

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-42

PROCEDURAL HISTORY

On March 12, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parents (Parents¹) of a student (Student) attending the Auburn School District (District). The Parents alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On March 13, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On March 25, 2020, the District requested an extension of time to respond to this complaint. OSPI granted the extension and requested the District respond by April 10, 2020.

On April 10, 2020, OSPI received the District's response to the complaint and forwarded it to the Parents on April 13, 2020. OSPI invited the Parents to reply.

On April 22, 2020, the Parents requested an extension of time to reply to the District's response to this complaint. OSPI granted the extension and requested the Parents reply by May 1, 2020.

On April 30 and May 1, 2020, the OSPI investigator interviewed the Student's middle and high school case managers and the District's director of special education (director).

On April 30, 2020, OSPI received the Parents' reply. OSPI forwarded that reply to the District on May 1, 2020.

On May 4, 2020, the OSPI investigator interviewed the Student's Wraparound with Intensive Services (WISe) facilitator.

OSPI considered all information provided by the Parents and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the interviews.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on March 13, 2019. These references are included to add context to the issues under investigation

¹ The complaint was filed by the Student's grandparents, who were the Student's guardians during most of the period under investigation. For purposes of this complaint, references to the "Parent" is the Student's grandfather and references to the Student's "Parents" are his grandparents.

and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

The Parents' reply to the District's response also raised additional allegations beyond the scope of a special education citizen complaint. For example, allegations related to specific District staff members and allegations of harassment. OSPI does not have the authority to investigate the professional practices of specific staff or harassment through the special education complaint process; and therefore, those allegations will not be addressed. If the Parents have further concerns about the professional practices of staff, they may wish to consider filing a professional practices complaint with the District superintendent or superintendent of the Educational Service District (ESD). For more information, the Parents should contact OSPI's Office of Professional Practices.

ISSUES

1. Did the District follow procedures for implementing the Student's individualized education program (IEP) and behavioral intervention plan (BIP) since May 2019?
2. Did the District follow special education discipline procedures since May 2019, including addressing the disciplinary change of placement and providing services per WAC 392-172A-05145?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. 34 CFR §300.323(a); WAC 392-172A-03105(1). Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

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 a free appropriate public education (FAPE). The BIP, 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.

Disciplinary Removal Generally: When a district removes a student from school for disciplinary reasons, it must make sure that the removal is consistent with state laws and regulations governing discipline for all students. WAC 392-172A-05140. Students eligible for special

education may not be improperly excluded from school for disciplinary reasons. 34 CFR §300.530; WAC 392-172A-05140. The procedural rules for the discipline of students who are eligible for special education are based on four general principles: (1) a student eligible for special education's placement should not be changed through discipline for behavior that is a result of his or her disability; (2) a student eligible for special education may be disciplined for behavior that is not a result of his or her disability, but only in a manner that is consistent with the discipline imposed on nondisabled students without disabilities; (3) during a period of discipline, a student eligible for special education should continue to receive services that will allow him or her to progress in his or her education; and (4) when a student's disciplinary removal from school is significant enough to amount to a change in educational placement, additional procedural requirements apply. *See generally* WAC 392-172A-05140 through 05175.

Disciplinary Removal that Results in a Change of Educational Placement: A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days; or, when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. 34 CFR §300.536; WAC 392-172A-05155. After a student eligible for special education has been removed from his or her current placement for ten school days in the same school year, and the removal is a change of placement, during any subsequent days of removal the student must continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The student's IEP team determines appropriate services. The services may be provided in an interim alternative educational setting. WAC 392-172A-05145(3).

After a student eligible for special education has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement, during any subsequent days of removals, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The services may be provided in an interim alternative educational setting. WAC 392-172A-05145(4).

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the

conduct in question was the direct result of the school district's failure to properly implement the student's IEP or behavior intervention plan. 34 CFR §300.530(e); WAC 392-172A-05146.

If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct a functional behavioral assessment (FBA), unless the district had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or, if a BIP already has been developed, review the BIP, and modify it, as necessary, to address the behavior; and, except for special circumstances, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the BIP. 34 CFR §300.530(f); WAC 392-172A-05147.

Disciplinary Removal for up to 45 school days: School personnel may remove a student to an interim alternative educational setting for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student: possesses or carries a weapon to school, on school premises, or to a school function; knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function; or inflicts serious bodily injury upon another person while at school, on school premises, or at a school function. 34 CFR §300.530(g); WAC 392-172A-05149.

FINDINGS OF FACT

Background

1. The Student attended a District middle school and was eligible for special education services under the category intellectual disability. The Student's previous triennial reevaluation occurred in November 2017.
2. According to the District's response to the Parents' complaint, the Student "historically demonstrated some challenging behaviors." In March of 2018, the Student's behaviors "became more aggressive" and began to "significantly impact his progress." The Student's individualized education program (IEP) team developed a behavioral intervention plan (BIP). According to the District, the BIP was implemented and during that time period, "the team was able to prevent significantly aggressive behaviors and/or respond to these types of behaviors without the use of out-of-school discipline."

2018-2019 School Year

3. During the 2018-2019 school year, the Student attended a District middle school and continued to be eligible for special education services under the category intellectual disability.
4. The District's 2018-2019 school year began on September 5, 2018, and the Student's schedule was as follows:

- First Period: Adaptive Behavior (special education)
- Second Period: Language Arts (special education)
- Third Period: Math (special education)
- Fourth Period: US History 8
- Fifth Period: Science 8
- Sixth Period: PE/Drama

5. On September 27, 2018, the Student received an in-school suspension.
6. On November 5, 2018, the Student's IEP team met and developed his annual IEP. The November 2018 IEP noted the Parent's concerns regarding the Student's behavior at school and his reading skills. The IEP documented that the Student's behavior impeded his learning or the learning of others, and that he had a "Positive Behavior Support plan." The November 2018 IEP included annual goals in social/emotional (respecting personal space and making requests), adaptive (self-regulation), reading, writing, and math. The IEP provided the following specially designed instruction in a *special education setting*:
- Math: 55 minutes, 5 times per week (special education teacher)
 - Reading: 35 minutes, 5 times per week (special education teacher)
 - Writing: 20 minutes, 5 times per week (special education teacher)
 - Social/emotional: 35 minutes, 5 times per week (special education teacher)
 - Adaptive skills: 20 minutes, 5 times per week (special education teacher)

The IEP included several accommodations and modifications, and the IEP provided the Student with a 1:1 paraeducator as a supplementary aid and service for 195 minutes daily in the general education setting and 195 minutes daily in the special education setting. The Student's IEP provided him with "special" transportation.

7. On November 5, 2018, the Student's IEP team also reviewed his functional behavioral assessment (FBA) and BIP. The Student's BIP defined the "problem behavior(s)" as: arguing with staff when staff prompt him; arguing with students; inappropriate spatial boundaries and not respecting other people's space; academic anxiety and unwillingness to comply with activity directions; and posturing and aggressive behavior with staff and students when a confrontation occurs. The BIP included information about potential triggers, settings and factors predicating behaviors, functions of the behavior, and replacement behaviors. The BIP specifically targeted the following:
- "Instead of arguing when [Student] wants to gain control of his environment, [Student] will instead use a calm voice to verbally advocate and express his needs."
 - "Instead of posturing and physical aggression towards peers and staff when [Student] wants to gain control of his environment, [Student] will instead maintain safe physical proximity and use appropriate gestures to communicate his needs for control."

The BIP listed replacement behaviors, including social/emotional instruction based on IEP goals, instruction in zones of regulation, and "explicitly teach routine for self advocacy through the use of a break pass." The BIP also included strategies for staff working with the Student and other supports, such as verbal reinforcement, self-monitoring behavior with a tracker, earned structured breaks as an incentive, other incentives, earned free time, and preferred activities. The BIP also included a response plan, which included redirection phrases for staff,

plans for safely managing behavior, debriefing phrases, and consequences (restorative circle when an unsafe physical boundary is crossed with peers or staff). And, the BIP included behavior goals for self-advocating to express needs and taking a break/walking away.

The attached behavior tracker allowed the Student to earn points in each class in the categories of "did work," "wait turn," "tone of voice," and "keep cool."

8. In November and December 2018, the Student received 2 days of out-of-school suspension and 1.5 days of in-school suspension.
9. In December 2018, a reevaluation was proposed. According to the District's response, the Student's behaviors continued to increase and were increasingly aggressive. The District stated the Student's team "continued to problem solve, review and revise the interventions attempted, and communicate frequently with the [Parents]." The District's response contained a signed consent for reevaluation document, dated February 5, 2019.
10. On March 6, 2019, the Student received a 3 day out-of-school suspension.

The Timeline for this Complaint Began on March 13, 2019

11. On March 13, 2019, according to the District's response, the team met with the intent to "review the reevaluation and support the [Student's] upcoming transition to high school." However, the Parent left the meeting before it started.
12. On March 14, 2019, the Student received a 1-day in-school suspension and on March 27, 2019, the Student received a 10-day out-of-school suspension.
13. On March 28, 2019, the District's director of special education (director) emailed the Parent and asked if he would be willing to meet with her to discuss his concerns. The director stated, "I know that you've been frustrated, and I would like to be able to help. School staff have also expressed concerns to me regarding an increase in challenging behavior from [Student] since we were unable to meet as a team on March 13."
14. On March 29, 2019, the Parent replied, stating he was "trying everything [he could] think of to try to help this situation" and agreed to meet.
15. On April 3, 2019, the reevaluation was completed.² The evaluation group determined the Student continued to be eligible for special education services and continued to recommend specially designed instruction in social/emotional, adaptive, reading, math, and written language.

² According to the District's response, "a variety of circumstances, including guardian and staff availability, snow days, and guardian seeking additional advocacy support, resulted in the timeline for this evaluation being extended."

16. Also, on April 3, 2019, a manifestation determination meeting was held. The Parent did not attend. The team determined the Student's behavior was a manifestation of his disability.

17. On, April 3, 2019, the director and Parent met separately from the evaluation and manifestation determination meetings. In an email following the meeting, the director summarized that they had discussed the Student's reevaluation and the outcome of the manifestation determination. The director stated the Student could return to school the next day, April 4. The director summarized that the team had discussed options "that would reduce [Student's] access to a [computer], other than during instructional time that requires its use, in an attempt to avoid some conflicts that may occur." The director noted they had also discussed communication between the Parent and District.

The Parent responded and stated the school could call him if he needed to pick the Student up, otherwise he was "not interested in hearing from them."

18. On April 4, 2019, the District provided progress reporting on the Student's goals. The progress reporting documented the following³:

- Social/Emotional (Personal Space): Not making progress toward goal—"[Invading personal space] 5 times per day. However, [Student's] invasion of personal space has become much more aggressive and includes staff. His inability to self-regulate is increasing, which is preventing him from making progress."
- Social/Emotional (Requests): Met goal target—"2/3 requests. When [Student]s is not at his frustration level, he will use these phrases. Sometimes he needs reminders, but he typically does not flat out refuse like he previously did."
- Adaptive (Self-regulation): Not making progress toward goal—"66% of the time [remain calm improving self-regulations skills] over the last month."

19. On April 17, 2019, the Student receive a 1-day in-school suspension, and on April 19, 2019, the Student received a 3-day out-of-school suspension.

20. On April 23, 2019, the Student's IEP team met and developed a new IEP for the Student. The Parents did not attend the IEP meeting. The April 2019 IEP documented that the Student's behavior impeded his learning or the learning of others, and that he had a "Positive Behavior Support plan." The present levels section noted the Student "sometimes makes decisions that may be unsafe or against school rules" and that the Student was "monitored across all school settings to ensure he is being safe and socially appropriately [sic]." The IEP noted the Student's behaviors "change day to day drastically and have at time, become physical." The present levels also noted the Student had not attended school or specific classes consistently.

³ As this complaint largely related to the Student's behavior and there is no indication of concern regarding the provision of specially designed instruction in math, reading, and writing, progress reporting in these areas—while provided—is not detailed in this complaint decision. It is important to note the progress reporting indicated that the Student's nonattendance—due in part to disciplinary removals—had an impact on the Student's progress in all areas.

The April 2019 IEP included annual goals in social/emotional (personal space/appropriate social engagement and making requests), adaptive (self-regulation), reading, writing, and math. The IEP provided the following specially designed instruction in a *special education setting* from April 23 through June 25, 2019:

- Math: 55 minutes, 5 times per week (special education teacher)
- Reading: 30 minutes, 5 times per week (special education teacher)
- Writing: 20 minutes, 5 times per week (special education teacher)
- Social/emotional: 35 minutes, 5 times per week (special education teacher)
- Adaptive skills: 20 minutes, 5 times per week (special education teacher)

The IEP included several accommodations and modifications, and the IEP provided the Student with a 1:1 paraeducator as a supplementary aid and service for 195 minutes daily in the general education setting and 165 minutes daily in the special education setting.

The IEP also provided the following specially designed instruction in a *special education setting* from June 26, 2019 through April 22, 2020:

- Math: 50 minutes, 5 times per week (special education teacher)
- Reading: 30 minutes, 5 times per week (special education teacher)
- Writing: 20 minutes, 5 times per week (special education teacher)
- Social/emotional: 30 minutes, 5 times per week (special education teacher)
- Adaptive skills: 20 minutes, 5 times per week (special education teacher)

For this period, the IEP provided the Student with a 1:1 paraeducator as a supplementary aid and service for 210 minutes daily in the general education setting and 150 minutes daily in the special education setting. The Student's IEP provided him with "regular" transportation.

21. Also, on April 23, 2019, the Student's IEP team reviewed his BIP. The BIP included a new behavior trigger (technology access) and a new strategy ("Allow [Student] to use desktop or publicly used technology, with clear expectations that they do not belong to him").
22. The prior written notice, dated April 24, 2019, noted the Parents "declined to attend the meeting" but would have an "opportunity to meet with [Student's] future IEP team up at the high school before his transition."
23. On April 24, 2019, the Student received a 2-day out-of-school suspension and on April 26, 2019, the Student received a 1-day out-of-school suspension. Also, on May 1, 2019, the Student received a 3-day out-of-school suspension.
24. On May 6, 2019, the Student's middle school case manager emailed the Parents and stated a manifestation determination meeting was scheduled for May 9, 2019 and invited them to attend.
25. On May 7, 2019, the Parent, peer counselor, and director met to discuss concerns and supports for the Student. Notes from the meeting indicated they discussed other interventions (community resources) and supports for the Student and family, such as the Wraparound with Intensive Services (WISe) program.

According to the Parent, the purpose of this meeting was to “try to get the [District] to put [Student] into a more structured educational setting...[such as a non-public agency].” According to the Parent, the District said no, but proposed a program at the District high school.

26. On May 9, 2019, a manifestation determination meeting was held. The District’s documentation noted the Parents did not “attend or respond to invitations.” The manifestation determination documentation indicated the Student had previously been suspended for a total of 20 days that school year. The documentation recorded the team’s finding that the Student’s behavior had a “direct and substantial relationship” to the Student’s disability and was not a “direct result of the [District’s] failure to implement the IEP”—meaning, the conduct was a manifestation of the Student’s disability. The manifestation determination documentation noted the Student “was suspended for 3 days for the multiple offenses that occurred one day.”

The prior written notice, dated May 9, 2019, further indicated the team discussed the fact that the Student knew the consequences, but “the team felt that [Student’s] disability directly impacted his decision making due to his lack of emotional regulation and making good decisions.” The prior written notice also noted, “The IEP will continue [Student’s] IEP and positive behavior plan, with the addition of more incentives. Since starting his new extra incentive plan (as of Tuesday, 5/7/19), [Student] has been having much better days.” Further, the meeting minutes summarized that the Student had a “great week” that week and “his behavior has been great, more like how he was before his drastic changes in behavior.” The notes indicated the Student was working for an incentive if he gets “5 days without a zero in the ‘keep cool’ column of his daily tracker.”

27. On May 21, 2019, the Student was suspended for 2 days (1 day in school and 1 day out of school).
28. On May 20, 2019, the District invited the Parents to a manifestation determination meeting, scheduled for May 31, 2019.
29. The Student’s middle school case manager requested tutoring services for the Student during the removal, following the May 1, 2019 suspension. According to the District’s response, there is no documentation that additional services were offered or provided as a result of the May 21, 2019 removal. Between May 8 and May 17, 2019, the District contacted two teachers, one of whom declined and the other agreed to provide the tutoring. Subsequently, this teacher stated she was no longer available to provide the tutoring.

Additionally, according to the District’s response, “instead of requesting those services so that they were in place during the removal...they were initiated on 5/8/19.” According to the District, “communication between the Student’s grandparents and the school had completely deteriorated at that time, and there was limited response to attempts to schedule tutoring services.”

30. Regarding communication, the Parent, in his reply to the District's response, acknowledged that he had stopped working with and communicating with the school by this point.
31. On May 31, 2019, a manifestation determination meeting was held. The Parents did not attend the meeting or "respond or provide information." The manifestation determination documentation noted the Student had previously been suspended for 24.5 days and that the behavior was a manifestation of the Student's disability, although the behavior did not result from a failure to implement the IEP.

According to the prior written notice, dated May 31, 2019, the IEP team decided the Student continued to need a 1:1 paraeducator, but decided to "switch the paras to give [Student] a new person to work with who he does not have as many negative reactions with." The meeting notes summarized that the Student "did come in the next day and he admitted to everything and said that he really was sorry." The Student further stated, "things are not good at home when he's suspended so he wanted to be able to come to school;" however, since the incident the Student "has had another similar situation."

32. Also, on May 31, 2019, the District reached out to a third teacher regarding providing the Student the tutoring offered following the May 1, 2019 disciplinary action. The teacher agreed to provide the four hours of tutoring.
33. On June 4, 2019, the Student was suspended for 16 days (out-of-school). According to the documentation provided in this complaint, the Student pushed a teacher and another student, who fell and was injured. Subsequently, the Student "returned to campus to get pocket knives from friends." The documentation stated, "[Student] was trespassing on campus and after reading the student and adult statements the [police officer] determined [Student] had assaulted another student and adult. [Student] has been detained by the Police and is being transported to juvenile detention."
34. On June 6, 2019, the director, Parents, WISE facilitator, and high school staff met. The District stated in its response that the "meeting was a positive one in which [Parents] were able to share their hopes and expectations, as well as their frustrations, and the staff could plan with the family for supporting [Student]." The District noted at this point, the Student was still in juvenile detention, so the group scheduled a time for the Student to visit the high school, meet teachers and staff, get a tour, and ask questions.
35. Also, on June 6, 2019, the middle school case manager emailed the Parents and invited them to the Student's manifestation determination meeting, scheduled for June 18, 2019. The Parent replied, "FYI, We will not be there."
36. On June 10 and 21, 2019, the District provided progress reporting on the Student's goals. The progress reporting documented the following:
 - Social/Emotional (Personal Space): Not making progress toward goal—" [Student] is invading personal space about 4 times a day. However, [Student's] invasion of personal space has now

escalated to aggressive (swatting, punching, shoving, etc.) and using force whereas it used to be non-aggressive.”

- Social/Emotional (Requests): Approaching goal target—“When [Student] is not escalated and in a good space, he has increased his use of the phrases thank you and please. 2/3 requests. Unfortunately, [Student’s] moods and behaviors are very up and down so this is not daily data.”
- Adaptive (Self-regulation): Approaching goal target—“70% of the time. This is when [Student] is in school and in class. However, [Student] has been out for suspension more this semester because instead of yelling/crying/hiding face, his behavior has shift[ed] to physical aggression towards other so the data is from the times he is able to be in school and be safe.”

37. Also, on June 10, 2019, the teacher emailed the Parents regarding tutoring for the Student. She provided her availability and suggested providing the tutoring at the library or the high school. The Parent responded:

No, nothing works for the summer. If they wanted him to get schooling, they would have allowed him to come to school. This is still [middle school’s] year and I am not doing anything to help that place out. [High school] can start in September. I have not agreed to do tutoring and I won’t, until the new school year starts....

According to the Parents’ complaint and reply to the District’s response, the Student was offered tutoring, but no transportation was provided. The Parent stated that due to his work schedule, he was unable to transport the Student to tutoring.

According to the District’s response, the Parents “declined services that were offered following the [S]tudent’s May/June 2019 disciplinary removals.”

38. On June 17, 2019, the Student visited the high school with his WISE facilitator.

39. On June 18, 2019, a manifestation determination meeting was held. The manifestation determination documentation noted the Student had been suspended for a total of 26.5 days that school year. The team determined the Student’s behavior was a manifestation of the Student’s disability, although it did not result from a failure to implement the IEP.

The meeting notes indicated the team discussed that the Student’s actions seemed to be planned, but that because of his disability, “he is not able to make decisions like a neurotypical 8th grader.” The notes also included a plan for the Student’s return to school, including providing him with his 1:1 paraeducator.

40. According to the District’s response:

Despite frequent attempts to modify the behavioral interventions to support [Student], his behavior continued to decline over the last few months of the 2018-19 school year. He was clearly aware of his grandfather’s dislike and distrust of the school and frequently brought this up to staff, as well as his belief that his grandfather was getting a lawyer to sue the school. Staff members reported that they believed that [grandfather’s] upset and frustration with the school made it very difficult for them to effectively work with [Student].⁴ Between

⁴ For example, in the meeting notes from the April 23, 2019 IEP meeting, staff shared concerns that “communication at home about adults and staff at school is negative which causes [Student] to react

the day of the meeting that [grandfather] walked out of and the end of the school year, [Student] was suspended 10 times for a total of 39 days...Prior to that, he had been suspended four times between September and December (no suspensions in January or February), for a total of 4.5 days...

41. On June 21, 2019, the District school year ended.

42. In an interview with the Student's case manager, she described examples of how the Student's IEP and BIP were implemented during the 2018-2019 school year. The case manager stated the Student received specially designed instruction in three classes: social skills (which the case manager taught), math, and language arts. The case manager stated the Student had a daily target on his behavior tracker and they would work on his goals during social skills instruction. For example, she stated, the Student had goals that included speaking appropriately, keeping calm, and keeping his hands to himself. The case manager stated she provided instruction related to de-escalation and self-regulation, coaching, debriefing, and reminders. She also stated the Student would practice skills and when they debriefed, they would talk through situations to determine what worked and what the Student could do differently.

The Student also had a 1:1 paraeducator who worked with the Student throughout the school day. The 1:1 paraeducator met the Student at the bus and checked in with him in the morning. The case manager stated the paraeducator was part of the BIP planning meetings, and that she and the paraeducator would check in most Mondays and often during class time. The case manager stated she worked very closely with the paraeducator and that they discussed how the Student was doing, what strategies and supports were working, and what was not working.

Regarding the Student's BIP, the case manager provided the following examples of strategies and supports that were used:

- Staff: When the Student started escalating, he often felt like he was being "cornered," so staff would step away to show that they were giving him space.
- Behavior Tracker: The Student had a daily behavior tracker with goals related to appropriate language, doing class work, being kind, and respecting personal space. The case manager stated staff would use the tracker to check in with the Student for a few minutes at the end of each class to debrief and give feedback—they would discuss with the Student areas he did well and areas he needed to work on.
- Incentive System: The behavior tracker was tied to a points/incentive system. The case manager stated this worked well for a while, but toward the end of the school year, it worked inconsistently as the Student stated he did not care and did not want to try to earn anything.

The case manager and director both shared that at the end of the school year, it became increasingly difficult to find behavior strategies and supports that worked for the Student. They stated the Student's perceptions of reality were often not accurate, but that once he got something in his mind, he would get stuck on that way of thinking. They stated the Student

negatively towards staff at school as well. His interactions are much more extreme than they used to be and he acts like it's a game now."

would get stuck on his family's attitude toward school and school staff, and that this had a significant impact on the Student's behavior at school.

2019-2020 School Year

43. During the 2019-2020 school year, the Student attended a District high school and continued to be eligible for special education services under the category intellectual disability.
44. The District's 2019-2020 school year began on September 4, 2019, and the Student's first semester schedule was as follows:
- First Period: Social Skills (special education)
 - Second Period: Language Arts (special education)
 - Third Period: PE
 - Fourth Period: Math (special education)
 - Fifth Period: World Studies
 - Sixth Period: Social Skills (special education)
45. In September 2019, according to the District's response, the Student "was doing well responding to redirection and was able to process with staff members when he was frustrated [or] demonstrating challenging behaviors." For example, on September 25, 2019, the Student's high school case manager emailed the Parent regarding an incident that day during which the Student escalated, but was able to discuss with staff and staff stated the Student "did a great job at sharing his side of the story and being willing to step back and hear others' perspectives."
46. On October 2, 2019, the case manager emailed the Parent regarding the Student's behavior and setting up an IEP meeting. The case manager stated the Student was doing a good job taking breaks when needed and reaching out to staff when he needed help or support. The case manager proposed dates for an IEP meeting, which was ultimately scheduled for October 24, 2019. The Parent responded regarding dates and asked that the WISE team be included in the meeting.
47. On October 7, 2019, the Parent emailed the WISE facilitator and case manager, among others, and provided an update on the Student's behavior regarding an incident that occurred outside of school. The Parent asked the school to pay "extremely close attention to his activities at school and also while he is on the school laptop."
48. On October 9, 2019, the assistant principal emailed the Parents regarding a meeting she, the case manager, and the school psychologist had with the Student regarding "inappropriate searches" made on the computer during school. According to the email summary of the meeting, the Student stated he did not make or did not remember making the searches, but that overall, they had a conversation about what was inappropriate and what was appropriate. The email noted the Student "was receptive to the conversation and he never got angry or defensive even when it came to talking about his consequences...We had some really great conversations about trust, computer responsibility..." The email stated there would be new protocols for computer use and stated because the Student uses the computer as a "learning aide, to read to him and to type for him, we do not want to take it away." The assistant principal

stated the Student would not be allowed free time on the computer and that his computer use would be highly monitored by the adults in the room. The assistant principal stated the following day, October 10, 2019, the Student would have class in the "reset room (like an in-school suspension)."

The Parent responded and stated he would forward the information to the Student's WISE team.

49. In the Parents' reply to the District's response, the Parent stated the school insisted the Student have a computer despite the Parent refusing to sign "a consent form and take responsibility for [Student] having a...computer issued by the [District]." According to the Parent, the assistant principal stated she would take "full responsibility for [Student] to have and use this computer." The Parent stated the school did not know about the inappropriate searches until the Parents notified the school. The Parent stated it was unfair to suspend the Student because the school gave "him a computer, accepts total responsibility for him having it, allows him complete, uncontrolled and unmonitored access to the internet then suspends him when he misused this piece of equipment."
50. On October 24, 2019, the IEP team—including the Parent and Student—met and amended the IEP to increase time spent in special education setting so that, according to the District's response, "he began and ended each day receiving social/emotional and adaptive services from his case manager and receive two periods of academic support." Several of the Student's annual goals were updated to better reflect his current needs and present levels of academic performance. The October 2019 IEP include annual goals and specially designed instruction in the *special education setting* in the following areas:
- Reading: 30 minutes, 5 times per week (special education teacher)
 - Math: 50 minutes, 5 times per week (special education teacher)
 - Writing: 25 minutes, 5 times per week (special education teacher)
 - Social/emotional/behavior: 50 minutes, 5 times per week (special education teacher)
 - Adaptive skills: 50 minutes, 5 times per week (special education teacher)

The IEP included several accommodations and modifications, and the IEP provided the Student with a 1:1 paraeducator as a supplementary aid and service for 170 minutes daily in the general education setting and 220 minutes daily in the special education setting. The Student's IEP provided him with "regular" transportation.

51. According to the District's response, the increase in specially designed instruction was made, in consultation with the Parents, based on the Student's increased behavior and social/emotional needs at the end of the 2018-2019 school year, with the "team considering it a 'trial' and a support for the transition to high school." The District's response explained that the actual increased time in the special education setting had been in place since the start of the 2019-2020 school year and was formalized into an IEP amendment on October 24, 2019.
52. In an interview with the Student's case manager, the case manager described the Student's social/emotional/behavioral instruction that was provided during his first and sixth period

classes. While in class, they focused on a range of social skills, the Student specifically worked on setting his own goals (e.g., what does he need to accomplish in a week, what does he need to do to accomplish those things, and what does he want to earn), managing emotions, identifying anger triggers, defusing anger, and transitioning to life after high school (exploring goals for after high school and independent living skills). The case manager stated the Student received more individualization because he had a 1:1 paraeducator who worked with him in her classes. The case manager also stated the Student also had times he focused specifically on instruction related to his IEP goals.

In his other classes, the case manager stated she worked with the Student's teachers to ensure behavior interventions were implemented. In his math and language arts class, the Student had a space he could use as a "cool down space" or a private workspace. He also had a "rules of the road" behavior map, which delineated expectations and consequences, such as making up work.

The case manager stated that when the Student had challenges with his behavior, one strategy that worked well were having "restorative conversations," which often included the Student, case manager, 1:1 paraeducator, and assistant principal. They would discuss the Student's perceptions of the situation, where his errors in thinking were (e.g., the Student felt people were out to get him), and work through the situation. The case manager stated the Student did well when he was able to share his perspective and when he felt like his voice was heard.

The Student participated in a token economy and had a behavior tracking sheet he filled out daily, which allowed him to receive corrective feedback and positive reinforcement. The case manager stated as the school year progressed, the token economy was less effective. She stated it was challenging to find extrinsic motivators and that the Student began to be noncompliant even when he could earn things he enjoyed.

As the school year progressed, the case manager stated one change they made was to disengage from the Student more as to not escalate him further. She stated they would give a prompt, walk away, and give the Student extended time to process. She stated sometimes it would take the Student 15-20 minutes to get started on work after being prompted, but that this strategy helped because by disengaging, the Student did not have anything to get escalated about.

Both the case manager and director shared that the Student's behavior was impacted by the Parents' attitude toward the school and school staff. For example, they shared that when the Student saw the Parent getting frustrated, it was very difficult for the Student to know how to react. They also shared that as the Parents stopped communicating with the school, it was challenging to have consistent behavior management across settings (school and home).

53. On October 30 and November 1, 2019, the District provided progress reporting on the Student's goals. The progress reporting documented the following:

- Social/Emotional (Personal Space): Sufficient progress.
- Social/Emotional (Requests): Sufficient progress.

- Adaptive (Self-regulation): Sufficient progress.

54. On November 7, 2019, the Student's 1:1 paraeducator emailed the assistant principal and case manager regarding an incident that day involving the Student. The paraeducator stated the Student had been aggressive and inappropriate, and subsequently became further escalated during reading. The Student grabbed the paraeducator's arms, got in the paraeducator's space, and used inappropriate language. The Student, in turn, claimed the paraeducator grabbed him. Ultimately, while discussing the incident, the Student deescalated, was calm, "and proceeded to apologize to [paraeducator]."

Also, on November 7, 2019, the Student had an incident wherein he had a box cutter at school. The case manager emailed the Parents regarding the incidents that day and stated the Student would spend the rest of the day in the "reset" room. The Student received a 3-day in-school suspension for bringing a box cutter to school (served November 7, 8 and 12, 2019).

55. On November 8, 2019, the Parent forwarded the case manager's email to the Student's WISE facilitator.

56. Also, on November 8, 2019, the assistant principal emailed the Parent and stated the Student continued "to make very poor decisions" that day, including stating he and other students had "box cutters and/or pocket knives." The assistant principal stated the Student would spend the following Tuesday, November 12, 2019, in the "reset" room. The assistant principal also stated she wanted to meet with the Parents, and anyone else from the Student's team, on November 12. The assistant principal stated the Student would have to be searched upon arriving at school each day and the Student "has been informed that if he brings a box cutter or another type of weapon to school he will be arrested."

57. On November 8, 2019, the Parents responded to the assistant principal's email and stated they could attend the meeting. The WISE facilitator responded on November 11, 2019 and stated she was unavailable; however, another WISE peer counselor stated he was able to attend to support the Student and his family.

58. According to the District's response, at this point in the school year, the Parent "expressed frustrations about [Student's] behavior at home and at school...but continued to communicate and collaborate with the school to problem solve and adjust plans to support [Student]." However, the District stated, "Despite that collaboration and the adjustments that were made, as well as frequent direct intervention by [Student's] case manager, paraeducator, and the assistant principal, [Student's] behavior continued to deteriorate."

59. On December 12, 2019, according to the Parents' reply to the District's response, the case manager called the Parent to have him come pick the Student up early from school because he was escalated. The Parent stated "this was clearly against the behavioral program that the school, the Wraparound team and us had put into place. When [Student] was to this point he

was supposed to have access to the telephone and call any one on the list of people for him to talk to, to attempt to get him calmed.”⁵

The Parent stated the Student then left home without permission, went to a District basketball game, and got into trouble. The Parent stated the Student was “suspended for the last two weeks of school until Christmas break” due to this incident, and that the Student was not offered transportation or transportation to tutoring.⁶

60. On December 13, 2019, the Student received a 1-day out-of-school suspension.
61. On December 17, 2019, a meeting with the WISE team was held. The Parent, according to the District’s response, “was so frustrated with [Student] and his behavior/attitude that he chose not to participate and left the meeting before it started.”
62. On December 20, 2019, the Student received a 1-day out-of-school suspension.
63. The District was on winter break from December 23, 2019 through January 3, 2020.
64. On January 13, 2020, the Student was suspended for two days (out-of-school) for bringing over-the-counter pills to school and selling them to other students.
65. According to the Parents’ reply, after the January 13, 2020 suspension, the Parent, Student, and assistant principal met. The assistant principal agreed to have the Student’s 1:1 paraeducator meet him at the bus in the morning and that the Student would be searched before entering school. The Parent stated they would also search the Student and his backpack before he left for school. According to the Parent, this only lasted a few days and then the school failed to follow through on the commitment, leading to the next behavior incident.
66. On January 17, 2020, the Student was emergency expelled for bringing multiple knives to school, along with bags with pills and a white substance that he claimed he was selling to other students. The emergency expulsion was converted to a 45-day suspension.

⁵ This strategy—calling people on a list--was not included in the Student’s IEP or BIP. In an interview with the Student’s WISE facilitator, she shared that this was a strategy discussed at a wraparound meeting. The Student would have a list of individuals, including the WISE facilitator, his uncle, or a therapist, that he could call when escalated or upset to talk to and calm down. The WISE facilitator also stated they discussed other strategies and supports, including strategies already in the IEP/BIP, such as morning and afternoon check-ins, incentives, breaks, and limited computer use.

⁶ The Student’s suspension summary does not align with this characterization of the suspension as it documents two 1-day suspensions between December 12, 2019 and the start of winter break on December 23, 2019—December 13 and 20, 2019. Further between December 12 and 23, 2019, there was only one week of school. The Student’s attendance record indicates he had an excused absence December 16, was present for several periods and excused for some periods December 17, and was absent due to illness December 18 and 19, 2019.

67. On January 21, 2020, the District invited the Parents to attend a manifestation determination meeting scheduled for January 30, 2020.
68. On January 22, 2020, the case manager emailed the WISE facilitator and stated they were hoping to meet with the WISE facilitator the following day, January 23, 2020, to touch base about the Student. The case manager stated, "we are not really hearing anything from the family and wanted to see if the three of us could at least talk and see if we could get on the same page regarding [Student.]" The WISE facilitator responded that she could meet.
69. On January 24, 2020, the Student's high school case manager requested that "outside tutoring" be scheduled for the Student for four hours a week. The District reached out to two teachers, both declined.
70. On January 27, 2020, the District provided progress reporting on the Student's goals. The progress reporting documented the following:
- Social/Emotional (Personal Space): Not making progress—" [Student] continues to struggle with this goal. Regarding peer interactions with males, [Student] continues to posture (which can include violating personal space), throw punches, or grab male peers. With female peers, [Student] will run up and hug them without asking for permission (side-hugs). With staff, [Student] will grab male and female staff if he feels escalated or if he is too close to staff during nonpreferred interactions-this can look like grabbing their arms or wrists."
 - Social/Emotional (Requests): Not making progress—" [Student] is demonstrating a regression in progress. This is indicated by non-compliance and discipline reports."
 - Adaptive (Self-regulation): Not making progress—"...This quarter [Student] has engaged in more posturing, aggressive behaviors, and verbal aggression towards staff and peers. [Student] is often unwilling to comply with his behavior plan and take breaks to help manage these feelings."
71. On January 30, 2020, a manifestation determination meeting was held. The Parents did not attend. The team determined the Student's behavior was a manifestation of his disability, but not a result of a failure to implement the Student's IEP. According to the prior written notice, despite the behavior being a manifestation of the Student's disability, the disciplinary action would be continued due to the nature of the violation.

The prior written notice indicated the IEP team "made a plan with the [WISE] team to send work home for [Student], continue to try and find a tutor, and to continue communicating home and with the [WISE] team to support [Student]." At the meeting, the WISE facilitator indicated that the Student was staying with his uncle. The notes indicated the Parents wanted to the Student to have a more restrictive environment.

The team also determined a reevaluation would be initiated and that schoolwork would be sent to the WISE facilitator. The District's response noted the team determined that the Student would receive four hours per week of 1:1 tutoring services during the time of the removal.

72. In an interview with the director, she stated they considered this a shift to an interim alternative education setting (IAES) and it would be accurate to characterize the Student's proposed placement during the suspension as a homebound placement with services. The director acknowledged that this specific description was not recorded in the documentation.
73. On February 4, 2020, case manager emailed the Parents and WISE facilitator a list of homework assignments for the Student to work on "as we continue to find a tutor for him." She also asked, "regarding tutoring, do we know if [Student] would be able to get transportation to [District]?"

The WISE facilitator forwarded the assignments to the Student's uncle.

74. On February 5, 2020, the high school case manager emailed the District's student special services office regarding tutoring. She stated she had made attempts to contact the family to discuss scheduling and transportation for tutoring. She stated she would let them know once she heard back.
75. The District was on break February 18-21, 2020.
76. On February 24, 2020, the WISE facilitator emailed the assistant principal and case manager, stating she met with the Student's family on February 19, 2020. The WISE facilitator indicated the Student's uncle was willing to attend a meeting and that he would send the guardianship paperwork to the District. She stated, "I think the plan is for [Student] to be enrolled in [another school district] but I did speak with them and they stated that he will have to finish out his suspension."
77. Also, on February 24, 2020, the District and WISE facilitator emailed several times about tutoring. The case manager shared that she was "trying to set up tutoring but was unable to get any info back from the family regarding their availability and transportation." She stated, "there was a potential tutor available at that time, do you know if they would be able to get [Student] to [the District]?" The WISE facilitator asked if the McKinney Vento Act would apply, as she had spoken with the District and "they said it would work if he returned to [District] and living at uncle's..."
78. On February 26, 2020, the WISE facilitator emailed the case manager, assistant principal, and school psychologist, stating she spoke with the District's transportation department. She stated the transportation department said "McKinney Vento...would cover the [Student] for transportation to [District] for tutoring and testing." She also stated she spoke with the family and "this was the route that they would like to take."
79. On February 27, 2020, the WISE facilitator emailed the Student's uncle, assistant principal, case manager, school psychologist, and school counselor to facilitate transportation for the Student's tutoring and reevaluation. The Student's uncle replied:
- ...[Student] can be available any of these times. He stays at home each day during this suspension. We have him completing math workbook assignment, reading book reports, and working on ABC mouse learning app...Proper transportation is one that can

communicate with us when they are present to pick [Student] up. He is a runner so he needs to be allowed out of our house...only once his ride is present so we need to be informed when that take[s] place. Then he needs to be monitored until he is placed back in that ride and must be delivered to only the place of residence...

The case manager replied that she was working on finding the tutor and setting up times and locations. She stated she would reach out when transportation was planned.

80. On February 28, 2020, the case manager emailed the Student's uncle and shared that they were still working on getting transportation set up for tutoring.
81. On March 3, 2020, the District, the WISe facilitator, and the Student's uncle emailed several times regarding the attempts to get transportation set up for the reevaluation.
82. Additional emails from March 10, 2020 between the school psychologist and transportation department discussed further challenges to providing transportation, including the lack of drivers due to the COVID-19 outbreak.
83. According to the District's response, the Student has been out of school since the suspension. The District stated the Student's case manager "attempted to communicate and coordinate with [Student's] family regarding initiation of services, but she was having difficulty getting a response from them." The case manager provided homework assignments to the Parents and WISe facilitator.

The District stated had a difficult time "identifying a tutor for [Student.] Multiple staff members declined the assignment" and once a tutor was identified, "there were continued challenges in setting up district transportation, due to [Student] staying in a residence that was out of district and confusion about whether it was the District's responsibility to provide that transportation."

According to the District's response, following the January 2020 disciplinary removal, "challenges related to family communication, staff availability, and access to transportation impacted the timeliness of implementation of those services" and that "each time that there was a disciplinary action that was a change of placement, services should have been initiated sooner. Additionally, team decisions and communication with [Parents] should have been better documented via prior written notice."

The District proposed the following corrective actions in response to this complaint:

- 36 hours of compensatory instruction based on the period the Student was removed due to discipline (January 23-April 2, 2020) and calculated at four hours per week, excluding the District's mid-winter break.
- Updating guidance on manifestation determination reviews and services during disciplinary removals to include information about transportation considerations, and training to specified staff.

84. According to the Parents' reply, the Student will be transferring to a different Washington school district when school facilities open for in-person education again.

CONCLUSIONS

Issue One: IEP and Behavior Plan Implementation – The Parent alleged that the District “violated” both the individualized education program (IEP) and behavioral intervention plan (BIP). A district must have in effect and implement an IEP for every student eligible for special education served through enrollment in the district, which includes a BIP, if incorporated into a student’s IEP.

Here, the Student had an IEP, which included specially designed instruction in social/emotional and adaptive skills, and a BIP. The Student’s BIP targeted arguing, posturing/physical aggression, and inappropriate boundaries. The BIP included several behavior goals, behavior strategies and supports, replacement behaviors, skills to teach, and a response plan. The Student’s IEPs also provided for 1:1 paraeducator support, to be provided throughout the school day.

The documentation in this complaint indicates that throughout the time period under investigation, the Student’s IEP and BIP were implemented. During both the 2018-2019 and 2019-2020 school years, the Student had several class periods in the special education setting where his case managers and special education teachers provided specially designed instruction. Both the Student’s middle and high school case managers provided thorough explanations of how specially designed instruction was provided and discussed the different strategies and supports included in the Student’s BIP that were used (including those that worked and did not). For example, the middle school case manager described instruction in de-escalation and self-regulation, and shared information about the coaching, debriefing, and reminders she provided, and the behavior strategies used (e.g., giving the Student space, behavior tracker and talking through behaviors with the Student to give feedback, and an incentive system). The case manager also provided information about how she worked closely with the Student’s paraeducator who worked with the Student throughout the school day. The Student’s high school case manager also described the instruction provided and specific goals the Student worked on (e.g., managing emotions, identifying anger triggers, defusing anger, etc.), and behavior strategies that worked, such as having restorative conversations to allow the Student to share his perspective and receive feedback. The high school case manager also described how she worked with the general education teachers and paraeducator to ensure the Student’s accommodations and BIP were implemented across settings.

Progress reporting provided in April 2019, June 2019, November 2019, and January 2020 indicates that while the Student made inconsistent progress on his goals, the comments on the progress reporting record the strategies/instruction provided and skills the Student was working on, indicating the IEP and BIP were being implemented.

At the same time, the Student’s behaviors did change and at times escalated, which necessitated changes to the BIP and behavior strategies and supports. The District and the Student’s team were responsive to these changes and worked to find supports and strategies that worked for the Student, despite—at times—the Parents choosing not to participate or communicate with the

District out of frustration. For example, during the 2018-2019 school year, after meeting with the Parents, the team discussed reducing the Student's access to a computer (other than during instruction) to avoid conflict. Additionally, in April 2019, the team updated the Student's BIP to include a new trigger and strategy related to computer use. During the 2019-2020 school year, for example, when the incentives stopped working, the case manager described that they started giving the Student a prompt and then walk away to give him extended time to process, which, she stated, helped decrease escalations. Further, the Student's school team met and communicated with the Student's WISe team throughout the fall semester to further support him and address behaviors.

Overall, the documentation indicates the District implemented the Student's IEP and BIP, including various behavior strategies and supports. While the Student's behavior did change and at times escalated, rendering some of the strategies in his BIP less effective, the District remained responsive to these changes and continued to work to address the Student's behaviors with positive behavior supports. Unfortunately, as discussed below, there were times disciplinary removals were required as a consequence to the Student's behavior. Despite this, OSPI finds no violation related to the implementation of the Student's IEP and BIP.

Issue Two: Discipline Procedures – The Parent alleged that the District improperly disciplined the Student and failed to provide any educational services during the Student's suspensions. In general, procedural rules for the discipline of students who are eligible for special education are based on several principles, including: (1) a student eligible for special education's placement should not be changed through discipline for behavior that is a result of his or her disability; and (2) a student eligible for special education may be disciplined for behavior that is not a result of his or her disability, but only in a manner that is consistent with the discipline imposed on nondisabled students without disabilities. This does not mean a student with a disability may never be disciplined. It, however, means there are additional procedural rules a district must follow.

Manifestation Determination Reviews: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents, and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or BIP.

Here, the documentation indicates the District conducted manifestation determination reviews during the 2018-2019 and 2019-2020 school years each time the Student's placement was changed due to a series of disciplinary removals or disciplinary removals that totaled more than 10 days, and that these reviews were held within 10 school days of the change in placement. The Parents were invited to all the manifestation determination meetings, but declined to attend. At each meeting, the following decisions were made:

- April 3, 2019⁷: Conduct was a manifestation of the Student's disability, but did not result from a failure to implement the IEP.
- May 9, 2019⁸: Conduct was a manifestation of the Student's disability, but did not result from a failure to implement the IEP. The team added additional/new incentives to the Student's plan and noted these new incentives seemed to be working.
- May 31, 2019: Conduct was a manifestation of the Student's disability, but did not result from a failure to implement the IEP. The team decided to switch the Student's paraeducator with the hope that the Student would do better working with a new person with whom he did not have negative associations.
- June 18, 2019: Conduct was a manifestation of the Student's disability, but did not result from a failure to implement the IEP. The team determined it would continue implementing the Student's IEP, BIP, and providing him with 1:1 paraeducator support. Also, the documentation indicates the team decided to increase the Student's minutes of specially designed instruction in social/emotional and adaptive.
- January 30, 2020: Conduct was a manifestation of the Student's disability, but did not result from a failure to implement the IEP. The team determined, however, that due to the nature of the violation, the Student's disciplinary action would be continued. The team also determined a reevaluation was necessary.

If the conduct was a manifestation of the student's disability, the IEP team must either: conduct a functional behavioral assessment (FBA), unless the district had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or, if a BIP already has been developed, review the BIP, and modify it, as necessary, to address the behavior; and, except for special circumstances, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the BIP.

In each case, the team determined the conduct was a manifestation of the Student's disability. The Student already had an FBA and BIP, so in the 2018-2019 school year, no new FBA was conducted as the behaviors were addressed in the existing FBA. However, at each meeting, the team reviewed the Student's behavior plan and often added or modified supports to better address the Student's behavior. After the manifestation determination in January 2020, the team determined a reevaluation was necessary. Overall, the District followed procedures for conducting manifestation determination reviews and took the appropriate steps following each manifestation determination, including returning the Student to his placement (except in January 2020, discussed further below). OSPI finds no violation with respect to the manifestation determination reviews.

⁷ On April 3, 2019, the Parents did meet separately with the District's director of special education and reviewed the results of the recent reevaluation and manifestation determination.

⁸ The Parents did not attend the May 9, 2019 manifestation determination; however, the Parents, director, and the Parents' peer counselor met on May 7, 2019. According to the District's notes from this meeting, they discussed other interventions, community resources, and the Wraparound with Intensive Services (WiSe) program, which the Student later received supports through. According to the Parent, at this meeting, he asked that the Student be placed in a more restrictive setting and stated the District refused.

Special Circumstances: School personnel may remove a student to an interim alternative educational setting for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student: possesses or carries a weapon to school, on school premises, or to a school function; and, knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function.

In January 2020, the Student was emergency expelled for having multiple knives and drugs at school. The emergency expulsion was subsequently converted to a 45-day suspension. At the manifestation determination review, the team determined the conduct was a manifestation of the Student's disability; however, due to the nature of the violation—which falls into the special circumstances exception—the team decided to continue the discipline. The team also determined a reevaluation was necessary, planned to send schoolwork to the Student through his WISE facilitator, and planned to provide the Student with four hours a week of 1:1 tutoring services during the removal.

The director stated it would be appropriate to characterize the Student's placement as an interim alternative educational setting and that the Student's proposed placement would be considered a homebound placement with services during the suspension. While this was not made explicit in the documentation in this complaint, functionally, that is what was proposed for the Student. OSPI finds that the District's continuation of the disciplinary action was allowable under the special circumstances exception. OSPI finds that the Student's placement was changed to an interim alternative educational setting; although, in future, OSPI recommends the District more clearly articulate the placement in such instances to ensure all members of the team are on the same page and it is clear what services are being offered to a student. Overall, OSPI finds no violation.

Services During Exclusion

After a student's placement has been changed due to disciplinary removals, during subsequent removals, a district must provide educational services so that a student can continue to receive a free appropriate public education (FAPE), including continuing to participate in the general education curriculum and having the opportunity to continue making progress toward meeting IEP goals. The IEP team should determine appropriate services.

2018-2019 Removal: Following the Student's May 1, 2019 suspension, the Student's case manager requested four hours of tutoring for the Student. Ultimately, this tutoring was not provided. The District had difficulty finding a special education teacher that would agree to provide the tutoring. The District also acknowledged it delayed in requesting the services, so that services were not in place during the removal, but instead were requested after the removal. The District also stated that due to a communication break down with the family, there were limited responses to its attempts to schedule services. Finally, the District acknowledged that additional services were not offered or provided as a result of the Student's May 21, 2019 removal. When the District finally found a special education teacher to provide the services, the Parents declined services, stating, "No, nothing works for the summer...I have not agreed to do tutoring and I won't,

until the new school year starts." The Parents stated the barrier to services was that the District did not offer transportation.

Overall, the District did offer some services. However, the District should have attempted to provide services during the exclusion and the District had an obligation to offer further services after the Student's subsequent removal. Thus, OSPI finds the District in violation. Despite the District's reasonable belief that the Parents were refusing services, the District will be required to provide four hours of compensatory services, in addition to the compensatory services proposed by the District.

2019-2020 Removal: Following the Student's emergency expulsion/suspension, the District proposed providing the Student homework via the WISe facilitator and providing 4 hours a week of 1:1 tutoring. Ultimately, no services were provided to the Student during this period of exclusion for a variety of reasons, including: communication challenges with the family, finding and scheduling a tutoring, arranging transportation, the Student's McKinney-Vento status when he was living with his uncle in another district, and miscommunications/misunderstandings with the District's transportation office. The District did send the Parents assignments for the Student to work on and communications from the Student's uncle indicated the Student was working on math and reading while suspended; so, the Student did have some access to educational opportunities, but was not provided 1:1 tutoring or special education services. OSPI finds the District in violation for failing to provide the Student educational services during his exclusion. The District proposed providing the Student 36 hours of compensatory services, based on the Student's 45-day suspension and original commitment to provide 4 hours a week of services. Further, the District proposed updated guidance on discipline procedures as a corrective action. OSPI accepts the proposed corrective actions, with the addition of 4 more hours as compensatory time for the 2018-2019 exclusion.

CORRECTIVE ACTIONS

By or before **August 14, 2020, September 4, 2020, October 16, 2020, and January 22, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **August 28, 2020 or whenever the District anticipates returning to school in the fall**, the District and the Parents *or Student's uncle* will develop a schedule for providing the 40 hours of compensatory education to the Student. OSPI recommends dividing the hours evenly between all the Student's services areas, although the District and guardian could agree to provide more services in a particular area if there is a higher need. OSPI notes the Parents indicated the Student would be enrolled in different school district in the fall. If this is the case, the District may wish to contract with the other district to provide the compensatory services or the District may provide the services using District staff.

The District will provide OSPI with documentation of the schedule for services by or before **September 4, 2020**.

The compensatory education will occur in a one-on-one setting and be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **January 15, 2021**, including those needing to be rescheduled.*

No later than **October 16, 2020**, the District will provide OSPI with an update on the number of hours of compensatory services completed to that date. No later than **January 22, 2021**, the District shall provide OSPI with documentation that all the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for Student to access these services or reimburse Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **January 22, 2021**.

DISTRICT SPECIFIC:

By **August 14, 2020**, the District will update and submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by August 21, 2020. The guidance will address manifestation determination reviews, the obligation to provide services during disciplinary removals, transportation considerations for services during disciplinary removals, documenting decisions related to discipline and services in prior written notice, and when an interim alternative education setting may be warranted.

By **October 2, 2020**, the District will ensure that the following individuals receive the written guidance and training on the guidance—either in person or using remote technology if necessary: District special education administrators, secondary principals and assistant principals, and secondary special education teachers. The guidance will include examples.

By **October 16, 2020**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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.

RECOMMENDATION

Based on this investigation, it appears there were some strategies discussed at wraparound meetings (e.g., having a list of people to call when escalated) that were agreed upon but not

incorporated into the Student's IEP or BIP. The Parents alleged that, specifically, the option to call individuals on the list was not implemented on at least one occasion. However, because this was not part of the IEP or BIP, the District is not in violation of the IDEA for failing to implement this support. If the Student returns to school in the District, OSPI recommends the District cross reference the notes and agreements from wraparound meetings and incorporate agreed upon strategies and supports into the Student's IEP and BIP.

Additionally, OSPI notes the Parent requested a placement at a nonpublic agency (NPA) or another more restrictive placement for the Student. As this request was not directly related to the issues alleged in this complaint, OSPI did not request more information about this and it is unclear if this request was addressed by the Student's IEP team. If the Student returns to school in the District, OSPI recommends that the Student's full IEP team consider this request.

Dated this ____ day of May, 2020

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.)