

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-48**

### **PROCEDURAL HISTORY**

On June 9, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Cheney School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On June 9, 2017, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. However, on June 5, 2017, OSPI received a copy of a request for a due process hearing filed by the Parent regarding similar issues identified by OSPI in the complaint. OSPI notified the District and the Parent that OSPI cannot investigate issues that are the subject of a pending due process hearing and placed the issues identified for investigation in abeyance.

On June 19, 2017, OSPI received notice that the due process hearing had been dismissed.

On June 22, 2017, OSPI notified the District and the Parent that it would proceed with the investigation of SECC 17-48 and asked the District to respond to the allegations made in the complaint.

On July 14, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on July 17, 2017. OSPI invited the Parent to reply with any information he had that was inconsistent with the District's information.

On July 26, 2017, OSPI received the Parent's reply and forwarded that reply to the District on the same day.

On August 7, 2017, OSPI requested additional information from the District. On August 8, 2017, OSPI received the requested information from the District and forwarded the information to the Parent on August 9, 2017.

OSPI considered all of the information provided by the Parent and the District as part of its investigation. The time period under investigation begins on June 20, 2016; findings of facts provided before this time are for background information only.

### **OVERVIEW**

During the 2016-2017 school year, the Student attended a District elementary school and was eligible to receive special education services under the category of emotional/behavioral disability. In November 2016, the Parent requested a reevaluation, which included a functional behavior assessment (FBA). In December 2016, the District received written consent from both of the Student's parents. In late February 2017, the District suspended the Student, which resulted in the Student being removed from school for 10.5 days based on a series of suspensions. In March 2017, the District completed

the Student's reevaluation and changed the Student's special education eligibility category to other health impairment. Also in March 2017, the District conducted a manifestation determination review and determined the Student's behavior in late February was a manifestation of his disability. From March through June 2017, the Student continued to have behavioral incidents, which resulted in additional suspensions and the Student being removed for a total of 23.5 school days during the school year. The District then completed the Student's FBA in July 2017, after the end of the District's school year. The Parent alleged that the District failed to follow special education disciplinary procedures. The District denied the allegations.

### **ISSUE**

1. Did the District follow special education discipline procedures during the 2016-2017 school year?

### **LEGAL STANDARDS**

Expulsions: An expulsion is a denial of attendance for a period of time up to, but not longer than, one calendar year from the time a student is removed from his or her current school placement. WAC 392-400-205(6).

Suspensions: When a district suspends or expels any student, it must make sure the removal is consistent with state laws and regulations governing discipline for all students, in addition to protections afforded eligible special education students under IDEA. A suspension is a denial of attendance (other than for the balance of the immediate class period for "discipline" purposes) for any single subject or class, or for any full schedule of subjects or classes for a stated period of time. WAC 392-400-205(2).

Parental Notice and Procedural Safeguards: No later than the date on which the district makes the decision to remove a student, creating a change of placement through discipline for more than ten school days, it must notify the parents of that decision. A copy of the parents' procedural safeguards under the IDEA must accompany this notification. 34 CFR §300.504; WAC 392-172A-05015(1); WAC 392-172A-05145(8).

Disciplinary Removals – No Change of Placement: School districts may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155. A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or fewer in that school year, if it provides services to a student without disabilities who is similarly removed. 34 CFR §300.530; WAC 392-172A-05145.

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 has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services 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. If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. 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-05145(5).

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, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or, if a behavioral intervention plan already has been developed, review the behavioral intervention plan, 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 behavioral intervention plan. 34 CFR §300.530(f); WAC 392-172A-05145(6).

Functional Behavior Assessment (FBA): An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a behavioral intervention plan (BIP) that will reduce or eliminate the misbehavior. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2). An FBA is

generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP. As with other individualized evaluation procedures, and consistent with 34 CFR §300.300(a) and (c), parental consent is required for an FBA to be conducted as part of the initial evaluation or a reevaluation. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4).

Behavioral Intervention Plan (BIP): A behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031 (effective January 29, 2016).

Positive Behavioral Interventions: Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior. WAC 392-172A-01142.

## **FINDINGS OF FACT**

### **Background Information**

1. During the 2015-2016 school year, the Student attended a District elementary school.
2. On April 13, 2016, the District referred the Student for a special education evaluation because the staff had concerns that the Student was exhibiting speech delays and behavior issues. The referral form stated the Student's strengths were academics, cognitive ability, motor skills, and language, and the Student's needs were articulation, social skills, and behavior.
3. On April 26, 2016, the Parent provided written consent for the District to evaluate the Student.
4. Also on April 26, 2016, the District issued prior written notice, proposing to complete an initial evaluation of the Student. The notice stated the Student may have

articulation and behavior delays that are adversely impacting his performance at school and may require specially designed instruction.

5. On May 27, 2016, the Student's evaluation team, including the Parent, met to review the results of the Student's initial evaluation and determined the Student was eligible to receive special education under the category of emotional/behavioral disability. The evaluation report stated the Student was twice exceptional and that while he is cognitively and academically gifted, the Student's behavior and emotional delays interrupt his learning and that of his classmates. The evaluation report also stated that the Student struggled with following adults' directions, that his mood swings negatively impacted his ability to build stable relationships with both peers and adults, and that his behaviors required that he be excluded from the classroom for a substantial period of time. The evaluation report further stated the Student's articulation deficits impacted the Student's oral performance in the classroom and may limit his interactions with adults and peers. The evaluation report recommended specially designed instruction in the area of communication and behavior.
6. On June 1, 2016, the Student's individualized education program (IEP) team, including the Parent, met to develop the Student's IEP. The IEP stated the Student was "academically at or exceeding grade level in all areas" but that the Student's behavior and emotion adversely impact his ability to be safe, calm, and compliant in a general education setting. The IEP also stated the Student refused to engage in classroom learning, often openly defies school rules, becomes angry, aggressive, and defiant when re-directed back to a task, and makes profane remarks and inappropriate comments. The IEP also stated that the Student's behavior impeded his learning and that of others, identified "specific behaviors of substantial concern," and provided recommendations to "support the Student to develop more pro-social behaviors". The IEP did not include a behavioral intervention plan (BIP), and did not indicate if the IEP team discussed if an emergency response protocol was needed. The IEP included annual goals in the areas of behavior and communication.

The IEP stated the Student would be in the general education setting approximately ninety percent of the school day and provided for specially designed instruction in the area of behavior and speech as follows:

- Behavior: 150 minutes, 1 time weekly – special education
- Speech Therapy: 20 minutes, 1 time weekly – special education

The IEP provided for accommodations/modifications related to the Student's behavior in the classroom setting as follows:

- Behavior Support Plan/Success Chart – throughout the school day
- Breaks in a different environment – as needed

7. Also on June 1, 2016, the Parent provided written consent for the District's initial provision of special education services for the Student.
8. The District's 2015-2016 school year ended on June 10, 2016.

### **Timeline for the Complaint begins June 20, 2016**

9. The District's 2016-2017 school year began on August 31, 2016.
10. At the beginning of the 2016-2017 school year, the Student continued to attend the same District elementary school, and his June 2016 IEP continued to be in place. The Student was in third grade.
11. According to the Student's attendance record, the Student served one day of in-school suspension on October 31, 2016.
12. On November 3, 2016, the District director of student support services (support services director) sent a letter to the Parent, acknowledging receipt of the Parent's "letter dated October 28, 2016".<sup>1</sup> The support services director stated she had noted the Parent's request for an early reevaluation and request for functional behavior assessment (FBA). The support services director stated the District would begin an FBA once it received consent from the Parent and that the District would "complete the FBA, continue to collect data and complete a sensory screener as our first steps".
13. According to the Student's attendance record, the Student served two days of in-school suspension from November 9-10, 2016. Including this occasion, the Student had been suspended for three (3) school days during the current school year.
14. On November 15, 2016, the District sent a letter to the Parent, notifying him that the Student was suspended from school for 1.5 days. The letter stated the Student made threats to harm himself, threatened to bring a pocket knife to school, and then the Student began "jumping off the arena stairs and running in circles". The letter also stated that the District called both of the Student's parents and the Parent came to pick up the Student. The letter also stated the Student violated District policy, specifically disruptive conduct. The suspension was effective on November 15-16, 2016. Including this occasion, the Student had been suspended for four and a half (4.5) school days during the current school year.
15. On November 29, 2016, the District sent a letter to the Parent, notifying him that the Student was suspended from school for 1.5 days. The letter stated the Student eloped from his classroom and the school building, and refused to return for 45 minutes. The letter also stated that after the Student returned to the school office, his behavior escalated and he eloped from the office and "began running around the arena". The letter further stated the Student violated District policy, specifically failure to cooperate. The suspension was effective on November 29-30, 2016. Including this occasion, the Student had been suspended for six (6) school days during the current school year.
16. On December 2, 2016, the Student's parents provided written consent for the District to reevaluate the Student. The District's reevaluation notification included completing a FBA and "sensory profile".

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<sup>1</sup> Neither the District nor the Parent provided OSPI the October 28, 2016 letter in response to this complaint.

17. According to the District's response to this complaint, it contracted with a private behavioral specialist to complete the FBA, and to provide consultation, recommendations, and strategies regarding the Student's behaviors.<sup>2</sup>
18. On December 7, 2016, the District sent a letter to the Parent, notifying him that the Student was suspended from school for half a day. The letter stated the Student eloped from the classroom when the teacher did not give the Student permission to work on the computers, slid down the banister, and ran and climbed in the arena. The letter also stated the Student reported that he was "only going to be in the arena today". The letter further stated that the District called both of the Student's parents and the Student's neighbor came to pick up the Student. The letter also stated the Student violated District policy, specifically failure to cooperate. The suspension was effective on December 7, 2016. Including this occasion, the Student had been suspended for six and a half (6.5) school days during the current school year.
19. The District was on break December 19, 2016 through January 2, 2017.
20. According to the Student's attendance record, the Student served one day of in-school suspension on January 5, 2017. Including this occasion, the Student had been suspended for seven and a half (7.5) school days during the current school year.
21. On January 12, 2017, the District sent a letter to the Parent, notifying him that the Student was suspended from school for one day. The letter stated the Student disrupted the learning environment when he was using items from home without teacher permission, when he refused to surrender them to the classroom teacher, when he was yelling and arguing, and when he slid his desk across the classroom. The letter also stated the Student eloped from the classroom, hid under a table in the hallway, and interrupted the learning interventions in the hallway by making loud noises with the chairs, running up and down the hallways, and sliding down the railings. The letter stated the Student violated District policy, specifically disruptive conduct. The suspension was effective on January 12, 2017. Including this occasion, the Student had been suspended for eight and a half (8.5) school days during the current school year.
22. On January 24, 2017, the District sent a letter to the Parent, notifying him that the Student was suspended from school for one day. The letter stated the Student disrupted the learning environment when he scooted his chair around the classroom, yelled and argued with the teacher, and refused to report to the office as directed by the teacher. The teacher evacuated the classroom and the Student continued to be argumentative and disrespectful, refusing to follow the directions of several staff members. The letter also stated that the District called the Parent, and that the Student violated District policy, specifically disruptive conduct. The suspension was effective on January 24, 2017. Including this occasion, the Student had been suspended for nine and a half (9.5) school days during the current school year.

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<sup>2</sup> Based on the documentation provided by the District in response to this complaint, it is unclear when the District began its contract with the behavioral specialist.

23. On February 1, 2017, the Parent agreed in writing to extend the proposed completion date of the reevaluation to March 3, 2017. On February 18, 2017, the Student's mother also agreed in writing to the extension. The notice stated the District was "waiting for outside evaluation results" from a behavioral health provider and the District's contracted behavioral specialist.
24. On February 3, 2017, the District sent a letter to the Parent, notifying him that the Student was suspended from school for a half day. The letter stated the Student disrupted the learning environment when he refused to participate in the Monday morning spelling routine and eloped from the classroom to the arena. The Student had also refused to follow directions when the elementary school principal directed him to the office, and that he climbed on the banister, threw objects, and ran around the arena. The letter stated that the District called both of the Student's parents and that the Parent picked up the Student from school. The letter stated the Student violated District policy, specifically disruptive conduct. The suspension was effective on February 3, 2017. Including this occasion, the Student had been suspended for ten (10) school days during the current school year.
25. Between February 17-27, 2017, the school psychologist and the Parent emailed each other regarding completing the intake assessments for the FBA.
26. On February 24, 2017, the District sent a letter to the Parent, notifying him that the Student was suspended from school for a half day. The letter stated the Student disrupted the learning environment by calling his classroom teacher names, refusing to participate in the morning tasks, and drawing inappropriate pictures of staff members. The Student was also running and yelling through the hallways, and kicking and throwing balls. The letter also stated the Student eloped to the arena and climbed on the table and chairs, and threw objects. As a result, the District called both of the Student's parents and the Parent picked up the Student from school. The letter stated the Student violated District policy, specifically disruptive conduct. The suspension was effective on February 24, 2017. Including this occasion, the Student had been suspended for 10.5 school days during the current school year.
27. On February 27, 2017, the school psychologist emailed the Parent, stating that February 24 was the tenth day the Student was removed from school and suggested adding a manifestation determination review to the meeting previously scheduled for March 3 to review the results of the Student's reevaluation. The Parent responded, stating that he requested a meeting prior to the 10 days of suspension, but the elementary school principal and special education teacher decided to wait until the Student was suspended for ten days. The Parent also stated he believed the Student's behaviors constitute a pattern because "it is always misconduct and disrespect".
28. Also on February 27, 2017, the District issued prior written notice, proposing to initiate a manifestation determination on March 3, 2017. The notice stated the manifestation determination is required by law and that team discussion is "vital to supporting the Student".



29. Between February 28 and March 2, 2017, the school psychologist and the Parent communicated via email about the draft copy of the Student's reevaluation. The psychologist answered the questions the Parent asked about the draft of the reevaluation.
30. On March 3, 2017, the Student's IEP team, including the Parent, met to review the results of the Student's reevaluation. The reevaluation report stated the Student was diagnosed as having a depressive disorder with anxious distress, and the frequency, duration, and intensity of the Student's behavior significantly impacted his ability to participate in the general education classroom, and that even with substantial behavior supports, he caused a significant disruption to the learning environment. The reevaluation report stated the Student's adaptive skills were below average when compared to his same age peers. The reevaluation report also stated the "Parent and teacher GARS-3 rating scales both yielded scores that fall in the 'very likely' probability range of [autism spectrum disorder]" and the Student's mother's rating scale fell "in the 'probable' range of [autism spectrum disorder]". The reevaluation further stated the Student was 60% accurate when articulating /s,z/ sounds independently and that he still required speech services. The reevaluation report recommended that the Student receive specially designed instruction in the area of communication and adaptive behaviors, and occupational therapy consultation as a related service. The reevaluation report did not include the results of the Student's FBA. The IEP team changed the Student's eligibility category from emotional/behavioral disability to other health impairment based on the depressive disorder diagnoses. The District issued prior written notice regarding the results of the reevaluation on this same day.
31. Also on the March 3, 2017, the IEP team conducted a manifestation determination review. The IEP team determined that the Student's conduct on February 24 was a manifestation of his disability. The team discussed that the Student had received significant positive behavior support and had a plan in place to address the disruptive behavior<sup>3</sup>, and that a contract behavioral specialist was conducting an FBA. The District issued prior written notice regarding the results of the manifestation determination meeting, on this same day. The prior written notice stated that an "FBA must be completed and a BIP developed and implemented."
32. On March 9, 2017, the District sent a letter to the Parent, notifying him that the Student was suspended from school for 1.5 days. The letter stated the Student refused to engage in the classroom, refused to follow the classroom teacher's instructions, threw food at the teacher, and threw objects around the classroom. The letter also stated the Student ran down the hallway, jumped from chairs, made disrespectful comments to staff members, and that the Student refused to cooperate with staff for two (2) hours. The letter also stated that the District left two voicemail messages before contacting the Parent at work. The letter said the Student violated District policy, specifically exceptional misconduct. The suspension was effective March 9-10, 2017. Including

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<sup>3</sup> Based on the documentation provided by the District in response to this complaint, it is unclear what plan the District had in place to address the Student's disruptive behavior.

this occasion, the Student had been suspended for 12 school days during the current school year.

33. On March 14, 2017, the District sent a letter to the Parent, notifying him that the Student was suspended from school for a half day. The letter stated the Student refused to engage in the classroom activities and eloped from the special education classroom to the arena. The letter also stated the Student threw a chair in the arena and threw clothes from “the lost and found” bin around the tables, climbed and jumped on the tables, and hit the principal with a basketball. The letter further stated the Student then eloped from the building, but was escorted back by law enforcement. The letter stated the Parent sent the Student’s emergency contact to pick up the Student from school. The letter also stated the Student violated District policy, specifically exceptional misconduct. The suspension was effective on March 14, 2017. Including this occasion, the Student had been suspended for 12.5 school days during the current school year.
34. On March 17, 2017, the IEP team, including the Parent, met to develop a new IEP for the Student based on the results and recommendations of the Student’s March 2017 reevaluation. However, the IEP team did not make a determination regarding the Student’s placement and agreed to hold another IEP meeting on March 23, 2017.
35. On March 23, 2017, the IEP team, including the Parent, met to finish developing the Student’s new IEP based on the results and recommendations of the Student’s March 2017 reevaluation. The March 23, 2017 IEP stated the Student qualified for the highly capable program and was currently at grade level in all academics but due to the Student’s escalating behaviors, the Student was not accessing the general education curriculum and his academic performance was declining. The IEP further stated the Student’s sensory processing skills were resulting in some problems for the Student both at home and in the classroom, as the Student responded negatively to loud noises by running away, became distressed by the feel of new clothes, and seemed to enjoy sensations that should be painful, such as crashing to the ground. The IEP also stated the Student could engage at length in intellectual conversations about topics the Student preferred, but did not “appear to be interested in other people’s opinions or ideas”. The IEP also stated that the Student’s behaviors impacted the Student’s ability to participate in the general education classroom without substantial behavioral support. The IEP said the Student’s schedule was modified to address his behavior needs and that a FBA was being conducted through the contracted behavioral specialist. The IEP also stated that the Student’s behavior impeded his learning and that of others and listed interventions, strategies, and supports that would benefit the Student, such as: providing the Student headphones with music to calm him, limiting transitions, and avoid engaging with the Student when he argued. The March 2017 IEP did not include a behavioral intervention plan (BIP), and did not indicate if the IEP team discussed if an emergency response protocol was needed. The IEP provided for specially designed instruction in the area of adaptive behavior, communication, and included occupational therapy consultation as a related services for sensory processing. The IEP included annual goals in communication and adaptive behavior.

The IEP stated the Student would be in the general education setting approximately thirty-five percent of the school day and provided for the following services:

- Adaptive Behavior: 227 minutes, 1 time daily – special education
- Speech Therapy: 20 minutes, 1 time weekly– special education
- Occupational Therapy Consultation, 15 minutes, 1 time monthly – special education

The IEP provided for accommodations/modifications as follows:

- Adult coach model
- Explicit directions
- Frequent praise and encouragement
- Preferential seating
- Frequent breaks during testing
- Provide the Student a copy of his schedule
- Separate testing location
- Snacks
- Visual/digital timers
- Behavioral Related: alternative schedule
- Behavioral Related: adult proximity
- Content Area: high interest topics
- Content Area: individualized learning
- Support for School Personnel: training around behavioral supports and response

36. The District was on break April 3-7, 2017.

37. According to the District's response to this complaint, on April 28, 2017, the elementary school principal and assistant principal met with the Parent to update him on the new plan for the Student, which consisted of schedules, tasks, check-ins, and work with the contract behavioral specialist. According to the District's response to this complaint, the District was "in communication with the contract specialist and implemented his recommendations and strategies". The District's documentation in response to this complaint contained a draft plan prepared by the contract behavioral specialist.<sup>4</sup> This plan stated it is the purpose "to outline the procedures, materials, and data collection modalities pertinent to [the Student] and his school days as a student in a general education 3<sup>rd</sup> grade program". The plan described positive behavior support suggestions, including antecedent interventions, skills training, and consequences. The plan described a fading plan and included a daily calendar for the Student. The plan did not identify the pattern of behavior of the Student that impeded the Student's learning and the learning of others, and did not identify instruction or environmental conditions that contribute to the pattern of the Student's behavior. The District's documentation does not show that the Student's IEP team reviewed the proposed plan.

38. On May 17, 2017, the District sent a letter to the Parent, notifying him that the Student was suspended from school for a half day. The letter stated the Student argued with staff members, called a staff member a profane name, repeatedly threw bark from the playground, hitting staff members and students, eloped from the playground, and refused to follow directions for 45 minutes. The letter also stated that the District called

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<sup>4</sup> The District provided a draft copy of the contract behavioral specialist's plan that is not dated and not signed. It is unclear when the District began to implement the plan drafted by the contract behavioral specialist provided in the documentation.

the Parent. The suspension was effective on May 17, 2017. Including this occasion, the Student had been suspended for 13 school days during the current school year.

39. On May 23, 2017, the District sent a letter to the Parent, notifying him that the Student was suspended from school for a half day. The letter stated that during recess, the Student refused to stop playing with the sprinkler, turned the sprinkler on an adult and soaked her clothing, and then “stood up on a bench and began flipping everyone off with both hands, refusing to stop”. The letter stated the Student then shut himself inside a closet, cried under a table, and refused to report to the office. The letter said the Student violated District policy, specifically exceptional misconduct. The suspension was effective on May 23, 2017. Including this occasion, the Student had been suspended for 13.5 school days during the current school year.
40. On May 25, 2017, the District emergency expelled the Student for “exceptional misconduct”. The next day, the District sent a letter to the Parent, notifying him of the Student’s emergency expulsion. The letter stated the Student was making loud noises, forcefully throwing objects, using inappropriate language, and calling staff members profane names and that once the teacher evacuated the classroom, the Student’s behaviors escalated and the Student continued to throw objects, and climb and jump off classroom furniture.<sup>5</sup> Additionally, the letter said the Student had stated, “I can’t wait to die” and “I hope everyone in this school – teachers, students, and including me die”. The letter requested that the Parent take the Student to a “mental health profession to conduct a risk assessment to ensure the Student’s well-being”. The letter further stated the Parent could request a hearing to contest the allegations and that the deadline to make the request was three school business days after receipt of the letter.<sup>6</sup> The letter also stated that the District had “a tutor available. Please call the front office to notify us if you are interested.” The letter further stated the Student could not attend or participate in any extracurricular activities and may not be present on District property. This emergency expulsion was effective beginning May 25, 2017.
41. Also on May 25, 2017, the Parent emailed the District’s contracted behavioral specialist, inquiring if the District developed a BIP for the Student. The Parent stated the Student was evaluated by medical professionals and they determined the Student’s statements regarding harming himself were an “ideation and not an active threat”. The Parent also expressed his frustration that the Student was being emergency expelled from school because the Student was making statements about harming himself. The behavioral specialist responded, stating the Student was doing better at school with “a few minor blips” and that “there is not a BIP to my knowledge”. The behavioral specialist stated he developed a “treatment package” for the Student that outlined the use of a token economy system to motivate the Student to increase specific behaviors.

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<sup>5</sup> The letter stated the Student’s classmates could not access their classroom for over two hours while the Student’s negative behaviors were escalating.

<sup>6</sup> The District acknowledges that it erroneously provided an inaccurate address for the District office to the Parent and has since made correction to its system.

42. On May 26, 2017, the principal sent the Parent a letter and enclosed “academic work to support the Student”. The letter stated the special education teacher provided activities from his social skills class and the general education teacher included activities from math, science, and social studies.
43. On May 30, 2017, the Parent sent the principal a letter, requesting a hearing to dispute the Student’s May 25 expulsion. The Parent also expressed frustration that the District had not completed the FBA nor developed a BIP for the Student as the Parent requested in November 2016.
44. On May 31, 2017, the District invited the Parent to a meeting to review the Student’s IEP and “review and update [the Student’s] behavior plan”<sup>7</sup> scheduled for June 7, 2017.
45. On June 1, 2017, the District associate superintendent emailed the Parent, notifying him that a hearing to address the Student’s emergency expulsion from school was scheduled for June 5, 2017. The associate superintendent also stated he attached the full hearing notice and details regarding the hearing.
46. Also on June 1, 2017, the Student came onto the District middle school campus. According to written statements from District middle school staff, the Student was yelling obscenities and brandishing a toy rifle cap gun on the middle school campus while students were boarding their school busses. When the Student attempted to elope from the area, middle school staff formed a barrier to contain the Student and prevented him from running into the parent pick up area. When two law enforcement officers arrived, the Student continued to yell obscenities and statements to encourage law enforcement to harm the Student. The Parent arrived and a law enforcement officer told him that the Student would need to be transported to the hospital for an evaluation. When the ambulance arrived to transport the Student, he got into the vehicle of his own volition.
47. On June 2, 2017, the District sent a letter to the Parent, stating that “the emergency expulsion issued on Thursday May 25<sup>th</sup>, 2017 is hereby terminated”. Including this six (6) day expulsion from school, the Student had been suspended for 19.5 school days during the current school year.
48. However, also on June 2, 2017, the District emergency expelled the Student for the exceptional misconduct, which occurred on June 1. The letter stated the Student was trespassing on school property, brandishing a toy gun in a threatening manner, aggressively striking other people with the toy gun, refusing to follow directions of middle school staff members, and caused a disruption at the middle school. The letter further stated the Parent could request a hearing to contest the allegations and that the deadline to make the request was ten (10) school business days after receipt of the letter. The letter also stated that the District had “a tutor available for up to 8 hours

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<sup>7</sup> Based on the documentation provided by the District in response to this complaint, it is unclear what “behavior plan” was under review.

per week with a location to be determined.” This emergency expulsion was effective beginning June 2, 2017.

49. Also on June 2, 2017, the Parent emailed the Student’s special education teacher, District associate superintendent, and the District superintendent, requesting that the IEP team meet in conjunction with the discipline hearing. In response, the associate superintendent stated that an IEP team meeting and a discipline hearing were separate processes and would not be held together. The associate superintendent stated that the support services director would contact the Parent to schedule an IEP meeting.
50. Also on June 2, 2017, the Parent forwarded the behavioral specialist’s May 25, 2017 email to the superintendent and the associate superintendent, requesting a BIP. The Parent stated the Student’s behaviors is “ideation and driven by escape” and that the behavior will likely continue until it’s addressed with a BIP”.
51. On June 4, 2017, the Parent emailed the associate superintendent, the special education teacher, the superintendent, and the support services director, requesting a due process hearing. The Parent stated he attached a copy of the request and a copy of the rules for disciplining students receiving special education services.
52. On June 6, 2017, the associate superintendent emailed the Parent a copy of the District’s discipline hearing officer’s decision upholding the District’s decision to expel the Student on May 25.
53. On June 7, 2017, the Student’s IEP team, including the Parent, met to review the Student’s IEP.<sup>8</sup> The IEP team discussed the Student’s placement and determined that a highly structured special education program located in a second District elementary school (elementary school 2) would be the most appropriate placement to meet the Student’s unique needs. The IEP team also discussed how to support the Student when he returned to school with only seven (7) days left in the school year. The IEP team then amended the Student’s March 2017 IEP to reflect the Student’s change in placement to elementary school 2, and increased the amount of services the Student would receive as follows:
  - Adaptive Behavior: 347 minutes, 1 time daily – special education
  - Speech Therapy: 20 minutes, 1 time weekly– special education
  - Occupational Therapy Consultation, 15 minutes, 1 time monthly – special education
54. Also on June 7, 2017, the District issued prior written notice, proposing to initiate a change in placement for the Student on June 9, 2017.
55. According to the District’s response to this complaint, on June 9, 2017, the Student began attending the special education program at elementary school 2.

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<sup>8</sup> The June 7, 2017 IEP cover page notes both of the Student’s parents participated in the IEP team meeting via telephone.

56. On June 9, 2017, the Parent sent an email withdrawing his request for a due process hearing.
57. The District's 2016-2017 school year ended on June 14, 2017. The Student had been suspended 23.5 school days during the school year.
58. On June 30, 2017, the District issued prior written notice to the Parent, notifying him the District was proposing to initiate action to finalize the Student's FBA and review the Student's behavior intervention plan on July 7, 2017. The notice stated that sufficient data was available to complete the FBA.
59. On July 7, 2017, the Parent, the student support services director, the student support services assistant director, and the contracted behavioral specialist met to review the results of the FBA. The FBA identified the Student's "low level behaviors" as yelling, pseudo-profanity, profanity, insulting others, leaving designated areas including the building which escalate to "high level behaviors" such as throwing objects, overturning furniture, making suicidal threats, climbing on the furniture, stairs, and banister. The FBA stated, "IEP and support plan were implemented and were successful for eight (8) weeks. This plan was implemented from the work of the [contract behavioral specialist]."<sup>9</sup> The assessment hypothesized the Student engaged in the behaviors when he was trying to escape a task and identified antecedent events and recommended teacher strategies to minimize the Student's disruptive behaviors. The FBA stated consequence strategies could include a token chart, strong encouragement, linking rewards to the Student's home activities, and end of the day check-ins. The assessment recommended the IEP team develop a BIP.
60. Later on July 7, 2017, the support services director emailed the Parent, the contract behavioral specialist, and the District assistant director of student support services, stating that a copy of the revised final FBA and supporting documents for the Student's plan were attached.

## CONCLUSIONS

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 must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. A change in placement occurs when a student is removed from his 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. Here, on February 24, 2017, the Student was suspended for one day, which brought his

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<sup>9</sup> Based on the documentation provided by the District in response to this complaint, it is unclear whether the "support plan" was the plan drafted by the behavioral specialist and it is unclear when the District began to implement the "support plan".

total number of suspensions for the school year to 10.5 days. The District conducted a manifestation review on March 3, 2017, within five school days of the Student's suspension in conjunction with a meeting to review the Student's reevaluation results.

Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP): When a student's IEP team determines the conduct was a manifestation of the student's disability, the IEP team must either: conduct a FBA, unless the district had conducted a FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the student. Here, the District determined that the Student's behavior, which resulted in the February 24, 2017 suspension, was a manifestation of the Student's disability. At the time of the manifestation determination review, the District noted that a FBA was already in progress as requested by the Parent in November 2016. However, the FBA was not completed until after the end of the District's school year on July 7, 2017, eight months after the Parent's request. Additionally, the documentation provided for this complaint shows that the District has still not developed a BIP for the Student. Although the District's response to this complaint states the Student's IEP provided a comprehensive list of behaviors and supports for the Student, it is clear from the documentation that the Student's IEP was not appropriate to address his needs, as the District removed the Student from school because of discipline 23 days during the school year. The District's own behavior intervention process does not override the IDEA and state regulations. The District will ensure that the Student has a BIP in place prior to school beginning for the 2017-2018 school year. It is also noted that the District failed to complete the Student's FBA, which was part of the Student's March 3, 2017 reevaluation, within the timeline for the reevaluation.

Student Services: After a student is removed from his current placement for ten school days in the same school year, during any subsequent days of removal, the district must provide services 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. If the removal is a change of placement because of disciplinary removals, the IEP team determines the appropriate education services. The District was required to provide the Student services beginning his tenth and a half day of suspension and everyday thereafter. Here, the District notified the Parent that tutoring services were available to the Student the first time the Student was emergency expelled on May 25, which was his 14<sup>th</sup> day of removal. Later, when the Student was emergency expelled a second time, the District notified the Parent that only eight (8) hours of tutoring would be available to the Student. The District's documentation in this complaint does not show that the Student's IEP team ever met to determine appropriate services for the Student while he was suspended or the location of services. Instead, the District unilaterally decided to offer tutoring to the Student based on its own timeline and later arbitrarily capped the Student's services at eight (8) hours a week.

Additional Removals from School: When the District subsequently removed the Student from school additional days on March 9, March 17, May 17, May 23, May 25, and June 2, it failed to conduct manifestation determination reviews each time and failed to provide the Student with services for the days he was removed from school. The District failed to follow special education procedures.



The District will provide the Student with 14 hours of compensatory services to address the missed services.<sup>10</sup> The Student's June 2016 IEP, which was in place from the beginning of the 2016-2017 school until March 23, 2017, provided for approximately 30 minutes a day of specially designed instruction for behavior and speech. Had the District provided the Student's services when the Student was suspended 2.5 days for behavioral incidents from February 24, 2017, the Student would have received approximately 1.25 hours of instruction in behavior.

The Student's March 2017 IEP provided for 227 minutes a day of specially designed instruction for adaptive behavior. Had the District provided the Student services when the Student was suspended and expelled from school for 11 days for behavioral incidents from March 24, 2017 through June 9, 2017, when the Student returned to school, the Student would have received approximately 42 hours of instruction in adaptive behavior.

Taking into consideration the more intensive individualized instruction that can be provided through one-to-one tutoring, the District will provide the Student with approximately 1/3 the amount of hours he should have received had the District provided services in accordance with special education discipline procedures. The District will provide 14 hours of compensatory education to the Student in individual tutoring sessions to address adaptive behavior. The specially designed instruction will occur outside of the District's school day and be provided by a certificated special education teacher.

### **CORRECTIVE ACTIONS**

By or before **September 15, 2017, September 22, 2017, October 20, 2017, October 27, 2017, December 1, 2017, and January 25, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

1. By **August 30, 2017**, the District will hold an IEP meeting to develop a BIP for the Student and consider whether an emergency response protocol is appropriate for the Student. By **September 15, 2017**, the District will provide OSPI with: 1) a copy of the meeting notice; 2) a copy of the BIP; 3) a copy of the Student's IEP clearly referencing the BIP; 4) a copy of the prior written notice; and, 5) any other related document.
2. By or before **September 15, 2017**, the District will meet with the Parent to develop a schedule for 14 hours of compensatory services to address adaptive behavior. Services may occur after school, or over vacations, and must occur outside of the Student's school day. Services will occur in a one-on-one setting and be provided by a certificated special education teacher. The District will provide OSPI with documentation of the schedule for services by or before **September 22, 2017**.

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<sup>10</sup> Compensatory time for the Student's speech language therapy (SLP) will not be ordered. The SLP data provided by the District in response to this complaint indicated that as a result of the Student's expulsions, he missed two SLP sessions (40 minutes total) on May 25, 2017 and June 1, 2017, and that by June 8, 2017, the Student was "now attending [a] different school". Progress reporting issued on June 5, 2017 stated the Student was making "sufficient progress to achieve his annual goal [in communication/articulation] within the duration of the IEP".

The District must provide OSPI with documentation by **October 27, 2017**, of the compensatory services provided to the Student. 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 transportation necessary for the Student to access these services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately owned vehicle rate.

By or before **January 25, 2018**, the District must provide OSPI with documentation that it has completed compensatory services for the Student. This documentation will 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. Additionally, this documentation will include payments, if any, made to the Parent for travel reimbursement.

**DISTRICT SPECIFIC:**

The District will ensure that all District certificated staff, including educational staff associates (ESAs) and administrators, receive training regarding special education discipline procedures. The trainer will not be an employee of the District. The training will also include examples.

- By **September 22, 2017**, the District will notify OSPI of the name of the outside trainer, and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.
- By **October 20, 2017**, the District will submit a draft of the training materials to OSPI for review. OSPI will approve the materials or provide comments by November 3, 2017 and additional dates for review, if needed.
- By **December 1, 2017**, the District will submit documentation that staff participated in the training. This will include a 1) sign-in sheet from the training, and 2) roster of all certificated staff and administrators so OSPI can verify that all required staff participated in the training.

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

Dated this \_\_\_\_ day of August, 2017

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 TIS 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.)