

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-027

PROCEDURAL HISTORY

On March 23, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Mead School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On March 24, 2021, 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 29, 2021, OSPI received additional information from the Parent. OSPI reviewed the additional information and determined that its contents fell within the purview of the issues already opened for the investigation. No additional issues were added to the complaint. OSPI forwarded the additional information to the District on the same day.

On April 15, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply.

On May 3 and 4, 2021, OSPI received the Parent's reply. OSPI forwarded that reply to the District on May 4, 2021.

OSPI considered all 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 period. The one-year complaint timeline began on March 24, 2020 and the complaint further specified a time period beginning March 8, 2021. 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 period.

ISSUES

1. Since March 8, 2021, did the District follow proper procedures for providing the Parents with prior written notices, when appropriate?
2. Since March 8, 2021, did the District properly implement the accommodations included in the Student's individualized education program (IEP)?
3. Since March 8, 2021, did the District follow proper IEP development procedures, including:
 - a. Properly responding to the Parents' request that new accommodations be added to the Student's IEP;

- b. Properly considering any change in the Student's needs resulting from the Student's disability since the prior IEP was developed; and,
- c. Properly considering any relevant information gathered by the Student's previous, in-patient facility?

LEGAL STANDARDS

Prior Written Notice: 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 individualized education program (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. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education (FAPE). 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. 34 CFR 300.503; WAC 392-172A-05010.

After a meeting, the district must provide prior written notice to the parent of the decisions made as a result of the meeting. This is particularly important when there is disagreement between the parent and the district regarding IEP content. If the IEP content reflects a district decision that it will refuse to provide certain services to the student, or if the district refuses to make changes to the IEP as a result of the parent's requests, the district must likewise provide prior written notice to the parent of those decisions. 34 CFR §300.503; WAC 392-172A-05010.

Students Who Transfer from an In-State School District: If a student eligible for special education transfers from one Washington State school district to Washington State school district and has an IEP that was in effect for the current school year from the previous district, the new school district, in consultation with the parents, must provide comparable services to those described in the student's IEP, until the new school district either: adopts the student's IEP from the previous school district; or develops, adopts, and implements a new IEP that meets the applicable requirements in WACs 392-172A-03090 through 392-172A-03110. 34 CFR §300.323(e); WAC 392-172A-03105(4). "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. Individuals with Disabilities Education Act (IDEA), 71 Fed. Reg. 46681 (August 14, 2006) (comments to the final regulations). Districts must take steps to adopt the IEP or develop and implement a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question A-4).

IEP Implementation: Each district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the

IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. IDEA, 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

The IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs. IDEA, 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). The district is not required, however, to adopt all recommendations proposed by a parent. The IEP team works toward consensus on IEP content, but if team members are unable to reach consensus it remains the district's responsibility to ensure that the IEP includes the special education and related services that are necessary to provide the student with a FAPE. An IEP may therefore be properly developed under IDEA procedural requirements, yet still not provide the student all of the services that the parent believes are necessary components of the student's educational program. IDEA, 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

Review of Existing Data: As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. If the student's IEP team and other qualified professionals, as appropriate, determine that no additional data is are needed to determine whether the student continues to be eligible for special education services, and/or to determine the student's educational needs, the school district must notify the parents of that determination, the reasons for the determination, and the parents' right to request an assessment to determine whether the student continues to be eligible for special education and/or determine the student's educational needs. 34 CFR §300.305; WAC 392-172A-03025.

FINDINGS OF FACT

Background: 2018-2019 School Year

1. During the 2018-2019 school year, the Student was in third grade and attended a District elementary school. In January 2019, the Student was determined to be eligible for special education services under the category of other health impairments.
2. On January 15, 2019, the Student's evaluation team met to discuss the results of Student's initial evaluation. The evaluation team included Parent, school psychologist, general education teacher, special education teacher and the education specialist. The evaluation described the following:

Medical-Physical: [Student] has experienced struggles with attachment and behavior. He also received outside occupational therapy to work on emotional regulation dysfunction, significant impulse control difficulty, anger, aggression, inability to tolerate non preferred tasks, and inability to tolerate those in authority.

Social/Emotional: The behavior assessment system for children – teacher rating scale (BASC3-TRS) results indicate hyperactivity, aggression, and conduct problems to be within the clinically significant range. Attention problems, learning problems, adaptability and study skills were within the at-risk range. Depression, anxiety, somatization, atypicality, withdrawal, social skills, leadership, and functional communication were rated as average. Discipline records were reviewed as part of this evaluation.

...This assessment is a rating scale based on the teacher's experience of the Student.

Based on the results of the BASC3 TRS, Student is currently functioning equivalent to or above 81% of peers in the area of behavioral symptoms and equivalent to or below 44% appears in the area of overall adaptive skills. The following behaviors were targeted for intervention: threatens to hurt others (often) loses control when angry (often) hits other children (sometimes) hurts others on purpose (sometimes) and gets back at others (almost always). There's a documented medical condition in the file. Emotional behavior is not considered the primary factor affecting learning.

Review of records: A review of discipline records indicate Student has had four discipline referrals this year and had six last school year. Behaviors leading to these referrals include aggression, theft, inappropriate language, defiance, and disrespect. These delays caused him to have difficulty meeting classroom expectations. Student continues to have difficulty in the area of social skills and require specially designed instruction with a focus on impulse control and appropriate responses to frustration. Special education is recommended in the area of social skills.

Adaptive: A Vineland teacher rating form was completed by the school psychologist with Student's teacher serving as respondent...Student score on the maladaptive behavior index was a particular concern...The scores are further addressed under the area of social skills. Based on the results of the Vineland assessment Student demonstrates adequate adaptive behavior skills. It is reported that Student is able to follow familiar routines, clean up after himself, communicate his needs, and display independent behavior. Student is reported to

have difficulty in the area of behavior/social skills. Specially designed instruction is not recommended in the area of adaptive behavior skills.

Cognitive: Evaluation in this area was requested by the evaluation team to provide an estimate of cognitive functioning to be used for eligibility and program placement. Psychological evaluation was completed...by school psychologist using the Wechsler intelligence scale for children, 5th edition. Results of this evaluation indicate that Student's cognitive functioning level falls within the average range and is considered to be a valid measure of his cognitive functioning at this time.

Conclusions from observations: Student came willingly to the evaluation session. He engaged in conversation easily, and demonstrated good eye contact with the examiner. He responded well to praise and positive attention.

Academic: The Woodcock Johnson four form a was administered on December 5, 2018 to assess the areas of reading, written language, and mathematics by education specialist in one session in a one on one setting. In the area of reading Student is performing overall at the 4.6 grade level, reading was his area of greatest strength. In the area of written expression, Student is performing at the 2.3 grade level. Student was able to generate and construct sentences given a prompt, with and without a visual cue, with simple content in minimal details. He struggled with spelling, capitals, punctuation, and complete details. He was able to write short sentences given three keywords in a picture clue with adequate fluency, but use no punctuation and almost no capitals.

...Overall in the area mathematics Student is performing at the 2.6 grade level. Student's math calculation skills are at the 1.6 grade level. Delays in the areas of mathematics show Student has difficulty doing work at grade level in the general education classroom without assistance. Student skills have not improved with ongoing intervention. He continues to have difficulty in the areas of mathematics, specially designed instruction in mathematics is recommended at this time.

3. Also, on January 15, 2019, members of the Student's individualized education program (IEP) team met to develop the Student's IEP. The Parent, general education teacher, school psychologist and special education teacher attended the meeting.

The January 2019 IEP provided the Student with specially designed instruction in social emotional and math; and, included one social emotional goal that concerned the Student's ability to improve maladaptive behaviors and one math goal.

The Student's IEP provided the Student with the following amounts of specially designed instruction in the special education setting:

- Math: 150 minutes per week, to be provided by a special education teacher
- Social/Emotional: 150 minutes per week, to be provided by a special education teacher

The Student's IEP provided the Student with the following accommodations:

- Availability of taking a break
- Break material into manageable parts
- Extended time for state and district wide assessments
- Extended time: classroom based assessments
- Fidget and sensory opportunities
- Preferential seating
- Separate setting or testing in Special Education Class

The Student's IEP indicated he would spend 82.61% of his time in the general education setting.

2019-2020 School Year

4. During the 2019-2020 school year, the Student was in fourth grade, attended a District elementary school, and continued to be eligible for special education services under the category of other health impairments.
5. In November of 2019, based on documentation provided by the Parent in her complaint, the Student left the District and was placed by the Parent, under medical advice, in an inpatient private facility based on his inability to cope with the stress and pressure of school. The Parent reports this was after several emergency room trips and short-term inpatient events that began shortly after the start of the 2019-2020 school year.
6. In February 2020, based on documentation provided by the Parent in her complaint, the Student transferred from the private inpatient facility to a children's long-term inpatient program (CLIP)¹. CLIP's program treats children with the complicated and challenging behaviors. CLIP reports almost all of the children it serves have demonstrated an increasing display of the potential to be unsafe for themselves and others. This aggressive behavior tends to continue to escalate. Without appropriate training and treatment, it poses a clear and ever-present danger.
7. Following his admission to CLIP, due to a history of escalated behavior and explosive mood, Student entered district 2 on February 26, 2020. District 2 is the education component for students residing at CLIP, and is a classroom setting for children who have psychological and safety needs that cannot be met in their community. While at the hospital, patients attend school year-round on campus through educational programs offered by district 2. The hospital counselors work alongside teachers and paraeducators to maintain a safe therapeutic learning environment. The CLIP program works with families at their home districts to make sure the students' transition into their next school is successful following discharge from the hospital.

In CLIP, Students are monitored to and from school by hospital staff. Students return to their cottages for lunch and use a single restroom located in the classroom. Morning sessions are from 8:15 to 11:30 am and afternoon session are from 12:30 to 2:45 pm. The proximity of

¹ CLIP is the most intensive inpatient psychiatric treatment available to WA State residents. <http://clipadministration.org/>

hospital staff is beneficial as teachers can call on staff to support the Student when he has extreme need, and when he masters a new skill and benefits from immediate admiration.

8. On March 13, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in Washington due to the COVID-19 pandemic.
9. On March 18, 2020, the CLIP patients/students enrolled in district 2 switched to remote learning.

2020-2021 School Year

10. At the beginning of the 2020-2021 school year, the Student was living in CLIP, attending district 2 elementary school remotely as a fifth-grade student, and continued to be eligible for special education services under the category of other health impairments.
11. On October 12, 2020, in person learning resumed at the district 2 school for two days a week as part of Student's inpatient program and on October 19, 2020 increased to four days a week of in-person instruction.
12. On November 8, 2020, the Parent emailed the District principal regarding the Student's return to the District. The Parent stated that certain parts of the Student's IEP that had been in place prior to the Student's admission into CLIP, such as a 1:1 paraeducator and transportation, had to be removed when the student had his IEP completed at district 2 because the school environment would not allow for those items. The Parent stated she expected those items would be put back into Student's IEP in the District.
13. On November 9, 2020, the principal forwarded the Parent's November 8, 2020 email to the education specialist and school psychologist and stated he would post the position for a 1:1 paraeducator.
14. Documentation provided by the District in response to the complaint included the principal's notes from a November 24, 2020 phone call with Student's teacher from CLIP. The notes stated, in relevant part:
Positives:
 - He is one of the school's strongest residents
 - He has been safe
 - He has been a role model and support to peers
 - He has been flexible and adaptable...tolerant and persevering
 - He thrives on helping behaviors

Tips for Success:

- Relationships are key
- Break times have been successful
- Give understandable directions for success
- Student needs structure
- Take away privileges when appropriate. Do not be wishy washy. At school, he must have tight boundaries.
- Do not offer carbs (sugars) as treats. He works for
 - Chats with adults, 1:1 time, 2:1 with an adult and a peer
 - He loves to talk, although the conversation must be two way

Final Thoughts:

- Dialectical Behavioral Therapy (DBT)² strategies are familiar.
- In-patient teacher would hope to phase out 1:1 eventually.
- His classroom setting was one of 14 kids, in rows, with multiple staff members supporting.

IEP process:

- Involve Parent in the process
- IEP will need to be amended

15. On November 30, 2020, while the Student was still in CLIP, members of the Student's district 2 IEP team met via video conference to develop the Student's IEP. The Parent, district 2 representative, and the IEP manager attended the meeting. Under "Team Considerations," the IEP stated the Student has behaviors that impede his or others' learning and included the following learning suggestions:

- Building relationships with Student will provide the needed introduction to increasing his academic readiness and social adjustment. Positive student relationships are fundamental to success. When Student has positive interactions with staff he strives to please and do what is expected.
- Modeling expected behavior plays a central role in shaping Student's desirable behavior and social skills.
- Let Student get to know a part of you. The more comfortable Student is with you, the more relaxed and receptive he will be.
- Implement student-based learning...Student's interest is the basis for curriculum decision-making, which ensures the teaching response to student strengths, abilities and interests leading in turn to engagement in learning. Student would like to be a Cadillac car salesman when he grows up.

The present levels of educational performance described the following:

Medical/physical: Attention deficit hyperactivity disorder, combined type (ADHD), oppositional defiant disorder (ODD), other specified anxiety disorder, and post-traumatic

² Dialectical Behavioral Therapy is a type of cognitive-behavioral therapy. Its main goals are to teach people how to live in the moment, develop healthy ways to cope with stress, regulate their emotions, and improve their relationships with others.

stress disorder (PTSD) confirmed by [doctor] in 2018. These conditions negatively impact Student in the education setting.

General education teacher report: Student...is a resident at a private inpatient treatment facility. District 2 is a self-contained setting with no opportunities for inclusion with nondisabled peers. District 2 program is a diagnostic and intervention program that allows Student to achieve his full potential in a small instruction group of 8 to 9 students led by a certified special education teacher, and instructional aid with classroom monitoring by psychiatric childcare counselors. District 2 program curriculum emphasizes academics and provides intense positive behavioral interventions and supports.

Parents have brought up a question about Student's home District providing daily 1:1 support to Student as it had reportedly been talked about at Student's home District. At this time Student is in a psychiatric hospital setting, all transportation and additional staffing are done through a private inpatient facility. Upon discharge, Student's IEP team will need to reconvene with Student's home District and determine how transportation and additional staffing will be continued in his home school setting.

Social/emotional: Scores indicate hyperactivity, aggression, and conduct problems to be within the clinically significant range. Attention problems, learning problems, adaptability, and study skills were within the at risk range. Depression, anxiety, somatization, atypicality, withdrawal, social skills, leadership, and functional communication were rated as average...These delays caused him to have difficulty meeting classroom expectations when compared to same age peers without assistance. Student continues to have difficulty in the area of social skills and requires specially designed instruction with a focus on impulse control and appropriate response to frustration. Special education is recommended in the areas of social skills...

Formal and informal observations indicated that Student functions at his best in a predictable structured environment. When his environment is unstructured or unexpected events occur, he becomes very anxious. When Student is anxious or apprehensive, he quickly becomes grumpy.

During remote learning, Student did not like remote learning because he was not able to build a relationship with his teachers as well as his almost continuous attempts to attract positive or negative, adult attention...

The December 2020 IEP provided the Student with specially designed instruction in social/emotional and math; and, included three social/emotional goals that concerned the Student's ability to self-advocate, self-calming and appropriate interactions, and three math goals.

The Student's December 2020 IEP provided the Student with the following specially designed instruction in the special education setting:

- Math: 300 minutes per week, to be provided by a special education teacher
- Social/Emotional: 1,440 minutes per week, to be provided by a special education teacher

The Student's December 2020 IEP provided the Student with the following accommodations:

- Allow breaks
- Allow for oral presentations when possible
- Behavior plan
- Calculator
- Careful pairing with students that can help with social skills
- Check in frequently to monitor the Student's emotional temperature or frustration level
- Directions reread verbatim
- Early dismissal from class to avoid hallway noise and bustle
- Ensure that Student understands by having him clarify what the directions mean, role-plays and demonstrations
- Extending testing time
- Extra time on tests and quizzes
- Facilitated socialization at recess
- Lunch, breaks
- After school activities
- Gum or chewable fidgets
- Help Student further develop social skills
- Human read aloud
- If consequences must be implemented, make them immediate short term and related to the action that prompted the consequence
- Individual or small group testing for students
- Ensure the other staff and guest teachers understand the signs and signals that student is a custom to using when he is becoming upset
- Student can be very vulnerable to suggestions so be sure the group media and other sources of input or prosocial and positive
- Liberally reinforce and praise Student for using his coping skills and techniques
- Mathematics manipulatives
- Modify repeat model directions
- Multiplication table
- No work/homework to be assigned to be completed at home after school hours. A designated time during the school day can be used to complete any needed work.
- Predictable schedule and routine with prior notice of change whenever possible
- Preferential seating
- Prior notice of tests and quizzes and procedures
- Provide extra credit options when he misses an assignment
- Provide individual small group instruction
- Read class materials orally
- Read aloud English
- Recess is required every day. He should not have his recess taken away
- Rehearsal and frequent practice of what to do in case of...
- Remain calm, quiet, and very patient at all times
- Check for understanding
- Separate seating
- Simplify test directions
- Use a nonverbal signals like a sticky note on the desk or a hand on the shoulder to get the Student's attention and indicate the need for things like taking a brain break
- Use short four or less words, concrete language and give examples.

The IEP also included the following support for school personnel:

- Right response de-escalation and physical intervention in life space crisis intervention strategies
- CHAMPS classroom management³
- ENVoY classroom management⁴
- Therapeutic classroom⁵

The Student's IEP indicated he would spend 0% of his time in the general education setting. Under special education and related services, the IEP stated the Student would participate in "Recreation Therapy" in lieu of physical education (PE).

16. Also, on November 30, 2020, district 2 issued a prior written notice proposing to initiate the Student's IEP. The notice stated that due to Parent request, the IEP is approximately 6 weeks early and that Student is set to be discharged from CLIP around November 30, 2020. The team completed a new IEP which included updated goals for social emotional skills and math.
17. Based on documentation provided by the Parent as part of this complaint, Student would be discharged from the CLIP program in December 2020. Upon his release, Student would continue in the fifth grade at the District elementary school and was provided with a WISE team for additional support.⁶
18. On December 14, 2020, the Student returned to the District elementary school five days per week, in person, and on a "half day" schedule, after which the Student would leave for an intensive day treatment program at 1 pm. The Student's half day schedule (with paraeducator responsibilities) included:

9:00	Arrive at school Drop backpack in general education classroom. (Paraeducator needs to meet the bus out front and escort Student to his general education class to unpack and drop off his things (coat, lunchbox, backpack.))
9:10-9:30	Social group with special education teacher. (Paraeducator walks Student to Resource Room for Social Group.

³ CHAMPS stands for Classwide Positive Behavior Support.

⁴ ENVoY is a style of nonverbal classroom management.

⁵ Therapeutic classrooms are for students whose emotional, social or behavioral needs interfere with their ability to be successful in school. The goal of the program is to improve the student's self-regulation, social and academic skills while providing behavior supports to teach emotional control, model appropriate social behaviors and address challenging behaviors.

⁶ The Wraparound with Intensive Services (WISE) program model provides comprehensive services and support to eligible youth in Washington who have complex behavioral health needs.

	Paraeducator monitors and observes Student and supports special education teacher when/if needed. If no Support is needed, paraeducator can wait outside of the classroom. Paraeducator walks him to his class to participate in Specialists. Student returns 9:30 to general education to get ready for specialists.)
9:30	Walk back to general education and get ready for specialist class.
9:40-10:16	Specialist (Paraeducator stays with him, supports and monitors when needed to keep him calm, and anxiety down.)
10:16-10:40	ELA (Lexia and/or writing) with general education teacher. (Paraeducator supports Student with tech, monitors that he stays on appropriate application/program.)
10:40-11:10	Math (Paraeducator walks Student to resource room for math group and paraeducator takes her break 10:45-11:00 - then returns to resource room to support Student/teacher as needed. If no support is needed, paraeducator can wait outside the room and assist with any projects teachers may need.)
11:10-11:40	Reading/Writing with general education teacher. (Paraeducator walks him back to general education and monitors that he is on task and keeps him focused, calm and helps with anxiety.)
11:40-12:10	Lunch in general education classroom (Paraeducator takes Lunch Break 11:40-12:10. Student eats lunch and watches movie during lunch in class.)
12:10-12:30	Alternative Recess (Paraeducator takes Student to recess and can use the front soccer field or kindergarten playground. Work towards inviting a friend?)
12:30-12:45	D.E.A.R. Silent reading time with general education teacher. (Paraeducator walks the Student back to general education and monitors his behavior, keeps him focused and on task.)
12:45-12:55	Check out with special education teacher. (Paraeducator escorts the Student back to resource room with special education teacher to pack up belongings and do a check out for the day. Paraeducator assists with pack-up and check-out. Walks Student to his cab at 12:55 and waits with him for his cab to arrive.)
12:55-1:00	Wait for cab to intensive day treatment program (Paraeducator picks up Student from resource room and walks him to cab)

19. On December 18, 2020, the Student's transfer team, consisting of Parent, education specialist, general education teacher, special education teacher and school psychologist participated in a transfer review meeting, including a review of Student's "prior records", to discuss Student's transfer from district 2 back to District.
20. Also, on December 18, 2020, the District issued a prior written notice proposing to initiate the Student's education placement. The prior written notice stated that due to the significant change proposed to service times the team is recommending that a new evaluation and IEP be completed. The notice further stated that a full school day was being offered to Student and that Parent was choosing to have the Student access an intensive day treatment program in the afternoons. When the Parents and the team at the intensive day treatment program determine that he no longer requires their services in the afternoon, he will transition back to full time attendance. The notice stated this action would be initiated on January 4, 2021.
21. On January 7, 2021, the Parent emailed the school psychologist as asked if the Student's behavior intervention plan (BIP), current accommodations, and goals would still be in place at the District.
22. On January 8, 2021, the school psychologist emailed the Parent and stated she updated the Student's transfer report to reflect the Student would receive 1:1 paraeducator support throughout his school day. The email further stated that a new IEP would be written as soon as possible and in the meantime the district 2 IEP goals and accommodations would be applicable (noting some of the accommodations may not be as applicable in the District setting). The email further stated the Student's May 2019 BIP was attached, as there had been no changes to his BIP while he was out of the District. She stated the BIP would be updated, along with the re-evaluation and new IEP.
23. On January 22, 2021, District staff requested the Parent sign a release of information form so the IEP team could obtain relevant records from the Student's prior service providers.
24. On January 25 and 27, 2021, at the Parents' request, the Student attended the District elementary school for three half days and two full days as a trial, to see how the Student would manage full day attendance⁷. The Student's full day schedule stated:

9:00	Arrive at school - Drop Backpack in general education classroom
9:10-9:30	Social group with special education teacher
10:16-10:40	English language arts (Lexia and/or writing) with general education teacher
10:40-11:10	Math
11:10-11:40	Reading/Writing with general education teacher

⁷ This modified full day schedule was emailed to the Parent on January 21, 2021.

11:40-12:10	Lunch in general education classroom
12:10-12:30	Alternative Recess
12:30-12:45	D.E.A.R. Silent reading time with general education teacher
12:45-1:00	Continue ELA/Second steps
1:00-1:45	Science/Social Studies
1:45-2:35	Math
2:35-3:00	Math Skills
3:00-3:10	Second Recess
3:10-3:20	Clean and End of Day - After all packed up go to the special education teacher to check out for the day. Then wait for transportation home.

25. On January 25 District special education teacher emailed the Parent, copied the principal and social worker, and stated:

Just wanted to give you a quick update on Student's first full day back. It went well today and I am pleased how positive and respectful Student was. Some things addressed with him for his check out today that may have caused him anxiety:

- Being in his class for math and not understanding the fraction lesson. I told him that I would have the general education teacher put together a fraction packet that he can work on during his resource room math instruction time and so when he goes back to class he will feel like he has a better understanding of what is being taught.
- Being here for a full day means that his 1:1 paraeducator will have one morning break, a lunch break, and an afternoon break, which requires another paraeducator to fill in while she takes her breaks. This will take Student a bit of getting used to since the paraeducators that are filling in for his paraeducator are all different ones. Student seemed a bit concerned, but I assured him and asked him to be patient and give himself and them time to get used to working together. These are the only things I noticed that could've caused him to be a little worried, but he was able to voice his concerns and we were able to problem solve together. I hope this feedback helps. He really did a wonderful job today.

26. On January 25, 2021, the Parent emailed District staff and stated, "Today's events definitely impacted [Student] significantly. He was touch and go all night and he's currently having nightmares."

27. On January 27, 2021, the District social worker emailed the Parent, copied the principal and special education teacher, and stated:

Today there was an incident with Student and his computer. He'd been told a day or two ago that there was no computer use except for current assignments. Several times his paraeducator told him to stop going to other sites. She brought him to me, as his special education teacher is out today. After she explained the situation, I asked him what was

going on. He stated that 'first off' 'I don't care what she had to say.' I can't remember his exact wording except for the 'first off.' He claimed he had loaded a bunch of family pictures on his Google site, something about a USB that he downloaded. He said he was trying to delete them. I told him specifically that the only thing he was supposed to be on with the current assignment. He was agitated and trying to justify why he was doing as requested. I then told him I would not argue with him and restated he needed to work only on his assignment. He then said, 'I don't like her,' and pointed to his paraeducator. I let him know that was unkind and he asked 'Why? It's true.' I then told him he needed to take a five minute break. After the break, I let him know that he would not be using the computer the rest of the day about an hour before school ends and he could read while the rest of the class was testing. Let me know if you have questions.

That same day the Parent responded and stated the Student relayed a different version of this incident to the Parent, and that the Student has no Google account, no photos online, and no jump drives.

28. On February 1, 2021 the special education teacher emailed the Parent and stated that during her daily check out with the Student they confirmed that his day went very well. He did accidentally drop his computer and it caused the screen to have some black spots on it. He and the paraeducator took it to the library assistant and she told the Student not to worry about it, it happens a lot. The library assistant assured Student not to worry about it and it will be fixed soon and returned to his class. The email stated the Student expressed to the special education teacher that he was more concerned about what would happen at home and how you would react and how it would ruin his night. I told him that I will give you a heads up and that seemed to make him feel more at ease.
29. On February 3, 2021, the special education teacher emailed the Parent and copied District staff and stated that Student had some frustrations that he voiced during check out this afternoon. He is frustrated and embarrassed for having a 1:1. He said he would scream if he had to have a 1:1 again next year. He blames his Parents for having a 1:1. I told him the 1:1 is part of his plan for now. Perhaps when he proves success, this may be something that he no longer needs in the future, but for now, we follow the plan. He said he doesn't like to be praised. When he gets praised or complemented, he feels like screaming and wanting to "kill" them. These are very serious words. I told him those are threatening words. The Student is struggling with staying 6 feet in the hallway from paraeducator. We will monitor this closely. Overall, Student has been doing well.
30. Also, on February 3, 2021, Parent alleged in her complaint, in response to the special education teacher's February 3, 2021 email, that Student, "[E]xpresses homicidal/suicidal feelings toward being praised...Rather than being concerned that these might be signs of suicidal behavior, [Student] was corrected (a trigger for him) and told these were threats. While parents were notified, the school did not attempt to address these behaviors, and instead sent him home to explode. Which he did."
31. On February 5, 2021, Parent emailed District staff and the representative from the intensive day treatment program and requested a meeting to discuss the impact of Student having

attended full days during the prior week. That same day the principal responded, seeking clarity on the purpose of a meeting. The Parent responded and stated, "The action item discussed at the IEP meeting was that we would follow up after he had the two days in class last week."

32. On February 8, 2021, the education specialist emailed the Parent, and copied District staff and the intensive day program representative, and stated:

We wanted to follow up on some of your questions from Friday. The team reviewed Student's plan this morning. We did communicate back to you with input about how the two full days went. Please refer to the emails from special education teacher on January 25 and social worker on January 27. If you would like us to share those again, please let us know and we can do that. Student continues to have a lot of success here at school and is welcome to join us for full days when you're ready. The team feels confident based on the success at District during the school day, we are prepared for him to return to full days. We will implement the same schedule as he practiced to start with. What we need from you is the proposed start date of full-time, so that we have notice to fully prepare to implement his schedule, staffing, and transportation.

That same day the Parent responded and stated that the Parent's understanding is that they would have a discussion, not just exchange emails. The Parent stated:

We shared he had a suicidal and homicidal response to the two full days. He feels extremely behind his peers. Placing him in the same manner as he was those two days with no modification or discussions feels very dismissive. We are requesting a meeting to: A - review with the child psychiatrist who directed his in-patient care [what was] recommended and was not provided to Student, B - Why the team feels this recommendation should be ignored, C - Why suicidal and homicidal threats are being dismissed now, but resulted in suspension and being held out of school by school administration in the past, D - Why Student continues to have unsupervised access to a computer, E - Confirm his 1:1 has the DBT Manuals we provided and is using them with him. We look forward to working together to provide Student and educational environment where he can learn and have his mental health prioritized.

33. On February 10, 2021, the education specialist emailed the Parent, copied District staff and intensive day program specialist and stated school staff would like to hold a follow up team meeting to discuss the Parent's concerns on February 19, 2021. School staff stated they would like to invite staff from Student's intensive day program to the meeting. The Parent responded that same day, agreeing to the time, and stated they would invite another specialist from the intensive day program as well as see if his psychiatrist from CLIP could attend.

34. Documentation provided by the District included the education specialist's notes from a February 10, 2021 IEP staff planning meeting which noted, in relevant part:
- Parent still has not signed releases for intensive day treatment program.
 - We cannot support what we don't see.
 - Has District staff seen suicidal/homicidal thoughts? No.

- Talked to principal, education specialist, and social worker - none have heard this.⁸
- Psychiatrist recommends a self-contained program but had no data of behavior in the hospital setting.
- Student has 1:1 all the time - no further than 6 ft away. She is monitoring. Even today she had to question him while doing research for a writing project on computer.
- DBT manuals - paraeducator is aware and has learned about it.

35. On February 11, 2021, District staff again requested the Parent sign a release of information form so the IEP team could obtain relevant records from the Student's prior mental health service providers.

36. On February 11, 2021, members of the Student's IEP team including Parent, general education teacher, special education teacher, and the school psychologist, met via Zoom to discuss the Student's re-evaluation and Parent concerns.

37. Also, on February 11, 2021, the District issued a prior written notice proposing to change the Student's reevaluation by adding standardized testing in communication.

38. On February 19, 2021, the Student's IEP team, including the Parent, principal, education specialist, general education teacher, special education teacher, school psychologist, social worker, intensive day therapy staff, and director and assistant director of special education, met to review the Student's instructional needs.

The principal's notes from the February 19, 2021 IEP team meeting noted, in relevant part:

- Brave face at school
- After full days - suicidal thoughts
- Schedule changes are tough - help him with schedule change
- Do not work on self advocacy
- Intensive day treatment program feedback: Stress of school; Needs time to regulate before home

The education specialist's notes from the meeting noted, in relevant part:

- Psychiatrist recommends 100% special education setting during transition period
 - Paraeducator not with him all the time
 - Should not be on computers
 - Says he is trying to triangulate between staff
- Special education teacher says:
 - Computer usage is monitored 100% by adults; Student only uses computer when directed
 - Has to hold it with both hands and closed in transition
 - Does not need it in resource room, he brings it to show her work
 - 1:1 - watch to see how Student is progressing and we fade-1:1 is now always 6 ft away
- Principal - DBT manuals

⁸ Based on the notes, it does not appear the education specialist spoke with the special education teacher regarding students suicidal/homicidal ideations, since on February 3, 2021 the special education teacher emailed the Parent regarding the Student's remark about wanting to "kill" those who praise him. It is also possible that the special education teacher did not share the information with the education specialist.

- Quick Guide - paraeducator has it - we don't have a manual, nor do we have training
39. Also, on February 19, 2021, the education specialist emailed the Parent a copy of the prior written notice from the February 11, 2021 IEP team meeting. The prior written notice proposed to continue the IEP to serve the Student's educational needs. The notice stated the meeting was held to address the Parent's concerns, clarify expectations for the Student and paraeducator, discuss the return to full day timeline, and clarify of the reevaluation timeline.
40. On February 24, 2021 the Parent emailed the special education teacher and copied the principal, general education teacher, social worker, education specialist, school psychologist, director and assistant director of special education and stated,
- We were just given [Student's] day treatment graduation day of March 5, 2021. This means March 8, 2021 is when he will be returning to [District] full time. These are the action items as I see them: Alternative [PE] plan in place, revised school day [schedule], revised bus plan (return home after school), informing [Student] of this plan, (Parent) remove transport to day treatment program.
41. On February 25, 2021, the education specialist responded to the Parent, copied District staff, and stated that the team will begin writing up the Student's new schedule, discuss PE, and share the information with Parent the following week. She asked for confirmation that the Parent did not want the Student participating in PE. The Parent responded and stated, in relevant part, "At this point in time, group and individual physical activity continues to result in escalated behaviors for [Student]. We would like [District] to suggest alternative that would not result in explosive behaviors."
42. On March 1, 2021, the special education teacher emailed the Parent, and copied the principal, general education teacher, social worker, education specialist, school psychologist, director and assistant director of special education, to send a revised copy of the Student's full day schedule, to be implemented on March 8, 2021. The special education teacher stated she would review the schedule with the Student so he would know what to expect.
43. On March 8, 2021, the Student began attending the District elementary school in person, five days per week on a full-time schedule.
44. On March 8, 2021, the principal and school psychologist exchanged emails with the Parent regarding the completion of the Student's assessments and scheduling the evaluation and IEP meeting via Zoom for March 19, 2021. The Parent agreed to attend.
45. Also, on March 8, 2021, the special education teacher emailed the Parent, copied District staff, and stated,
- Just wanted to let you know [Student] had a successful productive and respectful day today. He settled right into the new schedule and [general education teacher] did an excellent job including him in all the lessons and filling any gaps when needed. [Student] is a quick learner and we are all so excited to have him with us full days again! I will be working on

[Student's] IEP and would like a quick summary of some strengths you see [Student] having. Also, if you want to share any concerns you have for enhancing his education.

46. On March 10, 2021, the special education teacher emailed the Parent, copied District staff, and stated:

Just wanted to give you a quick update about [Student]. He's been working on keeping a better pace in the hallway and slowing down so his 1:1 paraeducator doesn't have to speed walk to keep up with him, I touched base with Student this morning about needing to be considerate of his 1:1 when he walks in the hallway and realize that she may not walk as fast as he would like, but he needs to slow down a touch so she's not out of breath trying to keep up with his pace. [Student] likes to get to his destination as quickly as possible and when he is asked to slow down, he feels like it's "wasting his time"...He needs to walk at a pace that is 6 ft apart. He said, 'If I didn't have a dumb 1:1, then I wouldn't have to slow down.' I told him that we always walk in the hallways and that calling his 1:1 'dumb' is not kind and is disrespectful. She is there to support him and he needs to be kind and considerate towards her. He apologized to her.

On another note, [Student] expressed his desire for wanting to be at recess with his peers so he can have opportunities to interact in positive and playful situations. Currently, the only socialization time that he is involved in is eating lunch with his peers in the classroom. Perhaps we can discuss some options for some more opportunities for positive peer interactions to take place in the future.

The Parent responded the same day and stated, in relevant part,

Regarding the speed walking with the 1:1, I would suggest implementing a consequence that would promote the desired pro social behavior. Ex: 'Try it again.' Meaning, he repeats the process over and over until he does it right. So if he runs/walks fast so he doesn't waste time, have him explain the expected behavior, clarify any adult expectations as needed, and then have him repeat the process by walking back to the original location and back with the 1:1. No emotion, just fact. And he does it until he's 100% meeting the expectation. When the consequence is less pleasurable than the expected behavior he will meet the expectation. The exact phrase 'Try it again' is the cue and is all that needs to be communicated after he explains the expected behavior to your satisfaction.

What it sounds like happened today is that he was able to successfully avoid a consequence by deflecting his reason for going too fast for the 1:1 and turning it into a request/demand that he needs standard recess. Hearing him out comes at an expense, and that expense is he will continue to maladaptively negatively respond to his 1:1 as she holds the line and maladaptively positively respond to you as you give him attention and hear him out. If instead the consequence is held and no one hears him out, you will get the desired behavior.

It appears that yesterday there was another incident where he was on a wrong website on his computer and was corrected for it. This made him very angry and his behavior indicates he was not directed on what the expected behavior was prior to computer usage. He believes he can email at any time as long as it is school related. It may be helpful to have written instructions attached to the computer that he has to state or read and state prior to usage.

As far as the request for recess...I have included a copy of his IEP, and below are the terms that specifically address how recess should look for him:

- [Student] can be vulnerable to suggestions so be sure the group, media and other sources of input are pro-social and positive.
- Facilitated socialization at breakfast, recess, lunch, breaks
- Help [Student] further develop social skills (art, sports, games, lunch, clubs.)
- Careful pairing
- Recess is required every day. He should not have his recess taken away as that is down time in the day he needs to have based on his disability.
- Rehearsal and frequent practice of 'What to do in case of...'

I would also like to add if the 1:1 is having trouble keeping up with him in the hallway, she will not be able to keep up with him on the playground, and it will likely become a game for him. This situation led to unsafe behavior in his time inpatient. [Student] also reports during his lunch he has been watching a movie. If this is accurate, then he is participating in mainstream recess. I believe the schedule has him in a social group when he arrives as well. These should be examples provided to him of how he is currently receiving standard recess and given opportunities to work on building his social skills. It continues to be communicated to Student that we are the reason that, in this case, standard recess is not available. Per his therapist at CLIP, explaining why adults have made decisions to Student does not yield positive results. This is an attempt to avoid or maladaptively attain something he knows is not available. The explanation confuses Student to think he is on equal footing with adults and will result in future defiance. Instead, redirection to the topic at hand is required. Praise for returning to the topic at hand is the best way to keep Student on track. Other queues are 'Adults make the decisions.'

His IEP was developed after over a year Student was inpatient and is a guide to the ways the school was able to best provide his needs. His inpatient stay came from a massive trauma for [Student] and our entire family...Pushing him too hard will result in gains lost. We are already seeing this. What you report of his behavior toward the 1:1 is a sign he is too stressed.

We would like to see the benefit from the wise advice and documents we were provided rather than push Student to another mental breakdown by setting the advice aside. These are trauma experts who have helped him out from the struggles prior to his admission, and their guidance to avoid him...returning. Student told us tonight the goal setting process is too overwhelming for him and he needs adults to guide him/do this for him. He is communicating he is being pushed too hard with aggressive goals.

I am concerned that if we cannot align for Student's best interest, District is not the appropriate educational setting for Student. I implore you to follow the guidance in the IEP has been shared with you from us and the CLIP/district 2 team, and not add extra pressures as he is transitioning out of 1/2 day day-treatment and attending school full time for the first time in nearly two years.

47. On March 13, 2021, the Parent emailed the education specialist and stated that she had the attachment (a prior written notice) but as there was no agenda provided prior to the meeting she was not sure it should be considered an IEP meeting. The email further stated:

When we met in January, the follow up action item was to meet the week after he attended school full-time for two days, to assess his success to see if full days were feasible and to put together a schedule for what a full day of school would look like...We received his full day schedule on March 1 via email for his March 8 full day start date. So, our first discussion on his proposed schedule will be in the March 19 meeting. Also, can you provide feedback for what other students who have 1:1's are doing for the at home learning days? We learned of Student's plan the day before and it did not include him participating in school activities like other children, and we are not sure why he was excluded from school that day, as he has access to a tablet in our home that he could've connected with...March 19 is the next day and a plan has not been provided for him yet...

48. On March 14, 2021 the education specialist emailed District staff and stated, "It was not an IEP meeting. It was a team meeting to address their concerns. We did not promise an agenda nor do we usually provide an agenda." Further the specialist stated, "As far as the schedule for at home days, there needs to be a discussion with his teachers. I'm not aware of anything that was proposed. And I have no idea how to respond to what to do about his paraeducator and virtual days."

49. Also, on March 14, 2021, the principal emailed the Parent and stated, "With [Student's] next PE rotation coming, I was wondering if there was any movement or desire to have [Student] try PE. If we're not ready, that's ok, but I wanted to give you and [Student] the opportunity if appropriate." That same day the Parent responded and stated, in relevant part:

Last week was a really hard week for [Student] to process...We need to continue to minimize changes to his day while he builds his confidence as changes present as failure points for him and put him into fight or flight. Has [District] come up with an alternative PE that meets the criteria for his social emotional needs?...If there is a plan that meets his needs and the school can provide the plan for his medical team to review and approve, and if he is not successful he will not be provided a negative consequence, we can consider this change post Spring Break. We really feel this action is adults pushing him into a space he is not prepared for, but the adults feel he is, so it is important the adults take responsibility for the decision...While your team seems to be getting a better version of [Student] daily, on a whole he is falling apart because he feels incredibly inferior to his peers and this makes him suicidal. I am not sure if you have had suicidal experiences with your child(ren) but when the best help available tells you not to push them and let time to heal [sic], you have to listen to them and advocate for your child's life.

50. On March 15, 2021, the principal responded to the Parent's email, copied District staff and intensive day treatment staff, and stated, "Ok, [Parent], we will not move forward with PE at this time. [Student] is due to have PE the week after spring break, so we'll check in then. At this time, there is no other PE offering for [Student]. His plan then is to have two music rotations and one tech. [sic]"

51. On March 16, 2021, the education specialist emailed the Parent, copied District staff and stated,

Thank you for your questions. In regard to your question about the paraeducator and virtual at home days, [Student's] paraeducator was approved for safety purposes within the physical school setting based on behaviors that were exhibited before he left last school year. So during at home day, the paraeducator would not be providing the safety within the physical school setting...Regarding his schedule for the 19th, the special education teacher emailed you earlier today to make sure you add all of the correct links for both her and for the general education teachers class for Friday. Please let her know if you have any questions.

That same day the Parent responded and stated,

Thank you for the information on this. Student's Internet/electronics usage has been and continues to be problematic and needs monitoring for safety. This is a regular function of his 1:1. The [District's] choice to use personalized technology with him despite his behavioral disabilities is something we continue to express concern about, however, his usage continues and he continues to be corrected for it. Which creates a cycle of anxiety, fear, self-loathing, anger and decreased self-esteem.

Student specifically has obsessive behaviors and intrusive thoughts with a strong link to screens...We see his increased usage of personal electronic devices at school and inappropriate use resulting in correction is part of why his behaviors have escalated since attending district full-time last week and an added reason of why he was angry when he returns home. If the team is not familiar with these concepts we...strongly discourage personal screen time for him. We believe it is time for the district to explore options for educating students without the use of personal computers to best meet his social/emotional disability needs.

52. Documentation provided by the District included the education specialist's notes from a March 18, 2021 IEP planning meeting with special education director, assistant director, and District attorney which noted, in relevant part:

- Develop benchmarks to fade paraeducator and add to IEP?
 - ...2 weeks with...the paraeducator is removed for 12 ft proximity
 - Then remove for certain easy times of the day
 - No changes for 6 weeks and then look at data to fade
 - Safety statement to explain the reason for the paraeducator (not academic)
- Recess - transition plan: small group with social worker or with paraeducator plan (PE - legally we can do PE)
 - Fade out plan 1:1
 - Fade in plan PE and recess
 - PE: start next PE rotation after Spring Break then 6 weeks fade paraeducator
 - Recess: 22nd with social worker, 29th with Regular Recess, after Spring Break

53. On March 19, 2021, the Student's evaluation team met to discuss the results of Student's reevaluation. The evaluation team included Parent, school psychologist, occupational therapist, speech language pathologist, general education teacher, special education teacher education specialist, and representatives from WISE. The evaluation described the following:

Social/Emotional: The behavior assessment system for children – teacher rating scale (BASC3-TRS) results indicate hyperactivity, aggression, and conduct problems to be within the clinically significant range. Attention problems, learning problems, adaptability and study skills were within the at risk range. Depression, anxiety, somatization, atypicality, withdrawal, social skills, leadership, and functional communication were rated as average. Discipline records were reviewed as part of this evaluation.

The Social Skills Improvement System (SSIS) SEL teacher form was completed on 2/23/21 with Student's special education teacher as respondent. The SSIS Parent form was completed on 2/24/21 with Student's Parents as respondents. On the SSIS teacher form, Student presented with average scores in all areas. On the Parent form, Student was well below average skills in self awareness and below average in self management, relationship skills, and responsible decision making. His social awareness score was average.

Classroom data: Based on data, 3/5/21, when given the opportunity to participate in class discussion, Student raises his hand and waits to be called on 50% of the time. Student will argue with adults approximately 1 time per week but is able to process with an adult in a positive way.

Fine Motor: Student was screened for occupational therapy services secondary to Parent concerns with handwriting, specifically letter sizing. Through consultation with Student's teachers, support staff, classroom work samples, and observation, fine motor services are not recommended.

Communication: Initial evaluation of Student's communication skills...Student's communication skills are within normal limits and no further testing is recommended at this time.

Conclusions from observations: Student came willingly to the evaluation session and good rapport was established. He was cooperative and demonstrated consistent motivation throughout the evaluation.

Academic: Specially designed instruction in written language is recommended at this time.

Mathematics: overall in the area mathematics Student is performing at an early 5th grade level.

54. Also, on March 19, 2021, members of the Student's IEP team met to develop the Student's IEP. The Parent, general education teacher, school psychologist, and special education teacher attended the meeting.

The March 2021 IEP included one social/emotional goal that concerned the Student's ability to raise his hand before interjecting in class and one written goal that concerned spelling. The IEP provided the Student with the following amounts of specially designed instruction in the special education setting from March 19, 2021 through June 25, 2021

- Written Language: 150 minutes per week, to be provided by a special education teacher
- Social/Emotional: 125 minutes per week, to be provided by a special education teacher

The Student's IEP removed 27 accommodations from the December 2020 IEP and provided only the following accommodations:

- Availability of taking a break
- Alternative Recess
- Break material into manageable parts
- Difficult assignments to be completed in resource room
- Ensure understanding of expectations by verbally clarifying with Student
- Extended time: classroom based assessments
- No homework
- Predictable schedules and routine, with prior notice of change when possible
- Prior notice of tests and quizzes
- Preferential seating
- Separate setting or testing
- Speech to text/text to speech
- Use clear and concise directions

The IEP also included positive behavior support training as a support for school personnel and 1:1 staffing support 345 minutes daily as a supplementary aid and service. The Student's IEP indicated he would spend 84% of his time in the general education setting.

55. Also, on March 19, 2021, the District issued a prior written notice that it was proposing to initiate an educational placement and IEP. The notice stated, based on evaluation results and current classroom data, the Student continued to be eligible for special education and required specially designed instruction in the areas of written language and social, but no longer needed specially designed instruction in math.

The notice stated the school team proposed a plan for Student to begin accessing general education PE and recess with the support of his current paraeducator, a paraeducator fade plan based on data collection, and documented the team's discussion about the disparity of the behaviors observed in the home setting versus the school setting. The notice stated PE would begin April 12, 2021, and that recess would begin April 25, 2021.

The notice described other options considered and rejected by the team: Parents requested adding gum/fidgets into the accommodations, modifications to Student support during passing periods, that the benchmarks in the paraeducator fade plan include data regarding suicidal threats and emergency room events (both of which were happening in the home setting only). The notice further stated the reason those options were rejected: Student does not use or need gum/fidgets in the school setting and Student does not currently need modified passing periods, although this accommodation will be revisited for the middle school setting. The notice also stated the paraeducator fade plan is based on observable behaviors in the school setting. The school staff will be watchful for signs of suicidal ideation during the school day. The notice stated the items reviewed as the basis for the above listed action included reviewing file review, teacher records, assessment data, IEP team input, and parent input. The notice stated the action would be initiated on March 25, 2021.

56. Documentation provided by the District, created by the special education teacher and labeled "Check out and Recess Progress Monitoring," stated (in relevant part) for the following dates in March 2021:

- March 22: "Student had a successful day. During the beginning of the day I went over the schedule change of no longer coming to me for math, but rather coming to the resource room for writing. I review the schedule with him and the paraeducator. Student had a very successful day."
- March 23: "Student had no issues today. At the end of the day during check out, I shared with Student that starting on Thursday, he will be participating with his class for recess. He was so excited and said that he can't wait to see how shocked his classmates will be. He said that they have been asking when he will participate in recess and he told them he hoped to start recess with them sometime soon. He shared with me that he didn't think he would get recess again soon and that he is so excited. His face was glowing! I reviewed the recess expectations with him."
- March 24: "Student had a great day. No issues. He's excited to start recess tomorrow! General education teacher has allowed Student to sit on the sidelines and watch how they do recess, so that he knows what to expect and is ready for tomorrow. I reviewed the recess expectations with him again."
- March 25: "Today was Student's first day with his new recess plan...Student was very excited to share how much fun he had at recess. During check out he shared that he played and ran with his classmates. He played kickball and tag and had no issues following directions. His behavior was very appropriate and he followed expectations. He was so happy to be back with his classmates at recess and his face was glowing with excitement as he was sharing how much fun he had. He has been doing great and is in a writing group. In fact he has been a great influence on other students in the group and has been a good role model for another student. Since Student has started the writing group, one of the other students has been writing more. Student has great ideas and is a good influence on others in the group."
- March 26: "During check out, Student said his day went well. He had no issues. He enjoyed his time at recess. General education teacher took his class out for an extra recess and he shared that Student has been doing a wonderful job participating. General education teacher was throwing the football to students and Student went for every ball that was thrown him. General education teacher raved about how good Student is doing a recess."
- March 29: "Student said the day went perfect, except for getting a cramp in his foot from running too much at recess. He followed expectations during recess and his paraeducator agrees that he did a great job. It was a successful day with no issues."
- March 30: "Student said his day went well, except for dropping his lunch. Recess went well. He walked around and talked with friends and he's looking forward to second recess with his class. He did great during the second recess. He was playing kickball with his class and playing very appropriately. No issues."
- March 31: "Today went well. Student did not have any issues with following directions and getting along with others. He did a perfect job at recess. They played football. He did not have any frustrations. He's doing a great job in class and in small groups."

57. On March 23, 2021, Parent filed this complaint alleging that since the Student returned to his full day schedule on March 8, 2021, the District failed to provide the Parent with proper prior written notices; failed to implement the accommodations on the Student's IEP; and failed to properly develop the Student's IEP by refusing to add additional accommodations requested

by Parent, not considering changes in Student's needs since development of prior IEP, and not considering data from Student's prior inpatient setting.

58. On April 1, 2021, following the meetings on March 19, 2021, the District issued a prior written notice proposing to correct the date recess would begin for the Student. The March 19, 2021 notice erroneously indicated the IEP team determined the Student would begin recess on April 25, 2021. The IEP team corrected this date to align with the date it had stated the March 19, 2021 notice would be initiated: March 25, 2021.
59. Documentation provided by the District, created by the special education teacher and labeled "Check out and Recess Progress Monitoring" stated (in relevant part) for the following dates in April 2021:
- April 1: "Today Student said his day went pretty well. Recess went perfectly. They played football for the first recess. He did well and followed directions."
 - April 2: "No issues today. Today went well. Student said it was nice out today. He played tag at recess. He had a good time. No issues or frustrations. He's doing very well in school and with his general education recess."
60. The District was on spring break April 5 - 9, 2021. April 12, 2021 was the first day of school after spring break.

CONCLUSIONS

Issue One: Prior Written Notice - The Parent specifically alleged the District implemented individualized education program (IEP) modifications without providing Parents with a copy of the prior written notice. The Parent's allegations primarily related to the period of time after the Student began attending the District full-time: March 8, 2021. Prior written notice must be provided to the parents of a student eligible for special education services a reasonable time before the school district proposes to initiate or change the identification, evaluation or educational placement of the student or provision a free appropriate public education (FAPE) to the student or refuses to initiate or change the identification, evaluation, or educational placement of the Student. The notice also must contain certain required elements.

Here, the District provided the Parent with two prior written notices after March 8, 2021. The Parent was issued a prior written notice on March 19, 2021 after the evaluation and IEP meeting and another prior written notice was issued to make a correction to an error on the March 19, 2021 notice recess start date. The March 19, 2021 notice stated the Student would begin PE on April 12, 2021 and that recess would begin April 25, 2021, when it should have read Student would begin recess on March 25, 2021. This is supported by documentation provided by the District, which included the education specialist's notes from a March 18, 2021 IEP planning meeting with staff stating the plan was to have Student begin recess March 25, 2021. The principal and Parent agreed via email on March 14-15, that the Student would not attempt PE until after spring break. The first day back from spring break is April 12, 2021, which is the date in the prior written notice for a PE start date. While the March 19 prior written notice did contain an error, the Parent was in regular communication with the District about the change and was aware of it prior to having

received the corrected notice. Further, all prior written notices issued by the District were provided in a timely fashion and included all substantive components. There is not documentation that there were other instances at which the District should have provided prior written notice and did not. No violation is found, as the District has provided prior written notices when required.

Issue Two: IEP Implementation - The Parent alleged the District failed to properly implement the accommodations in the Student's IEP. During the duration of time at issue in this complaint, March 8, 2021 through March 23, 2021 (the date this complaint was filed) the Student's December 1, 2020 IEP was in effect.

Although the December 2020 IEP was drafted to be implemented in a private inpatient facility, when a student eligible for special education transfers from one district to another, the new district, in consultation with the parents, must provide comparable services to those described in the student's IEP, until the new district either: adopts the student's IEP from the previous school district; or develops, adopts, and implements a new IEP that meets the applicable requirements.

Here, the Student began attending District in January 2021, but due to the IEP team's decision to conduct a reevaluation—given the substantial change in education setting from full time inpatient facility to District—the Student's IEP team did not create a new IEP for the Student until March 19, 2021. The March 19, 2021 prior written notice stated that the March 2021 IEP would be initiated on March 25, 2021.

The Parent alleged the school failed to provide the accommodations in the Student's December 2020 IEP; however, the psychologist emailed the Parent and stated that as part of the Student's transfer from district 2 to the District, the Student would receive a 1:1 paraeducator throughout his school day and that a new IEP would be written as soon as possible, but in the meantime noted that while the district 2 IEP goals and accommodations would be applicable some of the accommodations may not be as applicable in the District setting. This is acceptable as the District, per transfer procedures, must provide comparable services and is not necessarily required to implement the transfer IEP exactly as written. Here, the Student did not have a 1:1 paraeducator in the December 2020 IEP, and it appears the District provided the 1:1 paraeducator in place of several accommodations provided in the inpatient setting.

In her March email exchanges with the principal, the Parent seemed particularly concerned that the District was pushing the Student to participate in PE and that that was putting too much pressure on the Student. The Parent asked for a PE alternative. The Student had a recess alternative as an accommodation in his district 2 December 2020 IEP, but no accommodations for PE. Further, the District did not appear to be pushing PE, rather making sure the parent knew the course was an ongoing option. When the Parent said the Student was not ready for PE, the March 19, 2021 prior written notice stated the Student would revisit the possibility of PE after spring break and could continue to participate in music class as an alternative.

Further, Parent expressed concern that the Student did not have access to gum or fidget accommodations and praise accommodations. There is no mention throughout documentation

provided in response to this complaint that indicates the Parent or Student requesting gum or fidgets for the Student at the time, and it appears this may be an accommodation from the December 2020 IEP that was not required for the Student to access his education at the District, particularly while receiving the support of a 1:1 paraeducator. As noted above, while the gum accommodation was part of the December 2020 IEP, there is no evidence that the District's decision not to provide this accommodation caused any material harm to the Student's ability to access his education. The Student worked in close proximity daily with the paraeducator, whose schedule reflected her role was to support and calm the Student during their time together.

Although Student praise was not explicitly stated in the paraeducator's role, it seems reasonable to assume praise was part of the supporting and calming techniques she used with the Student. Further, while praise for the Student was not explicitly recorded in the Student's daily checkouts, it is likely from the special education teacher's notes praising the Student that she was sharing this praise with the Student as they worked together daily to process the events of the day. Based on the documentation provided by the Parent and the District in response to this complaint, it does not appear there was a material failure of services provided to the Student under the December 2020 IEP after March 8, 2021. OSPI finds the District implemented comparable services based on the December 2020 IEP and thus finds no violation.

Issue Three: IEP Development - The Parent alleged in her complaint that the District failed to properly respond to the Parent's request that new accommodations be added to the Student's IEP. After reviewing the documentation provided by both parties in response to this complaint, it appears the Parent's concern was not that the District failed to add new accommodations to the March 2021 IEP, rather the Parent felt that in transitioning the Student from the inpatient facility to the District, the District removed too many accommodations from the December 2020 IEP.

When developing an IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. Here, the IEP team removed 27 accommodations at the March 19, 2021 IEP meeting and added 2 in their place. At first glance, this may seem like a significant reduction, but it is important to recognize the impact of the difference in the Student's education setting, the impact of providing the Student with a dedicated 1:1 paraeducator he did not have at the inpatient facility, and the Student's progress since returning to the District that the District has recorded. For example, since the March 2021 IEP team decided the Student no longer required specially designed instruction in math, it seems appropriate that the accommodations for mathematical manipulatives and multiplication tables were removed.

The Parent did make several requests during the IEP meeting, all of which the District addressed. The Parent requested that the benchmarks in the paraeducator fade plan (part of the March 2021 IEP) include data regarding suicidal threats and emergency room events. The District noted that both these concerns were happening in the home setting only and to which the District responded in its March 19, 2021 prior written notice, "The paraeducator fade plan is based on observable behaviors in the school setting. The school staff will be watchful for signs of suicidal ideation

during the school day.” By not acknowledging data regarding suicidal threats and emergency room events happening at home, the IEP team may be missing some functional needs of the Student that are present at school. While the IEP team can only observe the behaviors that occur in the school setting, parent participation is such a critical part of the IEP team as it provides this other perspective. The Parent is expected to be an equal participant, because she provides critical information regarding the strengths of the child and expresses her concerns based on her experience with the child outside of the educational setting. However, while the District must consider the Student as a whole person, taking into consideration the perspective the Parent brings to the IEP team from outside of school, there is no evidence that the District failed to properly respond to Parent’s requests regarding adding accommodations to the Student’s IEP. Not adding these specific elements to the paraeducator fade plan does not rise to the level of a violation.

The Parent also alleged that the District failed to consider any change in the Student’s needs resulting from the Student’s disability since the prior IEP was developed. Since March 8, 2021, the District has provided a 1:1 paraeducator who works with the Student for the duration of his time at school and has been closely monitoring the Student’s progress with daily “check outs” with his special education teacher and paraeducator, and has been monitoring the Student’s daily recess progress monitoring. Further, the District conducted a reevaluation specifically to look at the Student’s changing needs. In the March 2021 reevaluation, the evaluation team reviewed data from both partial and full time Student days, along with conducting new assessments. Further, the Parent alleged the District failed to consider any relevant information gathered by Student’s previous inpatient facility. The District made several requests for the Parent to sign a records release so the District could review the Student’s records from his previous facilities, but the Parent did not sign a release. Regardless, the District did consider relevant information gathered by Student’s inpatient facility prior to March 8, 2021 when the principal spoke with the Student’s former special education teacher from the inpatient facility, and on several occasions after March 8, 2021, the IEP team invited members of the intensive day program representative to attend the Student’s IEP meeting, as well as had members of Student’s WISE team. The IEP team was open to the Parent inviting the CLIP psychologist to the March 2021 IEP meeting and copied Student’s WISE and former inpatient facility staff on group emails regarding the March 2021 evaluation and IEP meeting. Based on the documentation provided in response to this complaint, as of March 8, 2021, the District properly considered relevant information gathered by the Student’s previous inpatient facility and considered the Student’s changed needs.

Finally, several of the Parent’s requests were not specifically added to the IEP but were likely addressed by the support of the paraeducator.

For example, in addition to the Student’s continued issues with his computer usage, the Parent also requested that the Student have written instructions for computer usage physically attached to his computer. Based on the documentation provided in this complaint, although the District did not affix instructions to the Student’s computer, it appears that after March 8, 2021, the paraeducator was in close enough proximity to consistently address and correct the issue. If the Parent’s position is that despite the resolution of these issues with the computer during the day

the computer usage and resulting conflicts are causing escalations that are unsafe for the Student at home, this is data that should be shared with and considered by the IEP team in developing the Student's IEP.

The proximity of the paraeducator also impacted how the Student passes between classes, as the paraeducator is always within 6 feet of the student. This proximity requirement directly addressed Parent's concerns for modification of the passing time between classes to ensure Student safety and wellbeing. Based on data provided in the Student's 2021 evaluation, it appears the Student can manage passing through the halls with his peers, with the support of the paraeducator within a 6-foot proximity.

The Parent also inquired with the District regarding paraeducator support on remote learning days, but the District addressed this concern by clarifying that since the paraeducator support was in place for safety issues that occur at school, the paraeducator was not necessary for the Student to access his education remotely.

The Parent also expressed concern that the goals in the March 2021 IEP were too aggressive, but the goals were reduced from three social/emotional goals (self-advocate, self-calming, and appropriate interactions) to one goal which focused on raising his hand and not interjecting. Likewise, the student went from having three math goals in his December 2020 IEP to only one written language spelling goal. The goals in the 2021 IEP do not appear to be more intensive than the goals in the December 2020 IEP.

Overall, OSPI finds the District properly developed the Student's March 2021 IEP, taking into consideration information provided by the Parent, the reevaluation, information from the Student's previous inpatient facility, and addressed the Parent's various requests. OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this day of May, 2020.

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200

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.)