of a student eligible for special education have the right to obtain an independent educational evaluation (IEE) of the student at public expense if they disagree with the district's evaluation. If the parents request an IEE at public expense, the district must either: initiate a due process hearing within 15 days to show that its evaluation is appropriate; or, ensure that an IEE is provided at public expense, unless the district demonstrates in a hearing under this chapter that the evaluation obtained by the parents did not meet agency criteria. If the district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parents still have the right to an IEE, but not at public expense. 34 CFR §300.502; WAC 392-172A-05005.

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. 34 CFR 300.503; WAC 392-172A-05010.

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the

availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments and if the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why: the student cannot participate in the regular assessment and the particular alternate assessment selected is appropriate for the student; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

FINDINGS OF FACT

2017-2018 School Year

1. During the 2017-2018 school year, the Student attended a District middle school was eligible to receive special education services under the category of other health impairment.
2. The Student began the school year at the middle school on a full-day schedule in a program (program 1). The Student began presenting the following behaviors: verbal aggression, defiance, making threats, leaving class, and work refusal, although he attended lunch and was transitioning between classes independently.

3. On October 10, 2017, the Student's behavior escalated to the point where he was leaving the building, climbing structures unsafely, and throwing rocks at staff. The police were called and the Student was short-term suspended. When the Student returned to school, the Student's school day was shortened to a half-day and was placed in an interim alternative educational setting (IAES) (program 2), which was for students who were serving forty-five day suspensions.
4. On October 16, 2017, the District received consent from the Parent to conduct a functional behavioral assessment (FBA).
5. On November 14, 2017, the one-year timeline for this complaint began.
6. On November 16, 2017, the District convened an annual individualized education program (IEP) meeting for the Student. The Student's IEP (from November 17, 2017 to November 18, 2018) stated the Student was attending program 1 full time in the District. The Student's IEP stated that the Student's behavior impeded his learning or that of others. The IEP provided the following behavior supports:
 - Check-in/out
 - Self-monitoring/Tracking home sheet
 - Social skills training
 - Token economy
 - Behavior contracts
 - Positive reinforcement
 - Intermittent Rewards
 - Non-verbal prompts
 - Praise
 - Functional behavioral assessment and behavior intervention plan

The Student's IEP also provided for the use of restraint and isolation procedures and the IEP stated that the Parent had been notified about the District restraint and isolation procedures.

The Student's IEP included annual goals in the areas of reading, math, written language, and social/emotional/behavior. The Student's IEP provided the following special education and related services in the special education classroom:

- Math: 100 minutes, 4 days per week
- Math: 40 minutes, one day a week
- Motor: 30 minutes, one day a week
- Reading: 100 minutes, 4 days a week
- Reading: 40 minutes, one day a week
- Social/Emotional/Behavioral: 100 minutes, 4 days a week
- Social/Emotional/Behavioral: 40 minutes, one day a week
- Written Language: 100 minutes, 4 days a week
- Written Language: 35 minutes, one day a week

The IEP provided a total of 1,785 minutes of special education services each week, which represented a full school day. The IEP provided no time in the general education setting.

The Student's IEP provided for accommodations in the areas of environment, instructional strategies, method or response, assignments, and behavioral cues.

The IEP team also reviewed the results of the Student's FBA. The FBA identified the following targeted behaviors:

Low Intensity

- Work refusal
- Refusal to follow directions

Medium Intensity

- Calling out in class (high volume)
- Out of seat
- Calling staff/peers names
- Tantrums: may include many of the behaviors above

High Intensity

- Throwing items at others
- Running in halls/building
- Hitting/kicking others
- Running in halls/stairs/building
- Threats to harm himself or others

The FBA stated that behavior problems most likely occur when the Student does not have access to staff's attention and when authority figures attempt to redirect or de-escalate the Student outside of the classroom. Strategies to address the behavior included decreasing the student and staff numbers in the classroom and working with familiar staff.

7. On November 21, 2017, the Student was involved in a disciplinary incident that necessitated a manifestation determination. On November 30, 2017, the Student's behavior was determined to be a manifestation of the Student's disability. The Student was subsequently placed in another IAES (program 2), which was located at the middle school from December 7, 2017 to February 28, 2018. During this period, the Student attended school half days. The District's behavioral specialist and special education teacher provided services to the Student in the morning.

According to the manifestation determination documentation, the following recommendations were made to prevent the behavior from reoccurring:

Team Responsibilities

- Add to the BIP
- Explore pragmatic language support
- Add to sensory diet
- Remove aversive and time-out room from current IEP; consider emergency response protocol
- Consider environmental changes
- Get data from program 2
- Meet as an IEP team to discuss and make decisions

Student Responsibilities

- Continue his good work at program 2

Parent Responsibilities

- Continue supportive participation
8. Regarding the manifestation determination, according to the District's response to the complaint, the district stated, "One of the responsibilities was to "add to the BIP." The district failed to reconvene the IEP and amend the BIP..."
 9. The District was on break from December 18, 2017 through January 1, 2018.
 10. In January 2018, the Student was reevaluated by the District "to consider his most appropriate placement." On January 24, 2018, the evaluation team met to discuss the evaluation results. The evaluation team included the following participants:
 - Foster parents
 - District case manager
 - Occupational therapist
 - School psychologist
 - Educational advocate
 - [Agency 1] case worker
 - Assistant principal
 - [Agency 2] case manager
 - [Agency 2] therapist
 - [Agency 2] supervisor
 - Special services coordinator

The evaluation described a series of behavior incidents, some of which resulted in suspension. The incidents were as follows:

- September 20, 2017 – noncompliance and calling the paraeducator a "jerk";
- September 21, 2017 – disrespectful language towards staff; pushing tables and chairs towards staff; "unsafe" language (profanity) towards peers and staff;
- September 26, 2017 – threatened to drop computer on others; non-compliant and "verbally abusive";
- October 6, 2017 – refused to comply; climbed light pole; verbally abusive to staff;
- October 10, 2017 – noncompliance; throwing objects at staff and students; attempted elopement;
- November 14, 2017 – noncompliance; kicked, threw objects, and verbally assaulted staff members; and
- November 21, 2017 – kicking and hitting staff; noncompliant; ran outside and climbed beams.

The Student was also assessed in the area of visual motor integration. His scores were below average, but the evaluation indicated that the score might not be accurate because of the Student's test behavior. However, the evaluation stated that the Student had sensory difficulties in the classroom.

The evaluation team recommended that the Student continue in his present placement at program 2 with a "very slow integration/transition back into the district's full-day behavior intervention program" (program 1). The evaluation team discussed and ultimately refused a full-day placement back into program 1 or a day treatment program. The day treatment program was considered too restrictive to meet the Student's needs.

11. According to the documentation, no participant disagreed with the evaluation results.

12. On March 2, 2018, the District held an IEP meeting to review the Student's IEP and to address the results of the January 2018 reevaluation. The updated present levels on the Student's social/emotional/behavioral performance stated:

[Student] is currently attending the [program 1] at the [secondary school] full-time. To date, [Student] has been displaying the following problem behaviors: threats to harm himself/others, cussing, calling out loudly in class, leaving the classroom, defiance, hitting/kicking staff, throwing items, calling staff names, and leaving campus. His IEP team decided to place him on a three-week half-day program to best support his social/emotional skills acquisition and to conduct an FBA (functional behavioral assessment) and develop an updated behavior intervention plan. During this time, [Student's] behavior seem to decrease as the team added the following supports: self-monitoring/schedule tracking sheet, take a break spot, social skills curriculum, modified 5-10 minute work schedule and practicing positive behavior replacement skills. He had moderate success acclimating back to a full-day schedule for approximately 2 weeks, but problem behaviors including aggression towards staff is still on-going. He has been emergency expelled once to date since starting back to a full-day. His most recent FBA was focused on the problem behavior of tantrums as this behavior has recently led to increased aggression and defiance to staff during this school year. Strategies to support [Student] also include: a behavior intervention plan, token economy, positive praise, incentives if he has a successful day including access to his break box and other choice activities. [Student] works both with a one to one staff and in small groups. (See his attached Behavior Intervention Plan.)

The total number of minutes per week that the Student was served in a special education setting was decreased from 1,785 minutes to 1,759 minutes; the remaining twenty-six minutes were in a general education setting. Occupational therapy was reduced from thirty minutes once a week to twenty minutes once a week.

13. On March 6, 2018, the District provided the Parent with prior written notice. The notice stated the IEP team discussed the Student's progress at program 2 and the "next steps towards creating an Progression Action Plan for [Student] to return to [secondary school]...The team decided to meet in approximately 3 weeks after the meeting to review the [Student's] Progression Action Plan and next steps including a Person Centered Planning approach to programming for him."
14. The "Progression Action Plan" was designed to show the steps that would increase the Student's time in program 1. Each step included a list of activities that the Student would participate in and where.
15. On March 23, 2018, according to meeting notes, the District held a meeting. The meeting notes did not indicate who attended the meeting other than the behavior specialist at program 2. The meeting notes stated the following:
- 15 minute in increments (15on/15 off, can get 2-3 minute bonus)
 - Work station with rolling chair
 - Choice station – MP3, food, Chromebook
 - Academics are mostly worksheets
 - Game time in the middle

16. On April 12, 2018, the Parent met with the District. The District stated, in its response, that "During this meeting, it was agreed to update the [S]tudent's BIP to reflect what the [S]tudent's program at [program 2] consists of. This included his work and break stations and daily schedule. The District failed to amend the BIP to include the information discussed during the April 12, 2018 meeting."

According to the District, in an effort to gather more information about the Student, the District agreed to pay for a "Person Centered Plan" (PCP).¹ The participants in developing the plan were the facilitator, District staff, and others from community agencies that were serving the Student and the Parent, including the Student's guardian ad litem. The planning team described the Student as smart, humorous, and a good communicator, among many attributes. The team discussed, among other topics, the need for clear expectations and structure, and "behavioral protocols set in place and followed [in] the least restrictive environment..." The team also discussed what worked and what did not work for the Student. What worked included consistent people who care, calm nonreactive staff, consistent routine, social stories, humor, clear boundaries, and having choices. What did not work for the Student was being rushed, having no choices, large groups of people, arguing with him, and inconsistent transitions. The next steps in the planning process were to "put in IEP; try out ideas, resources, and classes; review plan in August; and strategy for transition."

17. From June 14, 2018 to July 10, 2018, the director began discussing, through a series of emails to the Parent and numerous community service providers, scheduling an IEP meeting for the Student.
18. On June 15, 2018, the Parent emailed the special education director and requested an independent educational evaluation (IEE) of the Student.
19. On June 18, 2018, the director replied in an email to the Parent regarding the IEE request:
"Absolutely! Guardians have a right to request an Independent Education Evaluation when they disagree with the school district's evaluation. Can you please let me know what area of evaluation you disagree with? Once I have that information, I will send you a list of possible providers who are eligible to complete IEEs."

On the same day, the Parent replied to the director in an email:

The current re-evaluation is lacking in the following areas which are crucial to our student's success:

1. Speech
2. Communication
3. Visual/Occupational therapy as it related to the interrelation between fine motor skill and visual motor impairment as documented in the independent visual evaluation
4. Academic needs and progress
5. Recommendation for services to bridge academic and behavioral needs

¹ A PCP is a problem-solving process that is used to assist a student with disabilities and their team plan for the student's future. According to the District, the PCP is part of the Student's IEP.

20. On June 19, 2018, the District scheduled a meeting with the Parent. According to the District, the District had planned to provide the Parent with the IEE information at the meeting, but the meeting was canceled and rescheduled for July 10, 2018.
21. On July 10, 2018, according to the District, the Parent, agency 1 case manager, agency 4 case manager, and the director met. The District provided the Parent with the IEE information, including the District's IEE policy and a list of potential evaluators.

According to the District's response, the meeting also addressed the request that the Student attend school "full-time." The response stated:

The team requested [Student] have a full day. A full day had not been requested previously from the team. The team brainstormed and it was requested [Student] be transferred to [middle school] as they have been informed it was a trauma-informed school. It was explained that the [program 1] is not located at [middle school] and IEP placement is in [program 1]. It would be a team decision and a change of placement to move him from a self-contained behavior program to resource. The team also brainstormed to have [Student] spend half of his day in [program 1] and half of his day in [program 2]. [Student's] evaluation recommended [program 2] with transitioning back to [program 1]. The team agreed to this option and [Student] began the school year with this schedule.

22. On July 13, 2018, the Parent emailed the director, stating she had made contact with the outside agency to have the IEE conducted. The Parent stated that IEE agency 1 would be contacting the District to authorize the evaluation.
23. On July 17, 2018, the case manager from agency 3 emailed the director and requested an IEE approval letter from the District. The email indicated that the District provided the IEE information at the July 10, 2018 meeting, but did not provide an "approval letter."

The Parent's complaint stated that the Parent requested a prior written notice "to confirm the school district's approval of the IEE. She received the prior written notice on August 15, 2018." According to the District, the District was not required to provide the Parent with prior written notice, but nevertheless, provided the notice on August 15, 2018.

24. In July and August 2018, the Student was evaluated by IEE agency 2. The Student's scores in the cognitive area when compared to others his age were as follows:
 - Verbal comprehension – 14%
 - Visual spatial – 50%
 - Fluid reasoning – 58%
 - Working memory – 21%
 - Processing speed – <1%
 - Full scale – 10%

Behaviorally, the assessment results indicated that the Student had significant problems with anxiety and depression, withdrawn behavior, social situations, rule breaking, and aggressive behaviors. The results also showed significant attention and concentration problems.

Academically, the Student scored as follows:

- Reading composite – 1%
- Math composite – 5%

Based on the assessment, the Student was diagnosed with the following:

- Attention-Deficit hyperactivity disorder;
- Oppositional defiant disorder;
- Specific reading disability;
- Specific math disability;
- Specific writing disability; and,
- Convergence excess due to high hypertonia (farsightedness) and amblyopia and oculomotor dysfunction (eye tracking disorder) in the right eye.

The recommendations regarding education, in relevant part, were as follows:

It appears that the approach taken at [program 3] in 2015 was more effective than previous education interventions. At [District], [Student] should attend school for a full day with the assistance of a full-time paraeducator. He needs extensive practice of the skills necessary to learn and succeed in school. [Student] is capable of learning and forming meaningful relationships given time, patience and behavioral management. He has demonstrated that he can develop rapport with a teacher or a skilled guide. The cognitive and achievement test data suggest that [Student] is also capable of meaningful learning when his behavior does not interfere with the learning process and his attention can be focused on the learning experience...

25. On August 24, 2018, the District held a meeting to discuss program options for the Student for the 2018-2019 school year.² The participants were the Parent, representatives from community service agencies, including the Student's guardian ad litem, and the District special education director. The participants discussed the program options that included program 1 in the morning and program 2, but in a different school, in the afternoon. The meeting notes included the following:

- Will start in [program 1] first period
- Afternoons at [school] - IAES
- Foster mom
 - Wants to make sure he can self-assess his behavior
 - Visit classroom and meet paraeducator
- All paraeducators need to interact in the same manner with him
- Really wants to have consistent supports/strategies at home, school, in therapy, too
- Zones of regulation
- Use Room ## only when needed (not starting there)
- He likes to tell his story
- Wants to related to people
- Will be there through first lunch
- Struggles with Chromebook – No Chromebook, too difficult to manage at this time
- Very extrinsically motivated
 - Motivated by computer/food
 - Small rewards throughout day
 - Limit stress
- Touches everything – poor visions and tactile
 - Loves the library
 - Does well with audiobooks

² Although there was some later confusion over whether the August 24, 2018 meeting was an IEP meeting, the District clarified to the participants that it was not an IEP meeting.

26. On September 4, 2018, the case manager from agency 3 provided the District a copy of the Student's "safety plan" that was used at home.

2018-2019 School Year

27. On September 5, 2018, the District's 2018-2019 school year began.

28. According to the documentation the District provided:

At the beginning of the 2018-2019 school year, [Student's] day was increased from a half day to a full day. His day was split between the [program 1] on a traditional campus and [program 2]. The [program 1] has a high ratio of staff to students. The [program 2] is primarily 1:1. A Progression Action Plan was created to provide concrete steps with the goal to reduce his time in [program 2] and increase his time in the [program 1]. [Student] began the year attending the [program 1] from 7:25 – 11:15. He then rode the bus to the [program 2] until the end of the day. While in the [program 1] the focus was to have him build a strong relationship with staff and slowly increase the academic demands. In the [program 2] setting, [Student] had increased targeted academic instruction. [Student] progressed to step 3, which had him attending the [program 1] from 7:25 – 12:15. On Thursdays, he attended all day at [program 1] due to a shortened day. With this increased time at [program 1], [Student's] behaviors began escalating more frequently. The team agreed to go back a step and return to his schedule of 7:25 – 11:15 at [program 1] and the rest of the day at [program 2]. In addition, while on the traditional campus, [Student] is in an alternative environment working 1:1 with staff where there is reduced stimuli. As his behaviors return to baseline, academic demands will also increase...

29. On September 11, 2018, the agency 3 case manager emailed the director, requesting a meeting to discuss the possibility of the Student attending program 1 full time to reduce the need for transitioning between two schools. On the same day, the agency 3 family support specialist emailed the director, requesting an IEP meeting.

30. On September 14, 2018, the District case manager emailed representatives from five agencies and inquired if they wanted to meet before the completion of the IEE.

31. On September 17, 2018, the District special services coordinator exchanged emails with the Parent and community agency representatives regarding whether the August 24, 2018 meeting—regarding the program options for the Student—was an IEP meeting. The coordinator clarified that the meeting was not an IEP meeting.

32. On September 26, 2018, according to the Parent, the Student had a behavior incident that involved an authority figure, and the Parent stated that the District did not follow the Student's BIP. No other documentation was provided by the Parent or the District regarding the incident.

33. On September 27, 2018, the "Progression Action Plan" to increase the Student's time in program 1 was reviewed. The documentation did not indicate who attended the meeting or what was discussed. The complaint alleged that there was agreement that the Student needed a physical outlet, including shooting baskets and a stationary bike.

34. On October 2, 2018, the District provided the Parent with prior written notice regarding placing the Student full time in program 1. The progression plan identified the steps to increase the Student's time in program 1 and decrease time in program 2 based on the success the Student was having at program 1. Daily behavior data and information about academic engagement were reviewed to help make the decision.³
35. On October 10, 2018, the District received the results of the Student's IEE. Meanwhile, the District and Parent agreed to mediation. According to the District, the IEP team agreed to wait to review the IEE until after mediation was conducted. The first mediation session occurred on November 1, 2018, and the second mediation session occurred on November 15, 2018.
36. Also on October 10, 2018, the Parent emailed the District case manager about a bus incident with another student. The email stated:
- In speaking with [Student] about ideas for de-escalation he stated it would help to have closed in space where no one could see him, having an exercise bike (as agreed upon at the IEP meeting) or a punching bag that he could use when he is triggered. I am asking that we have some options in place by the end of this week. It is extremely important that all staff that engage with [Student] review and comply with the BIP/FBA which are part of his IEP. I have highlighted a page from the FBA that discusses triggers. Problems with administration/authority figures outside the classroom that should be avoided.
37. On October 19, 2018, a behavior incident occurred that resulted in the Student being arrested by law enforcement and the Student was "emergency expelled," which was subsequently changed to a four-day suspension.
38. On October 24, 2018, the District conducted a manifestation determination regarding the October 19, 2018 incident. The District and the Parent determined the behavior was a manifestation of the Student's disability. The documentation stated a new BIP was needed and would develop it after a new FBA was conducted.⁴
39. Sometime before November 2018, the Student was referred for a three-year evaluation to address the Student's eligibility for special education services. On November 2, 2018, the evaluation group met to review the evaluation results, including the results of the IEE. The evaluation identified a number of significant behaviors, including trouble with staying seated, defies authority, breaks rules, and uses foul language. Regarding school behavior, the results indicated difficulty with meeting deadlines, making careless mistakes, being easily distracted. Based on the evaluation results, the evaluation group determined the Student continued to be eligible for special education services, but under the category of emotional behavioral disability.

³ The behavioral data showed that the Student had a 72% success rate at program 1 at the time.

⁴ On December 5, 2018, the District provided the Parent with prior written notice regarding the determination. The notice addressed an apparent error in the original documentation that stated the behavior was not a manifestation of the Student's disability.

On November 2, 2018, the District provided the Parent prior written notice of the proposal to “continue with his special education placement and receive SDI (specially designed instruction) in math, reading, writing, and SEB (social/emotional/behavioral).”

40. On November 14, 2018, the Parent filed this complaint.

41. On November 15, 2018, the Parent and District held a second mediation session and reached an agreement. The mediation agreement provided resolution to the following issues:

- The Student’s placement at [program 1] and [program 2]. [Program 1] will provide a one-on-one paraeducator who will provide behavioral support to the Student, along with training.
- The IEP team will revise the Progression Action Plan and modify the goals in the plan at the next IEP meeting on November 29, 2018.
- A protocol will be followed when one of the agencies wants to make change to the IEP.
- At the end of each in-person meeting, there will be written clarification about who is going to do what, by when.
- District staff will be provided training on trauma-informed care strategies.
- If the Student is suspended from school, restorative justice strategies will be used.
- The IEP team will revise the behavior tracking sheet by the November 29, 2018 scheduled IEP meeting.
- The Student will not have access to assistive technology such as computers or hand-held devices unless there is an IEP team meeting to discuss the need.

42. On November 29, 2018, the District held an IEP meeting to review the Student’s IEP. According to the meeting notes, the following recommendations were made and actions to be followed up on:

- Explain/describe diagnosis section
- Create a sensory/cool down box
- Plan to model for paraeducators
- New FBA and BIP
- Small, cozy de-escalation/self-care spot
- Date to reconvene to continue IEP discussion
- Finalize self-monitor/color form
- Daily schedule to [agency]

CONCLUSIONS

Issue 1: Behavioral Intervention Plan – The complaint stated that the District failed to follow procedures when developing and implementing the Student’s BIP. A district must consider any behavior supports, interventions, or strategies, including a behavioral intervention plan, necessary for a student to receive a free appropriate public education (FAPE). Any behavioral intervention plan (BIP) or behavior interventions must be implemented as written.

BIP Development & Amendment

Here, the Student’s many behavioral difficulties required the District to address what behavior supports, interventions, and strategies were needed to meet the Student’s unique needs. To address the Student’s needs, the District conducted a functional behavioral assessment (FBA) and

provided a BIP, a "Progression Action Plan", and a "Person Centered Plan" that all addressed the Student's behaviors to varying degrees. In addition, a long list of recommended behavior supports, interventions, and strategies were included in the Student's IEP. And these supports, interventions, and strategies were discussed during the manifestation determination and other meetings with the Parent and community agencies. The independent educational evaluation (IEE) also addressed the Student's behaviors. While it is clear the District was attempting to address the Student's behaviors, the multiple plans and long list of interventions does not necessarily indicate that strategies were being implemented with fidelity. The District needs to develop a single behavior plan that identifies the specific supports, interventions, and strategies that meet the significant behavior needs of the Student, and at the same time, can be implemented with fidelity. The plan needs to consider the training needs of the staff and systematic progress monitoring.

The District acknowledged in its response to the complaint that the procedures were not followed in amending the BIP and providing sufficient prior written notice to the Parent regarding changes to the BIP. A violation is found. Regarding the Student, OSPI will defer to the November 15, 2018 mediation agreement that addressed the Student's BIP by providing trauma-informed care strategies, using restorative justice practices in lieu of disciplinary removals, and revising the behavior tracking sheets. Regarding District practices, the District is required to receive training regarding procedures for developing and amending BIPs.

IEP Implementation

The complaint also stated the District failed to follow the BIP on September 26 and October 10, 2018. The Parent stated that the District failed to recognize the Student's trigger regarding authority figures while the Student's behavior escalated. However, the fact that the Student's behavior escalated was not necessarily an indication that the BIP was not follow. There was insufficient evidence to substantiate the violation of implementation.

Issue 2: Independent Educational Evaluation – The Parent's complaint stated that the District failed to follow procedures when the Parent requested an independent educational evaluation (IEE) by not providing the Parent with prior written notice until August 15, 2018. Parents of a student eligible for special education have the right to obtain an IEE of the student at public expense if they disagree with the district's evaluation. If the parents request an IEE at public expense, the district must either: initiate a due process hearing within 15 days to show that its evaluation is appropriate; or, ensure that an IEE is provided at public expense, unless the district demonstrates in a hearing under this chapter that the evaluation obtained by the parents did not meet agency criteria.

Here, on June 15, 2018, the Parent emailed the special education director, requesting an IEE. On June 18, 2018, the District replied that the Parent had a right to an IEE. While the email did not explicitly declare the request was approved, the email could be reasonably interpreted to indicate that the request was approved. There was no requirement that the District provide the Parent with prior written notice of the approval. There was also some delay in getting the Parent the

District's policy and a list of evaluators, but it did not appear to inhibit the Parent from eventually receiving the IEE, even after the Parent switched IEE evaluators. No violation is found.

Issue 3: Prior Written Notice – The Parent's complaint stated that the District failed to provide the Parent with prior written notice. The complaint alleged that some prior written notices did not reflect the decisions that were made at the meetings and did not provide a sufficient explanation of the decisions. Prior written notice ensures that a parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding a student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent and should clearly describe what the district proposes or refuses to initiate, including the rationale.

Here, the IEP team, including representatives from community agencies, met numerous times during the 2017-2018 and 2018-2019 school years to discuss the Student's behavioral needs. According to the documentation, the District proposed many behavior supports, interventions, and strategies, but the prior written notices provided did not reflect the proposals. The District acknowledged that the notices did not document the decisions that were made and the rationale. A violation is found.

Issue 4: IEP Procedures – The Parent's complaint alleged that the District failed to follow the required IEP procedures. The complaint alleged that the District did not document the change of placement that was agreed to at the August 24, 2018 meeting and failed to consider physical outlets for the Student. The complaint stated, "The District had already decided for the team that [Student] would go to different facilities, despite the IEP Team agreeing to keep [Student] in [program 2]." A district must ensure that decisions regarding a student's IEP are made by a properly constituted IEP team and are documented on the IEP.

Here, the Student's November 2017 and March 2018 IEPs stated that the Student was attending a full day of school, according to the total number of minutes in school. However, the documentation also stated that the Student was sometimes attending school half time. The documentation showed that the District had meetings with the Parent and community agency representatives to discuss the length of the school day for the Student and his attendance at program 1 and program 2, which were decidedly different.⁵ The documentation indicated that decisions about the length of the school day and where the Student would attend were not made by the IEP team, such as the July 2018 meeting, but there was no amendment to the Student's IEP or prior written notice provided regarding the decisions.

Regarding the August 24, 2018 meeting, according to the District, the meeting was not an IEP meeting, although it was like some of the previous meetings, such as the July 2018 meeting in which IEP decisions were made by the director, Parent, and community agency representatives.

⁵ Based on the evidence provided about the two programs, changing from one program to another would constitute a change of placement. The Student's IEP team has the responsibility to determine a change of placement.

In this case, the District was correct because the IEP team was not properly constituted and therefore, the District could not make a decision about a change of placement.

Regarding the request for having access to a physical outlet, the complaint stated the "Progression Action Plan" included a physical outlet but the prior written notice did not reflect the proposal. The documentation of the plan did not mention a physical outlet and there was no indication from the prior written notice that there was an agreement to provide a physical outlet.

The November 15, 2018 mediation agreement resolved the issue of the Student's placement by agreeing to have the Student attend program 1 in the morning and program 2 in the afternoon. However, the documentation showed that the District failed to follow IEP procedures when it failed to document changes of placement, failed to have required IEP team members at meetings where placement decisions were made, and failed to document agreed upon changes in the IEP or prior written notices. A violation is found.

CORRECTIVE ACTIONS

By or before **January 23, 2019, February 8, 2019, March 8, 2019, and March 29, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

All corrective action regarding the Student was addressed in the November 2018 mediation agreement.

DISTRICT SPECIFIC:

Training

By **February 28, 2019**, the District will provide training for the 2017-2018 and 2018-2019 IEP teams of the Student regarding topics identified in this complaint, including:

- IEP procedures, including the required members and reviewing and revising the IEP, as appropriate;
- Prior written notice; and,
- Developing and implementing BIPs.

The training should also address the topics from the above required guidance or provide the guidance memorandum as a resource to reinforce those topics. The training must be provided by both the District special education administrative staff and Olympic Educational Service District 114 staff.

By or before **January 23, 2019**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By of before **February 8, 2019**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by February 15, 2019 and additional dates for review, if needed.

By **March 8, 2019**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

Implementation

By **March 29, 2019**, the District will provide OSPI with five prior written notices that are written after the February 8, 2019 training. The notices must pertain to changes of placement, BIPs, or revising services. If the notices are in compliance, the violation regarding prior written notice will be corrected. If the notices are not in compliance, OSPI, in collaboration with the Olympic Educational Service District 114, will develop a plan for the District to achieve and maintain compliance.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this ____ day of January, 2019

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)