

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-58**

### **PROCEDURAL HISTORY**

On July 28, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parents (Parents) of a student (Student) attending the Seattle School District (District). The Parents 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 July 29, 2017, the OSPI investigator requested clarification on the complaint and spoke with the Student's father via telephone.

On July 31, 2017, 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 August 22, 2017, OSPI received the District's response to the complaint and forwarded it to the Parents on August 28, 2017. OSPI invited the Parents to reply with any information they had that was inconsistent with the District's information.

On September 6, 2017, OSPI received the Parents' reply and forwarded that reply to the District on September 7, 2017.

On September 14, 2017, the OSPI investigator requested clarification on the District's response and spoke with District counsel via telephone.

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

### **OVERVIEW**

During the 2016-2017 school year, the Student attended a District elementary school and qualified for special education services under the eligibility category of emotional/behavior disability. The Student's individualized education program (IEP) team developed an IEP, which included a behavioral intervention plan (BIP), in March 2016. In October 2016, the Student moved to another elementary school within the District. The Student struggled with large escalations accompanying aggressive behaviors toward peers and adults. The Parent alleged that the District failed to implement the Student's IEP, by improperly responding to the Student when he was escalated, thereby causing him to further escalate, which resulted in negative consequences for the Student, including suspension. The Parents also alleged that although the District provided paraeducator support per the IEP, the paraeducators were monitoring the Student for data collection instead of providing the services set forth in the Student's IEP. The District denied the allegations.

## ISSUE

1. Did the District follow procedures for implementing the Student's individualized education program (IEP) during the 2016-2017 school year?

### LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) ESY services, if necessary for the student to receive FAPE; (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090 (effective January 29, 2016).

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).

## **FINDINGS OF FACT**

### **Background Facts**

#### **2014**

1. During the 2013-2014 school year, the Student attended a District elementary school (elementary school 1).
2. On January 7, 2014, a private psychologist conducted an intellectual evaluation of the Student as part of the admissions process for gifted programs within the District. The test results stated the Student's overall cognitive abilities fell at the 99<sup>th</sup> percentile, and that the Student would likely function successfully in a program designed to meet the needs of gifted children. Behavioral observations suggested that the Student benefitted from multiple breaks, which allowed him to regroup and put forth his best effort.
3. In February 2014, the District conducted the Student's initial evaluation and determined he was eligible for special education services in the category of emotional/behavioral disability (EBD). The District determined the Student was eligible for specially designed instruction in the area of social/behavioral, and occupational therapy as a related service.

#### **2015 – 2016 School Year**

4. During the 2015-2016 school year, the Student continued to attend elementary school 1, and continued to be eligible for special education services.
5. On March 3, 2016, the District conducted a functional behavioral assessment (FBA) of the Student. The FBA stated the Student's two target behaviors were: managing large frustrations and unsafe actions toward peers.
6. On March 4, 2016, the Student's individualized education program (IEP) team, including the Parents, met to develop the Student's annual IEP. The March 2016 IEP stated that the Student's behavior impeded his learning and the learning of others, and that his FBA/BIP and social skills section of the IEP should be followed. The IEP included information from the Student's general education teachers, which stated (in relevant part):
  - Homeroom teacher – [Student] needs constant behavior reminders in the regular classroom. His blurting out of comments in discussions, and side conversations with students across the

room, make learning difficult for other students and require the teacher to devote a large portion of the time and energy of the lesson or activity into monitoring and correcting [Student's] behavior.

- Math teacher – [Student] needs constant supervision. He is constantly calling out and having verbal altercations with students in my class. This is very disruptive... [Student] sits at a desk where there is no one next to him because students are wary of his unpredictable behavior. It is hard to find students that will willingly work with him due to his behavior.
- PE teacher – I fear for the other kids' safety and their emotional wellbeing when [Student] has explosive episodes. I try to be near him, but that's not always possible. He tends to pick on whoever is nearby when he gets upset. [Student] gets so easily frustrated.

The IEP stated that according to the social skills improvement system (SSIS), Parent ratings indicated the Student was exhibiting average problem behaviors and social skills at home. However, multiple raters, who are familiar with the Student's performance in the school setting, indicated that the Student exhibited above average problem behaviors and below average social skills. According to the Connors-3, all four [at school] raters indicated that emotional lability was very elevated for the Student, and the Student was also demonstrating very elevated hyperactivity/impulsivity, defiance/aggression, and struggled with peer relations. The Student demonstrated the need for social/behavioral support in the school setting with a focus on the following:

- Increasing positive social interactions
- Responding appropriately to adult directions
- Following school rules and expectations
- Demonstrating appropriate responses to frustration

The IEP also included four annual goals in the areas social/emotional skills and provided for the following specially designed instruction in a special education setting:

- Social/emotional: 15 minutes per day – 2 times weekly

Supplementary aides and services stated the Student was to receive additional classroom support from a paraeducator in the general education setting for 15 minutes/5 times weekly and occupational therapy consultation for 10 minutes/1 time monthly.

The March 2016 IEP also provided for the following twenty-two (22) accommodations:

- adult proximity (as "yellow" behavior observed)
- water bottle at desk
- bathroom breaks
- clear and visual expectations
- visual aids
- note card for writing to avoid blurring
- access to sensory objects and activities including gum and snacks
- detailed editing checklist
- clear expectation for behavior
- breaks available when frustration level escalates
- clear and visual expectations and visual tools
- cover sheet for math problems and multiple choice problems
- break material into manageable parts
- difficult assignments to be completed in resource room
- provide small group instruction
- use graph paper for math or special folder or designed paper

- adult proximity during unstructured, competitive games
- support before and during school safety drills
- use of positives to encourage behavior and performance
- alternate setting to complete tests/assignments
- task/assignment sheet or checklist
- separate seating for testing

The IEP further stated (in relevant part): Parents would like all staff interacting with [Student] to use these strategies whenever possible:

- Staff/teacher response to escalated situations –
  - Seek to understand – If [Student] is calm, the staff/teacher observing the behavior will pause and work with children involved to understand the issue/trigger prior to taking a break or sending to the office. For example, “[Student], that was unexpected behavior, Can you tell me what happened?”
  - If [Student] is escalated ask him to take a break and let him know you will help talk through the situation when calm.
  - Encourage empathy - “How are you feeling about what just happened?” and “How do you think getting hit made [classmate] feel?”
  - Avoid blame - [Student] doesn’t respond very well when adults confront him head on about a situation. Approaching the conversation with the above language helps create a conversation where [Student] feels supported in a blame-free way.
  - Provide positive alternatives for approaching a situation
  - Encourage a repair when ready

The supports for school personnel stated that all staff who work with [Student] would be made aware of his IEP goals and behavior intervention plan (BIP).

7. Also on March 4, 2016, the Student’s IEP team, including the Parents, formulated a BIP based on the FBA. The summary of data in the Student’s BIP stated that large escalations accompanying aggressive behaviors were declining, but still present. The team stated the large outbursts were somewhat unpredictable, and varied day to day, but generally happened during unstructured times of the day, such as recess and preparation-conference planning (PCP)<sup>1</sup>, “Especially if competition was involved.” Contributing factors that impacted the Student’s behavior included “Competitive situations, [Student] is sensitive, sensory needs, giftedness, executive functioning delays, overall immaturity, [Student’s dislike for] having different interventions than peers [...] dislikes the feeling of being micromanaged, anxiety, small frustration building over the day.”

The BIP included intervention strategies as stated in his continued goal about managing frustration at recess.

- Managing large frustrations: [Student] has improved his management of frustration over the past few months but this is still a large area of concern for those who are involved in [Student]’s overall success. Very large outbursts with aggressive behaviors that have been

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<sup>1</sup> “Preparation-Conference-Planning” is time set aside for the individual teacher to prepare, plan, and conference. While the teacher is participating in these activities, the students are attending non-academic classes such as PE, art, music, etc.

slowly declining over the past few months and [Student] is a bit more reflective and able to follow directions better after a large outburst now. [Student] will continue to have a goal about managing frustration at recess.

- Unsafe behavior toward peers: When escalated, [Student] may lash out with shoving and pushing, hard enough for the peer to go to the ground. In the past, he has hit or kicked peers.
  - Antecedent: A competitive game, an instruction or correction from an adult.
  - Antecedent strategies: review expectations before recess or PCP; deep breathing on the way to PCP or recess and throughout the day; positive descriptive praise when acting as expected, 3:00 p.m. snack.
  - Consequences strategies for managing large frustrations: replacement behavior - use of calming and self-regulation tools resulting in descriptive praise by adults; less corrective attention from adults; and increased positive peer interaction.
  - Consequences strategies for unsafe behavior toward peers: replacement behavior - use of calming and self-regulation tools resulting in descriptive praise by adults; less corrective attention from adults; and increased positive peer interaction.
  - Target behavior for unsafe behavior toward peers:
    - Shoving – take a break
    - Unsafe words (name calling, taunting, you suck, yelling) – take a break
    - Saying no to an adult – office, loss of game, make a repair
    - Aggressive actions such as raising arm like he’s going to hit – take a break, if continues, take a break elsewhere, back to green, go back to class
    - Kicking or hitting – office, loss of game for 5 recesses
    - End of day – escalated may mean no bus

More specific supports stated:

- Classroom behavioral expectations posted near Student’s work area
- 3:00 snack
- Conversations with teachers on the way to PCP about expectations
- Daily check-ins with paraeducator

8. On March 29, 2016, the District issued a prior written notice regarding the March 4, 2016 meeting. The notice proposed to update the Student’s FBA because “Student’s behaviors and triggers are shifting, and so a new FBA was recommended.” The notice stated, in relevant part, “Shoving or hitting an adult – resource room +, loss of game, no school the next day’ was removed from the FBA due to Parent objection. If such an even should occur, District disciplinary policy would go into effect.”

### 2016 – 2017 School Year

9. The District’s 2016-2017 school year began on September 7, 2016, and the Student’s March 2016 IEP was in effect. At the beginning of the school year, the Student was in fifth grade and continued to attend elementary school 1.
10. On September 23, 2016, the Student’s general education science teacher emailed the assistant principal (assistant principal 1) and the principal at elementary school 1 (principal 1) about the Student’s refusal to work with a classroom partner. The teacher stated the Student threw items at, and took items from peers, drew on the teacher’s materials, and choked

himself with a water bottle. As a result, the Student's IEP case manager (case manager 1) came to get the Student in the morning, said he was calmed down by lunch, and said he needed to stay in the science room in the time-out spot before coming to see the case manager in her room. The science teacher stated that the Student then returned to the science classroom, where he immediately began choking himself with the water bottle again and growled when the teacher asked him to relinquish the bottle. The teacher stated she then asked the Student to take a break and he threw books and pulled apart a bookshelf. The teacher stated in the email, "This is not your average behavior problem," and suggested the IEP team meet with the Parents to discuss the Student's behavior.

11. On September 26, 2016, the Student's mother, case manager 1, and science teacher exchanged several emails regarding the Student's behavior incidents, which occurred on September 23. The emails are summarized as follows:

- The Student's mother thanked the staff for their patience with the Student on September 23, and stated that, "While most days are better for [Student], there will be days like [September 23], and that's ok." The Student's mother stated the Student reported that he was bored and she suggested to him reading a book, chewing gum or drawing on a notepad, as these things had helped in the past.
- The science teacher responded to the Student's mother's email, copying principal 1, assistant principal 1, and the case manager 1, and stated that a number of students were upset and scared due to the Student's behavior on September 23. The teacher stated she would be meeting with the team to explore the Student's next steps and stated the Parents participation was vital as they contemplated the Student's transition to middle school. Additionally, the science teacher stated the Student's behavior incidents originated in work avoidance and not wanting to work with particular partners, not boredom; however, the Student had articulated that he was bored, and the teacher guessed this phrase was an indicator that he was starting to struggle.
- The Student's mother forwarded the science teacher's email to case manager 1 and stated, "[Science teacher's] email makes me really nervous about her being the right fit for [Student]... I don't see a lot of empathy in her response in recognizing where [Student] might have been coming from."
- Case manager 1 responded, attempting to put together a meeting to discuss the Student's BIP.
- Principal 1 emailed the group, reminding them that the Student has a disability and was generally feeling pretty bad inside when he was behaving in such a negative way.
- The science teacher responded that she was feeling frustrated and in need of more support than just to follow his plan. "He is changing the climate of my classroom...He is talking back and saying he doesn't care if the charter says people should feel safe. He indicated he won't follow the charter."

12. On September 27, 2016, principal 1 emailed the Parents, copying the District members of the Student's IEP team, and stated that during a game of tag, the Student got frustrated when he was tagged, said he wasn't playing, and then rejoined the game, hitting children if they tagged him. He hit one student on the back and another on her face. After he hit the first student, the paraeducator asked the Student to take a break, and he did. When the Student rejoined the game, he hit the second student. After recess, the Student went in for lunch with his

class. The paraeducator informed assistant principal 1 of what had happened, and assistant principal 1 quietly approached the Student, to let him know they needed to talk about what had happened on the playground. The Student escalated and refused to go, at which point, one of the staff took the Student's lunch and stated, "Let's go." The Student then punched assistant principal 1 in the hip. A few minutes later, in the office, the Student tore up papers, ripped a poster off the wall, and attempted to hit assistant principal 1 with his lunchbox. The Student then spoke with his father on the phone, and seemed to calm down and feel better. The Student then sat back down to eat, and principal 1 and the Student discussed what happened on the playground and making reparations. The Student cleaned up the items he disrupted in the office and began working on apology letters to the girls he had hit. The principal also suggested the Student write an apology letter to assistant principal 1, and stated the Student could not participate in tag games until he had five safe recesses.

13. On September 28, 2016, the Student's former science teacher (from 4<sup>th</sup> grade) emailed case manager 1, copying District members of the IEP team, and stated that it would be fine for the Student to come to his 4<sup>th</sup> grade science class if he needs a place to "chill out." The science teacher further stated, "We are usually doing science, the units of which [Student] knows from last year. I'd rather have him down with me than disrupting the science and social studies in that big class."

14. On October 3, 2016, assistant principal 1 emailed the Parents, copying case manager 1, principal 1, and the Student's homeroom general education teacher, and stated that the school intended to put more structured supports in place for the Student, starting [October 3] and included a schedule of support. The schedule stated:

- 9:25 a.m.: (Five minutes before first bell) check in with Student and general education teacher where they will review expectations and daily schedule
- 10:15 – 10:30 a.m.: Skills with [case manager 1]. [Student's] IEP is for twice per week, but she's likely to try every day and then we can possibly amend the IEP if this intervention yields positive results.
- 12:05 p.m.: Science/Social Studies – Because science has been a particularly challenging time of day, we are exploring options for how best to support [Student] and ensure a positive learning environment for all students.
- Paraeducator check in about expectations before PCP
- 3:00 p.m.: Paraeducator check in with snack option
- 3:40 p.m.: Check out/reflection

Assistant principal 1 also stated the Student's behavior during the past week had been very difficult and outline the behavior:

- Monday – defiance and aggressive behavior with general education teacher
- Tuesday – Student hit two children and assistant principal 1 at recess
- Wednesday – Student was noncompliant and threatening and unsafe with other students in PE
- Thursday – Better day, but paraeducator observed the Student trying to crush another student's hand with his fist while they were working out the water cycle in class, and the Student marked up classmate's materials with permanent marker.



- Friday – Shouting in music class, threw music stand and book, attempted elopement, pulled flags down, climbed on table, etc.

Assistant principal 1 further stated (in relevant part), that based on the Student's behavior, the school had serious concerns regarding the Student's safety, the safety of other students and adults, the safety of school property, etc. Assistant principal 1 also stated that the Student's teacher was requesting a meeting as soon as possible, and asked if the Parents were available to meet the week of October 3, 2016. An IEP review meeting was subsequently scheduled for October 6, 2016.

15. On October 5, 2016, the District issued a discipline report that stated:

9:45 AM. [Student] became escalated shortly after the start of the school day. He began disrupting class, shouting that classmates were "stupid". His teacher asked him to take a break in the hallway. [Student] began pounding on the classroom door, pulling paper off bulletin boards in the hallway, etc. [Case manager 1] was called. Student refused a break and began kicking walls, pulling down posters, trying to overturn furniture, break copier, pull fire alarm, etc. Security was called. Parents were called. As [Parents] did not come for several hours, Student spent most of the rest of the day in the resource room, leaving about 1 1/2 hours early. Action: modified Student's environment.

16. On October 6, 2016, the District issued a discipline report that stated:

1:20 PM. [Student] became escalated before class. He was physical with other students, putting his hands on them. When staff intervened, he was verbally abusive and tried to hit and kick several teachers. He did punch one teacher and struck two others. He spat at several staff members. He destroyed bulletin boards and refused to leave to take a break. After about an hour, staff was able to move him to the resource room. He destroyed property in the resource room, and broke the telephone. Security was called and Parents were called to pick him up. Student left the resource room and went to the cafeteria and threatened to [elope]. He tried to break off the water fountain spigot and opened the ball closet and threw balls at his teacher. Action: short term suspension on October 12, 2016.

17. On October 6, 2016, the Student's IEP team met, including the Parents, to discuss the Student's school challenges. That same day, the District issued a prior written notice regarding the IEP team meeting. The notice stated:

The team met to discuss [Student's] current school challenges. While there have been successful portions of the day, we are seeing a dramatic increase in concerning behaviors. Currently, [Student] may be blurting out, calling his classmates "stupid," damaging the classroom, refusing to take breaks, hitting, standing on tables, exiting the front of the building. There are concerns about [Student's] safety and that of other students, staff, and school property.

The notice included a summary of the conversation from the October 6, 2016 IEP meeting, where staff expressed concern based on the Student's unsafe behaviors. The Parents stated they were concerned that [October 3] schedule changes were impacting the Student and stated the Student reported being bored, and asked what was being done to address his boredom. The Student's teacher stated that the work is at a very high level, but the Student disengages and does not seem to be accessing what is being taught. The Student's general

education teacher stated, "I want a paraeducator. Kids are afraid of him." The Parents asked if the Student's work was being broken down, and stated that the current paraeducators were not a good fit for the Student. The team agreed to keep the new schedule, sent out by assistant principal 1 on October 3, 2016. Case manager 1 stated she would create a safety plan, and stated she would speak with the occupation therapist regarding sensory issues, as well as develop a paraeducator plan for the Student.

18. Notes from the October 6, 2016 IEP meeting, provided by the District in response to this complaint, stated that the target behavior regarding shoving or hitting an adult would be removed from the FBA, because the Student's mother did not agree with the Student being suspended for shoving or hitting an adult. The target behavior to be removed stated, "Shoving or hitting and adult would result in going to the resource room, loss of game, and no school the next day." However, a hand written note by principal 1 crossed out the line regarding "shoving or hitting an adult," and wrote, "Take out of FBA, District discipline policy will be followed, and if it [shoving or hitting and adult] happens, I will have to make a decision following the District discipline policy. Consult [special education director] when hitting an adult."

19. On October 7, 2016, case manager 1 emailed the special education program specialist at another District elementary school (elementary school 2), which was the neighborhood school where the Parents had just purchased a home, and stated:

It looks like Student will be moving to [elementary school 2] for sure, per his Parents' decision. Yesterday was incredibly difficult. He punched one of the [paraeducators] in front of his entire class, and at points was trying to hit me and the other [paraeducator]. He was very aggressive and could not get reregulated, even enough to get to the resource room. He is out of town for a few days, suspended on [October 12, 2016], and [principal 1] is working on getting him started at [elementary school 2] on October 13, 2016.

20. On October 10, 2016, the principal at elementary school 2 (principal 2) emailed the elementary principal 1 and IEP case manager 1, and copied the District's regional special education program supervisor, the IEP case manager (case manager 2), and special education program specialist at elementary school 2. Principal 2 stated:

[Student] has not been enrolled at [elementary school 2] yet. I am very concerned that his IEP does not reflect his actual needs and should be amended by the teachers who actually know him before he moves. As [special education program supervisor] already stated, our resource room is overloaded and we do not have the personnel in place to support [Student]. Is there a reason this student is being rushed to change placements?

In response, IEP case manager 1 stated (in relevant part):

The Student is out of town for a few days and the Parents thought it would be easier for him if they moved schools during the natural break. It looks like we are now hoping for a start date of October 17, 2016. I cannot say for sure if the current IEP will meet his needs at the new school, or not. If he continues on the current course it will not, but he's demonstrated in the past it will. There is an FBA and BIP in place. He made a lot of progress last year. I feel the

move itself is very challenging for him. We had an IEP meeting [October 6] [...] and decided to write a safety plan<sup>2</sup>.

21. On October 11, 2016, the Student's mother emailed the IEP case manager at District elementary school 1 and stated, "Can I please have a copy of [Student's] IEP? I want to forward it to [elementary school 2]." That same day, IEP case manager 1 responded, via email:

I've already provided a copy to [elementary school 2] but I'm attaching a copy here. I will also be giving them my teacher file so the sensory profiles, etc. will be included. [Principal 1] has already spoken with the occupational therapist at [elementary school 2] so they can start addressing sensory needs as soon as possible. I was wondering if there is anything more you need from me at this time. Or is there anything more I can do to support the transition?

That same day, the Student's mother forwarded an email containing the Student's IEP, FBA, and BIP to case manager 2.

22. On October 13, 2016, District staff met to prepare for the Student's transition to elementary school 2.

23. On October 14, 2016, the District was on break.

24. On October 15, 2016, case manager 2 emailed the Student's mother a letter she composed for the Student about what to expect on his first day, and asked the mother to share the letter with the Student. The letter set forth the Student's schedule, introduced the Student's teachers, and explained the bell schedule.

### **Elementary School 2**

25. On October 17, 2016, the Student began attending elementary school 2 and IEP case manager 2 held an intake meeting with the Student and the Student's father.

26. On October 18, 2016, case manager 1 exchanged emails with case manager 2 to see how things were going with the Student. Case manager 2 stated there was another reactive student in the Student's classroom who was causing problems. She stated the Student did not "take the bait," and had otherwise been participating and doing his work.

27. On October 19, 2016, the house administrator at elementary school 2 emailed case manager 2, principal 2, and the Student's general education math teacher, regarding her observations from that same day. The house administrator's email stated (in relevant part):

- Student struggled to engage in appropriate peer interactions and conversations
- Student was working in table groups of four
- Student would mock, mimic, or talk over others while they spoke
- Student interrupted others while they spoke (approximately 30 times in < 60 minutes)

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<sup>2</sup> Elementary school 1 drafted a safety plan to be implemented on October 13, 2016, but it was never implemented, as the Student did not return to elementary school 1 after October 6, 2016, due to a family trip and the family's relocation to elementary school 2 neighborhood.

- Student frequently used insults (you are stupid, you are dumb) to interrupt others (approx. 25 times)
- Student was able to focus on the lesson and follow teacher's directions
- Might benefit from a fidget toy
- Student was chewing on and snapping pencils, during the 5-7 minute lesson he destroyed 5 pencils, and when he ran out, he took another pencil from a classmate, despite her protest
- Student struggles to take direction from adults – was asked not to throw another pencil and Student mimicked the adult and threw another pencil
- Student was able to take notes and ask questions when he did not understand the content

28. On October 20, 2016, case manager 2 responded to the house administrator's email, and stated that the general education math teacher had mentioned the Student was starting to "pick on" an already incredibly sensitive student in class, and asked what the protocol was for sharing data, because she wanted to share it with the Student's Parents.

29. Also on October 20, 2016, the general education math teacher emailed the Student's mother and asked her to check in with the Student about class on October 20, to help him process the day. The teacher stated that the Student was calling other students dumb, and grabbed a classmate's paper, crinkled it up, and threw it at the teacher. The math teacher also stated that on October 21, she would talk with the Student, and tell him he needed to use positive words and actions or he would be moved to a separate desk until he earned back working in a group.

30. Also on October 20, 2016, case manager 2 sent several emails to the Student's mother, stating the Student had a great first day, and she wanted to nip the negative behaviors and name calling as soon as possible to keep the Student on a positive trajectory. The mother replied that afternoon, stating that she and the Student had a good conversation, and that sometimes in the moment, the Student got caught up when he was embarrassed. The Student's mother stated, "I think if we stay positive and continue to provide positive alternatives on verbiage to use he will respond well to that feedback. I would probably say let's not overly focus on correcting the negative, but rather recognizing tomorrow when he has positive interactions."

31. On October 24, 2016, the District members of the Student's IEP team, and the school counselor, exchanged emails about the Student potentially joining a school lunch group or meeting one-on-one with the counselor. Case manager 2 noted the Student does not like to be pulled from class or "singled out." Principal 2 stated that the Student should not be in the same group as a certain classmate, but instead the IEP team should review the Student's IEP goals and discuss a plan, so the Student was working on his goals before a group was created for him.

32. On October 27-28, 2016, the District members of the Student's IEP team exchanged emails regarding adding a goal to the Student's IEP about one-on-one interactions with peers due to the Student "pushing the buttons" of a female classmate, who appeared to the team to be "at her maximum capacity" for handling the Student's comments and physical interactions.

33. On October 31, 2016, the District issued a discipline report that stated:

11:30 AM. [Student] initially denied a request to transition from snack to the carpet. Once at the carpet, he continued to disrupt the lesson, making inappropriate comments about anything any student [...] or teacher said. The teacher called for an administrator to provide Student a break. In the hall, the Student began meandering and complaining about how mean the teacher was. I (assistant principal 2) asked him to join me in the office to take a break and indicated I wanted to hear why he was so upset. He didn't want to go. Instead, he sluggishly meandered from wall-to-wall, giving the intent to tear down posters, but stopped after I intervened. After several minutes, and with third-graders about to [come through] the main doors from recess, I finally talked him into coming with me to the office, indicating that if he didn't join me, I would have to call security. He reluctantly complied.

Once in the office, he continued to request to return to class. I indicated that once he demonstrated he was calm, not indicating further frustration with his teacher, and using a respectful tone, we can try again. Still escalated, we called [Student's father]. I wanted to know if there was anything from the weekend or morning that might've put Student in a negative, lethargic place. [Student's father] indicated that they had a good weekend and good morning. [Student's father] spoke with Student and Student went back-and-forth from calm to screaming at his father on the phone.

By approximately 12:10 PM [Student] had clearly calmed down after spinning in the chair for a while. He no longer was putting his feet on the table, or lying across it. He wanted to return to class so I reminded him of the expected behaviors and we went back to his class. He needed to use the restroom on the way, so I took the opportunity to check in with his teacher before bringing the Student back. She indicated that the trigger was asking him to come to the carpet for the lesson, [when] he had not finished his snack, from there he spiraled.

Upon returning, Student erased a letter off the whiteboard then proceeded to clean crumbs off his table. While cleaning his table I reminded him that erasing information from the class whiteboard was not what we discussed, and encouraged him to make good choices. He then walked by a student who was reading a book on the floor and stepped on her book.

I redirected the Student back out [of the classroom] and he came with me to the office, knowing that if he didn't, I would call security. Upon returning I radioed [case manager 2] to check in with us and let her know what was happening. After she left, Student requested to go to recess. I said I can't let him go to recess given his behavior. Student escalated even more, screaming at me, kicking the wall, ripping down posters, crawling on the table.

As Student's [mother] was going to help with the afternoon party, I called her to come in early. In collaboration with [case manager 2], [the Student's mother], and Student, we agreed that when he calmed down, he could return to class and we clarified the behavior expectations. [Case manager 2] and [Student's mother] accompanied him to class. Action: school-based action, temporary removal from classroom until fully deescalated.

34. Also on October 31, 2016, assistant principal 2 emailed the Student's IEP team members, including the Student's mother, and stated (in relevant part), "Thank you for agreeing to meet. I would like to review what the IEP accommodations are around snacks and breaks as well as clarify classroom expectations. "

35. On the morning of November 1, 2016, principal 2, case manager 2, and the Student's special education teacher met with the Student's mother to discuss the Student's IEP and classroom expectations. That same day, case manager 2 emailed the Student's mother, thanking her for coming in to clarify how the Student's accommodations help him, and asked if it would be possible to connect with the Student's private therapist to learn more about what they are discussing and how she could integrate it into her lunch times with the Student.
36. Also on November 1, 2016, case manager 2 emailed the Parents and stated that the school counselor was available to see the Student on Wednesday mornings, when most students do free writing, to avoid the feeling of being "pulled out" of class. Case manager 2 stated they could meet once a week to reinforce self-regulation strategies and skills for building friendships.
37. Also on November 1, 2016, the District issued a discipline report that stated:  
2 PM. [Student's] teacher reported that [Student] got very upset while playing chess. Student became frustrated and approached the teacher. The [classmate] he was playing with came up to join the conversation. [Student] responded by pushing the [classmate]. The student victim was pushed into the classroom computer table and fell to the ground. Action: school-based action, Student was given a break by a paraeducator until he deescalated. He was then returned to class by a paraeducator.
38. On November 2, 2016, the District issued a discipline report that stated:  
10:45 AM. As students were lining up to return to their homeroom class, [Student] pushed another student. The classroom teacher began intervening when Student became verbally aggressive toward the classroom teacher. Student then walked past the classroom teacher and shoved the classroom teacher on her shoulder with two hands. Action: short term suspension from November 3 to November 4, 2016, two days at home.
39. Also on November 2, 2016, principal 2 emailed the District members of the Student's IEP team and stated that the Student had a rough week, and that it appeared his behavior came in groups of threes. The email stated that the assistant principal would be suspending the Student for his aggressive behaviors that week. The house administrator and case manager 2 would be drafting a checklist for all teachers, including the accommodations on the Student's IEP, so the teachers could document that the accommodations were tried when the Student escalates. Principal 2 also stated that the BIP had too many accommodations for the Student's aggressive behavior and would need to be redone. The principal further stated, "We also need to get a 1:1 paraeducator or talk about next steps. Teacher and student safety need to be considered since he is physical towards other students and adults. [Assistant principal] is planning to hold an IEP meeting [this week]."
40. Also on November 2, 2016, the Student's father emailed the assistant principal, and attached a notification of informal grievance conference regarding the Student's two-day suspension and requested a manifestation determination meeting.
41. On November 3, 2016, the District issued a meeting notice for November 7, 2016, for a manifestation determination meeting.

42. On November 4, 2016, assistant principal 2 emailed the District members of the Student's IEP team, and stated that, per the District discipline appeals procedures, he would be meeting with the Student's father later that day, after which the team will all conference together to ask clarifying questions of all of the staff. That same evening, assistant principal 2 emailed the Student's father and stated that after considering the Student's father's input and listening to the informal conference with requested staff members, "I have decided to uphold the original two day suspension." Assistant principal 2 further stated, "We are still planning to meet on [November 7] for our manifestation meeting."
43. On November 7, 2016, the Student's IEP team, including the Parents, the house administrator, assistant principal, two general education teachers, the Student's special education teacher, and the District regional special education program supervisor met to review the Student's IEP and conduct a manifestation determination meeting<sup>3</sup>. The team agreed the Student's [October 31, 2016] behavior was a manifestation of his disability and the Parents stated they believed the incident occurred due to the District's failure to properly implement the Student's IEP and BIP. The IEP team discussed adding services to the Student's IEP, and agreed to meet again in December 2016 to develop a new FBA and update the Student's IEP and BIP. Documentation provided by the District stated that the IEP team agreed to develop a new safety plan to use in the meantime.
44. Also on November 7, 2016, the District issued a prior written notice, proposing to initiate a manifestation determination meeting based on the Parent's request. The notice stated that District members of the Student's IEP team met on November 1, 2016, discussed data on behaviors, and received input from the Parents regarding the Student's disability. The notice also stated the Student was currently receiving special education services under the category of "EBD" and that the Parents stated the Student was having a private evaluation on November 14, 2016, to determine if he had attention deficit hyperactivity disorder (ADHD). The notice stated the Parents said that they had given elementary school 1 information regarding the Student's processing disorder, but that information had not been received by elementary school 2. The Parents would provide a copy of that information to the current team. The notice also stated that the Parents provided information about how to deescalate the Student and strategies for when he is escalated. The team planned to meet again on December 1, 2016, to write a new FBA/BIP/IEP to include strategies to be used in the current setting. The notice stated: Team will need a safety plan for now until December 1 meeting.
45. On November 8, 2016, the elementary school house administrator emailed principal 2 the following observation of the Student during an escalated episode:

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<sup>3</sup> The assistant principal originally requested the IEP meeting to discuss the appropriateness of the Student's BIP and accommodations, but after the disciplinary issue, the Parents requested a manifestation determination meeting. Under WAC 392-172A-05145, a manifestation determination meeting is required only if a student has been removed from school for more than ten consecutive school days during the same school year, or the student has been removed from school for more than ten school days during the same school year and the removals constitute a change of placement as stated in WAC 392-172A-05155. Here, the Student had been suspended a total of three school days by November 7, 2016; therefore, this manifestation determination occurred at the Parents' request, and was not mandated under WAC 392-172A-05145.

- Student opened and closed multiple lockers repeatedly
- Target staff member was repeating, “What do you need, how can I help you, I am here to support you and help you calm down” in a neutral tone
- The Student mimicked the staff member and began hitting the lockers
- Verbal support was offered and the Student mimicked and began pulling on student art
- Target staff offered several strategies, Student walked up the stairs
- Student turned and spit at principal 2
- Student went up the stairs, leaned over the railing and spat toward staff a second time

Additional reports from District staff on November 8 stated the Student pulled books from his locker and dropped them over the railing down to the first floor, spit at the librarian, dragged a chair down the stairs, and threw pamphlets on the floor.

46. On November 9, 2016, the District regional special education program supervisor sent the District members of the Student’s IEP team a draft safety plan and examples of data collection tools. The safety plan set forth a description of unsafe behaviors and strategies that may help. The safety plan stated that when escalated, the Student may:

- hit adults
- push students and adults
- harm or threaten to harm school property
- leave the building

The safety plan included strategies that may help:

- Look for early warning signs [such as] shouting out, throwing pencils
- Remind Student that he can take a break, eat a snack, take a deep breath (meditation tips)
- Do not approach him face on, come up to him aside
- Reassure him he is not in trouble, but he should take a break
- Allow Student to exit classroom before peers and travel to the next destination to avoid issues in lines
- Have a desk in the classroom that can be used as a break space (books available, coloring sheets, etc.)
- Use special education teacher’s room as a place Student can go when escalated

#### Crisis Response Plan

If Student escalated to the point of hitting students or staff:

- Paraeducator or identified staff member should escort the Student back to the case manager’s classroom to take a break
- Staff member must remain calm and encouraging to the Student that he is not in trouble, but needs to take a break
- Later in the day, the case manager or identified staff member will debrief with the Student on his behavior and develop an option for better choices

The safety plan also set forth data collection instructions, stating aggressive acts and disruptive acts should be tallied for frequency as well as the Student’s ability to take a break or listen to adult direction as set forth in his BIP.



47. On November 10, 2016, the special education program supervisor sent the Parents documentation from the manifestation determination meeting, and also sent a consent form to be signed for the new FBA, along with information pertaining to the FBA.
48. Also on November 10, 2016, the house administrator emailed the principal and stated she observed the following took place in the hallway, between the Student and his reading teacher:
- Student was shouting that he wanted to be picked for a specific role
  - Teacher was explaining the activity was over
  - Student continued to shout and demand
  - Student ripped classmate's art off the wall and tore it up
  - Student was shouting that he wanted to go back to class
  - The paraeducator continued to follow the BIP, including the use of specific language, but the Student mimicked, said he did not care and did not want to take a break
  - Student opened the door and screamed that he wanted to come back into class, continued to open and close the door
  - The door was locked
  - The Student kicked the door repeatedly, with full force for 20 minutes, after 15 minutes the teacher opened the door and asked the Student to stop because his classmates were concerned and scared
  - During this time, the Student removed and destroyed almost all of the teacher's items on the door
  - Throughout this time, strategies were implemented (calm talk, supportive language, phrases from BIP, alternative settings for a break were offered, reminder that he was not in trouble) but the Student appeared to respond by escalating
  - Staff pulled back and was quiet while Student continued to destroy property
  - Principal 2 was called
  - Security was called
  - When security arrived, the Student calmed, wandered the halls muttering several derogatory statements and mimicking
  - Student then took the elevator to case manager 2's room
49. The District was on break November 11, 2016.
50. On November 15, 2016, in an email exchange between the District members of the Student's IEP team, the Student's math teacher stated she had concerns about the Student, who appeared to be targeting another student, and stated, "We are also working on getting an additional [paraeducator] to work with and supervise the Student. For the time being, the principal will continue to supervise the Student during lunch recess and I will closely monitor him during afternoon recess. The principal, paraeducator, and case manager will also continue to check in with the Student during class."
51. On November 21, 2016, principal 2 sent the safety plan drafted by the District regional special education program supervisor to staff and proposed it be implemented after the District's Thanksgiving break on November 24-25, 2016.

52. Also on November 21, 2016, the District received a formal complaint of harassment, intimidation, and bullying from another student's family pertaining to the Student, as well as a restraining order issued between the two families that prohibited the Student from being within 10 feet of the other student. In response, principal 2 developed a new class schedule for the Student, so the Student would no longer have classes with the other student. Principal 2 then emailed the District members of the Student's IEP team, the District executive director, and District legal counsel, stating that she would be moving the Student to a new set of classes on November 28, and would continue to provide the Student with all day paraeducator support as set forth in her November 15 email. Principal 2 included a letter she planned to send to the Parents. That same day, Principal 2 sent a letter to the Parents, detailing the process regarding the harassment, intimidation, and bullying complaint against the Student and requested a meeting with the Parents on November 28, 2016.
53. On November 22, 2016, principal 2 sent an email to the District administrator and the District members of the Student's IEP team, stating that a classmate's parent filed a police report against the Student. She stated, "This is an extremely challenging situation because of the IEP, BIP, and FBA that are in place from his previous school." The principal also stated, "The police said we should be calling them anytime [Student] puts his hands on someone."
54. On November 23, 2016, the District sent the Parents a meeting invitation for a December 1, 2016 IEP meeting to amend the Student's IEP, BIP, FBA, and develop a new safety plan. This meeting would include the principal, two of the Student's general education teachers, the Parents, special education teacher, two of the Student's paraeducators, the District's general counsel, elementary school 2 house administrator, and the special education program supervisor.
55. On November 27, 2016, case manager 2 wrote a letter to the Student, explaining the forthcoming changes to his schedule as a result of the restraining order. Case manager 2 also wrote to the Parents and stated the Student would meet with a paraeducator at the beginning of the day and go to case manager 2's classroom before class. The Student would also have lunch in case manager 2's classroom and he would use the bathroom on the same floor as his homeroom to avoid the other student with whom he had been having conflicts.
56. On November 28, 2016, the Student was reassigned to new general education teachers due to the restraining order. That same day, case manager 2 sent the Parents a draft of the new FBA, updated BIP and IEP, and safety plan for their review in advance of the December 1, 2016 IEP meeting.
57. On December 1, 2016, the IEP team, including the Parents, met and discussed the proposed safety plan for the Student. The IEP team agreed to amend the Student's March 2016 IEP to include two new goals and increased the amount of the Student's specially designed instruction provided by case manager 2 to 30 minutes, twice weekly, and the amount of specially designed instruction provided by a paraeducator to 1 hour, 5 times weekly. The amended IEP also reflected full-time paraeducator support.

The IEP team also amended the Student's March 2016 BIP. The summary of data in the Student's amended BIP stated:

That based on data collected from October 20, 2016, through December 1, 2016 (interval, narrative, anecdotal, time sampling, and teacher reports) and a records review, Student primarily struggled to interact with peers and adults in a positive manner. This behavior had been observed in the general education classroom, his physical education class, recess, and the playground. Classroom observation data indicated that the Student engaged in a negative social interaction with adults throughout his day and across all settings (approximately 3 to 5 occasions per hour). Student also struggled with regulating his emotions and emotional responses across all settings, but particularly during less structured times (Group work, PE, recess, lunch). This behavior is distracting and disruptive to the students learning, the learning environment, and the learning of others. The behavior can be observed in the following manifestations, in increasing intensities... [Student] responds to typical peer engagement as a threat, uses simple phrases to communicate (stop, no, it's mine), repeats peers language with an increased pace and cadence, shouts out in class, puts down peers (usually their ability or intelligence), shouts loudly, screams, clenches fist, makes specific demands (give it, I want it), makes a threat, throws own or others belongings, raise his fist.

58. On December 2, 2016, the District behavior program specialist emailed case manager 2 her notes from observing the Student at school that day. The program specialist stated, "[Staff] told me that you and the Student made a plan for this morning, and that [Student] was really close to following the time frame! It looks like the plans and supports you have in place are really successful so far!" The program specialist observation notes stated:

- Student arrived to class only about 10 minutes late, and very appropriately got caught up on the day's expectations
- Student was focused and appeared on task throughout math
- With voice at 0 volume
- Student used coping strategies during work time, like eating a snack
- Smooth transition off the computer at the end of math
- Smooth transition to carpet time, prior to science

59. On December 9, 2016, the Student's mother emailed the IEP team and requested that the District remove the Student's safety plan completely, and that its contents be added to the crisis and recovery section in the March 2016 amended BIP.

60. The District was on break from December 19 – January 3, 2017.

61. On January 11, 2017, the Student's IEP team met, including the Parents, to review the results of the Student's FBA. The Student's FBA data summary included a longer and more specific list of the Student's behaviors, including (in relevant part):

The FBA stated, "These behaviors are observed to occur when the [Student] is engaging with his peers, typically during times when [Student's] self-worth is at risk [...], he is over stimulated, under stimulated, [transitioning... or presented with a non-preferred task... or an adult directive]." The FBA further stated the target behavior was to get the Student to attempt to self-soothe when an unpleasant situation is experienced. The assessment stated

the Student had verbal (moan, increase volume, call out, repeats words of others, give an insult, make a demand, refuse a directive, threaten physical aggression) and physical (hand in mouth, objects in mouth, physical pressure, repeated physical movements, throw objects or become physically aggressive towards peers or adults) responses to unexpected events. The FBA consequence strategies stated (in relevant part) that if the Student becomes physically aggressive towards peers or adults, the safety plan and crisis recovery plan [that are in the BIP] will be followed.

The FBA further stated:

As of November 2016, the setting, antecedent, and consequence strategies appear to provide support, but during the transition to a new school, [Student] appears to require more support, structure, and revised strategies in order to meet his needs. Student came to [elementary school 2] with a safety plan. [Student's] Parents report they were unaware of the safety plan at [elementary school 1]. In November 2016, the IEP team developed a new safety plan. The updated plan included a description of specific unsafe behaviors, intervention strategies prior to an escalation, and a crisis response plan.

62. Also at the January 11, 2017 IEP meeting, the IEP team developed a new BIP for the Student. The new BIP integrated the data from the January 2017 FBA and the December 1, 2016 safety plan by outlining behaviors and responses as follows (in relevant part):

If Student is in the classroom or designated space and begins to display physical release or physically aggressive behaviors, refusal to follow directions, perseverating on demands, hitting objects, kicking wall/doors, screaming repeatedly, crying, ripping up papers, throws objects, distraction of classroom or school property:

- Case manager and or paraeducator remove items as appropriate for safety only
- Security is called (Staff actions are not shared with Student)
- Security, staff, and administrator take the lead
- If Student is in the classroom, other students will be evacuated for his privacy and their safety
- All responding adults kept at a minimum, engage, and de-escalation language and CPI techniques; hands off, minimal interaction, clear concise redirection

Crisis response: When remaining in a specific location, if Student interacts physically with school property or advances physically towards school staff, staff believes that their safety or the safety of others is at risk, tipping desks towards peer or staff, throwing items are objects at staff, swings arm or leg at staff, spits phlegm toward staff:

- Security, staff, or administrator will already be present
- Security or staff to notify additional security

Standing up actively pursuing to be in proximity to others, Student interacts physically with school property or advances physically toward staff. Maybe tipping desk toward peer or staff, throwing objects at staff, swings or more like at staff, blocks entrance or exit with body, bumps are charges with shoulder, hits with elbow, spitting phlegm, tackling, shoving:

- Security, staff, or assistant principal will already be present
- Security or staff to notify additional security

- Case manager or social emotional learning team to call 911; directive given by administrator or security if it is believe that students, Student, or staff safety is at risk
- Include school nurse or a custodian as appropriate

63. Also on January 11, 2017, the District issued a prior written notice, proposing to change the Student's IEP, BIP, FBA, and safety plan. The notice stated that on December 1, 2016, two new goals were written to reflect the BIP, and changes were made to the Student's service matrix to reflect [increased] paraeducator support in class. The notice also stated on January 11, 2017, the team met to review Parent proposed changes to the safety plan. The Parents expressed concern that the BIP would not be followed because the safety plan distracted from the BIP. The principal stated that the safety plan provides for consistency of responses. The Parents recommend the safety plan be integrated into the BIP. The team agreed to put all of the information from the safety plan into the BIP, but also determined it would keep a safety plan [with the same information] in place for staff to use. District members of the IEP team stated the safety plan was a step-by-step plan of how to implement the BIP. The team agreed it would replace the words in the BIP, "See safety plan" with the actual safety, intervention, and support plan. The notice further stated that the Student's triennial reevaluation was due in March 2017, at which point the IEP team would review the FBA, BIP, IEP, and safety plan, for needed revisions.

64. On January 13, 2017, the house administrator sent a copy of the safety plan to District staff.

65. The District was on break January 16, 2017.

66. On January 17, 2017, the Student's reading teacher emailed case manager 2 and stated the Student was blurting out in reading/writing class, called the teacher "stupid," and said "No," loudly when asked to do a call and response in class. The reading teacher asked the Student to speak with him in the hall. In the hall, the teacher asked the Student why he felt the way he did and suggested alternative ways the Student could communicate his frustration. During this time, the Student began opening and closing the classroom door and looked upset. The paraeducator came out, and stated that the Student looked unsafe and asked him if he wanted to go to the resource room to calm down. The Student began slamming the door more vigorously and stated that he wanted to go back into class. The teacher returned to class and the Student returned to the classroom after recess, and blurted many times. The Student then went to an assembly with his class, and sat quietly and listened at the assembly.

67. On January 18, 2017, the Parents exchanged several emails with case manager 2 and requested paraeducators give the Student some more space. Case manager 2 responded that the paraeducators work with the Student, as well as other students in the classrooms, and that she would explain this to the Student, so he understood the paraeducators were not only in the room to support him.

68. On January 19, 2017, the Student's reading teacher emailed the Student's mother and stated that the Student "demonstrated much greater control over his emotions today, and

demonstrated expected behaviors during reading and writing... It seemed like he is feeling ready to participate more positively tomorrow.”

69. Also on January 19, 2017, the Student’s father emailed principal 2 and stated that the Student feels monitored and not supported by the paraeducators in his classrooms. The father stated the “intent of the paraeducator is to act in a supportive capacity for [Student]”.
70. On January 20, 2017, case manager 2 sent the Parents final copies of the Student’s updated IEP, BIP, FBA, and safety plan.
71. Also on January 20, 2017, the Parents and principal 2 exchanged emails regarding the Student’s paraeducator support. The Parents stated that the Student had not hit anyone since moving into his new classroom, and stated they wanted him to have more independence. Additionally, the Parents stated they wanted evidence of how the paraeducators were helping the Student break down his work. Principal 2 responded that same day, and stated:

The school team has met and discussed your requests, and at this point, we do not agree that [Student] is ready for more independence. This decision is based on the continued outbursts in the classroom and physical contact that has occurred with other students. We are happy to meet with you, but the data does not reflect any changes are needed at this time.
72. On January 23, 2017, the Student’s PE teacher emailed case manager 2 and stated that during an exercise in PE, the Student had gotten frustrated with a classmate and hit him in the face with a pool noodle. The PE teacher asked the Student three times to take a break, which he did, and then rejoined the class about three minutes later, having calmed down.
73. On January 26, 2017, principal 2 exchanged emails with the Parents and included the consent for reevaluation, questionnaires, and procedural safeguards. Principal 2 and the Parents agreed that the evaluation would assess social/behavioral and study/organization.
74. On January 28, 2017, the District sent the Parents an invitation to review the Student’s IEP on February 3, 2017. The purpose of the meeting was to discuss the Student’s service matrix and paraeducator support.
75. The District was on break February 1, 2017.
76. On February 3, 2017, the IEP team, including the Parents, met to discuss the Parents’ concerns about the Student’s [level of] paraeducator support. The Parents stated the paraeducator support was too restrictive for the Student. The District agreed to document times the Student worked more independently and agreed to begin phasing out paraeducator support during those times. The IEP team agreed the Student could leave class without a paraeducator for 5 minutes, but if he did not return, a paraeducator would begin checking school grounds for him.
77. Also on February 3, 2017, the District issued two prior written notices. The first notice proposed to change the Student’s areas of reevaluation to include study/organizational skills.

The second notice stated the reason for the February 3, 2017 IEP meeting had been the Parents' request to discuss adult support for the Student. The notice stated the reason the action was proposed was because the Parent felt the current level of paraeducator support was too restrictive, but the District felt the level of paraeducator support was necessary to keep the Student supported and safe in school. The notice stated:

- Considered reducing the amount of support in the morning;
- Consider reducing the escort when student leaves the room;
- Considered adjusting the way the para educator takes data;
- Considered adjusting the way the para educator supports in the morning, the para educator would be in the room, but not single student out, the para educator would support the entire class;
- Considered a sign out in the classroom for when student leaves the room; and
- Considered setting a specific time limit for breaks.

The notice further stated the reason the team rejected those options were:

- Having the paraeducator in the room is important to provide support, as needed, instead of being reactive. Being in the room allows the paraeducator to see events as they happen and can help with reflecting. Student will wait in the hall before school starts. The paraeducator will be in proximity. The paraeducator will come into the room 20 minutes after class starts. Team will work on documenting times that student can be independent during the day and being flexible on time in class;
- Discussed creating a specific spot for student to take a break. Paraeducator will be notified if Student does not return after five minutes. If paraeducator is in the room he will note the time and respond if Student does not return after five minutes;
- Special education teacher will discuss with paraeducator about notetaking;
- Paraeducator will check in with class at 10 AM and judge with the teacher when Student is independent enough for the paraeducator to leave the classroom;
- Classroom will have a sign out sheet for Student when he leaves the room; and
- Amount of time out of class was considered, setting a time limit will be worked on by the Student. Time discussed was five minutes.

78. On February 5, 2017, case manager 2 emailed the Parents an updated copy of the Student's IEP and a prior written notice regarding the February 3, 2017 meeting. The following day, the Parents responded with areas highlighted in the FBA and BIP to which they objected, and asked if these issues could be addressed in the March 2, 2017 evaluation meeting.

79. On February 8, 2017, the Student's general education math and science teacher emailed the Parents and explained in detail how he and the paraeducators were breaking down the Student's assignments:

- Presentations on board with clear visual expectations for each problem and each step to solve problem
- Posters outlining simple steps to solve math problems instruct students to use their books for both example problems and notes – which breaks each example down into step by step manageable parts
- Given Student scratch paper, white boards, note cards and graph paper (for working on math or if Student feels need to blurt out – Student does not use effectively for blurting)

- Provide small group instruction
- Give Student 1:1 instruction
- Task clearly listed and consistent
- Preferential seating
- Clear view of instructions
- Check ins regularly

80. On February 9, 2017, the Student's PE teacher emailed case manager 2 and stated the Student did not put much effort into class and pushed several classmates during a game he perceived to be unfair. The Student also punched a classmate because he thought he had been tagged when he felt he had not. The PE teacher stated that the Student could not deescalate himself in class that day and left class early without telling anyone where he was going. The paraeducator followed him.

81. Also on February 9, 2017, the Student's reading teacher emailed the Student's mother and explained the Student's current accommodations:

- Use of clear and visual expectations
- Allowing a water bottle
- Breaking work into manageable pieces
- Use of power points to lead from one targeted direction or question to the next
- Checklists provided to the Student (usually a post it note with steps to complete the assignment)
- Incremental introduction of resources
- 1:1 support to help decide how to break down an assignment
- Extra time to complete assignments

82. On February 10, 2017, the District sent the Parents an invitation to a reevaluation meeting scheduled for March 2, 2017.

83. On February 20, 2017, case manager 2 emailed the Student's special education teacher and stated that she and the Student meet twice a week during lunch for approximately 30 minutes to work on his goals. She stated their focus had been on teaching him to handle frustrations in and out of the classroom. She further stated that over the past three weeks, he had become frustrated and resistant to receiving this instruction by shouting, "No! I don't want to work with you," ignoring her, or not responding/interacting when prompted.

84. The District was on break from February 20 – 24, 2017.

85. On February 24, 2017, the case manager 2 emailed the District regional special education program supervisor and the house administrator and stated:

The [Parents] said that they object to specific language in the final BIP and have noted those objections. I'm only planning to review the IEP on March 2, 2017, since we just reviewed the BIP/FBA on January 11, 2017. Since we won't be revisiting the BIP/FBA on March 2, 2017, do we note their objections on the prior written notice at the meeting?

The next day, the special education program supervisor responded and stated, "I suggest we note their concerns in the prior written notice."



86. On February 26, 2017, case manager 2 sent the Parents proposed changes to the Student's BIP in light of their February 6, 2017 objections.

87. On February 28, 2017, the District sent the Parents an invitation to review the Student's annual IEP on March 2, 2017.

88. On March 2, 2017, the Student's IEP team met to review the results of the Student's reevaluation, and determined the Student continued to be eligible to receive special education services. The evaluation report recommended the Student receive services in the areas of social/behavioral and study/organizational skills. The IEP team then discussed and agreed on an email communication plan, which included staff emailing the Parents on Mondays and Fridays every week. The IEP team also discussed the Student's transition to middle school during the 2017-2018 school year and the special education programs offered at the middle school. The IEP team then developed the Student's March 2017 IEP. The IEP stated:

General Education teacher report (in relevant part):

- March 2017: [Student] currently has 1,095 minutes of [paraeducator] support per week. Team agrees that we can review this amount of support sometime in April and create a plan to fade support as it seems appropriate.

The IEP also included three annual goals, one in study/organizational skills and two in social/emotional skills. The IEP provided for the following specially designed instruction in a special education setting from 3/3/17 – 6/26/17:

- Social/emotional provided by special education teacher: 30 minutes – weekly
- Study/organizational skills provided by special education teacher: 30 minutes – weekly

The IEP provided for the following specially designed instruction in a general education setting:

- Social/behavioral skills provided by paraeducator: 1095 minutes – weekly

The IEP also addressed services the Student would receive in middle school during the 2017-2018 school year. The BIP was not discussed. The IEP further provided for supplementary aides and services, which stated the Student would receive additional classroom support from a paraeducator in the general education setting for 60 minutes/5 times weekly. The group also recommended occupational therapy as a support to school personnel to provide consultation to the classroom team.

89. Also on March 2, 2017, the District issued a prior written notice, proposing to continue the Student's eligibility category. The notice also stated the group proposed to continue the Student's social/behavior services and added study/organizational skills to address the Student's executive functioning deficits. The notice further stated in the other factor relevant to the action section that the Student's teachers stated the Student's work refusal was likely behavior related, and not an executive functioning issue, but the Parents stated the Student's executive functioning caused him to shut down and then refuse work.

90. On March 8, 2017, the Parent asked case manager 2 to remove the paraeducator in-class support for the Student's middle school service matrix until they could talk with staff at the middle school.
91. On March 16, 2017, case manager 2 emailed the Parents and stated that school staff recommended no more foursquare at recess for the Student for the rest of the year – as it was having a negative impact on the Student and his peer relationships. Case manager 2 explained in detail how the Student returned to class after playing tag or basketball ready to learn, but was amped and frustrated after foursquare. The Parents disagreed, stating the Student did not like other activities, but said the Student agreed not to play for the rest of the week.
92. On March 20, 2017, during a game of foursquare, the Student threw a ball at staff and another student. The Student's paraeducator then asked the Student to leave the game and talk about what happened. The Student initially complied, but then reentered the game without permission. The paraeducator prompted the Student to take a break, but the Student refused. As other adults approached the playground, the Student left campus. Staff followed him, calmly asking him to return to school, but the Student refused. A security specialist arrived and offered the Student a ride in a district vehicle, but the Student refused. The security specialist told the Student that if he did not return to school, the police would have to be called. The Student walked back to school with the counselor and paraeducator. On campus, the Student threw a rock at the building and told the counselor he wanted to kill everyone at the school by bulldozing the building, that he thought about it every day, and that he would do it when he was older. The Student's father who had been called, then arrived and talked with the Student, and took him home.
93. On April 4, 2017, the Student and a classmate had a disagreement at recess during a dodgeball type game. A paraeducator discussed the situation with both students, during which the Student threw the ball at the other student, hitting him in the stomach. The paraeducator walked the Student to case manager 2's classroom, explained the other student had been feeling targeted by the Student, and talked with the Student about how to treat others.
94. The District was on break from April 10 – 14, 2017.
95. On April 27, 2017, the District issued a discipline report that stated:  
11:17 AM. [Student] was working on a project in the hallway and said to [student1], "Should I hit [student 2] in the head with a pencil?" [Student 1] responded that it wasn't a good idea and they should continue working. The Student then made physical contact with [student 2]. [Student]'s pencil tip make contact with [student 2]'s head. [Student 2] reported this incident to the teacher. [Student] then brushed by [student 2], pushing him with his shoulder, and then rattled his chair. Action: family conference, family invited to have an IEP meeting to address pattern of aggressive behavior toward peers and create a follow up plan via IEP. Action: teacher reteach expected behavior, per BIP in IEP, Student went to the resource room to calm down and reset.

96. On May 9, 2017, the Student's IEP team met to amend the Student's March 2017 IEP. The amended IEP provided for the following specially designed instruction in a special education setting from 5/12/17 – 6/26/17:

- Social/emotional provided by special education teacher: 20 minutes – 1 time weekly

The IEP provided for the following specially designed instruction in a general education setting:

- Study/organizational skills provided by special education teacher: 20 minutes – weekly
- Social/behavioral skills provided by paraeducator: 1095 minutes – weekly

97. Also on May 9, 2017, the District issued a prior written notice, proposing to change the Student's IEP. The notice stated the reason for the proposed action was to discuss the fade plan for the Student's paraeducator support. The notice stated:

Fading support has not been successful in reducing disruptive behaviors. Parents feel that if the support can be used to keep the Student engaged in the classroom, support is beneficial. Strategic support, as opposed to monitoring behavior, such as pre-planning support for assignments. The [IEP] team notes that the support in the afternoon has been successful. Behaviors are often unpredictable and difficult to preplan for. Parents see a pattern of difficulties during math. He needs support to engage during math. He needs pre-structured support for assignments. [IEP] team reports that the Student has support during math but often does not accept the support. Once Student feels confident, he does well. When he feels others are doing better than he is, he becomes escalated. Discussion of conflict resolution strategies. Executive functioning issues, Parents are not seeing the pre-engagement that Student needs. [IEP] team is offering the supports Student needs to address his executive functioning needs, but often he refuses and become escalated because he feels insulted by the supports. [Discussion of] support in the least restrictive environment [included] how to provide the needed support for Student's executive functioning, but not singling him out or over providing support. [IEP] team reported helping break down work and provide support for classwork.

The notice further stated that the Parents requested that the paraeducator support be removed from the Student's IEP because they do not yet know the team at the District middle school, and if the supports would work for the Student in the middle school setting. The school team feel strongly that the paraeducator support should be in the service matrix to provide the picture of the supports that the Student needs during the day, including the supports that the Parents feel are necessary for the Student to succeed.

The notice further stated the following factors were relevant to the action:

Parents feel that an assigned paraeducator for the Student all day is not the least restrictive environment. Teacher suggests a smaller team meeting with the Student to explain the support in the classroom to the Student. Parents report that Student would prefer not to have pull out time for working with the special education teacher. The teacher replied that she is happy to give that a try. The house administrator will follow up with the family to continue the discussion of services at the District middle school. An IEP transition meeting will be scheduled before the end of the year. The IEP team agreed to Parents' request that the paraeducator support minutes be removed, although the school team is very concerned about the removal of the support.

98. The District's 2016-2017 school year ended on June 23, 2017.

### CONCLUSION

The Parents alleged that the District failed to implement the Student's BIP during an incident on October 31, 2016. At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. The Student's March 2016 IEP was in place at the beginning of the school year, and on October 31, 2016. The District must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Here, the Student's March 2016 BIP included a protocol to address specific target behaviors exhibited by the Student. On October 31, when the Student was refusing to listen to the teacher and disputing class by making inappropriate comments about anything the teacher or students said. The teacher followed the BIP protocol and called for an administrator to provide the Student a break. The assistant principal arrived and asked the Student to take a break with her in the office and tell her why he was so upset. The Student refused and threatened to destroy school property. The assistant principal could see the Student was escalating and that 3<sup>rd</sup> graders would soon be in the halls, and told the Student that if he did not join her in the office, she would have to call security. The assistant principal then talked with the Student and allowed him to call his father. When the Student calmed down, the assistant principal escorted him back to class. Once he was back in class, the Student acted aggressively toward another student and was again directed to take a break in the office with the assistant principal, per his BIP. When the Student further escalated, screaming at the assistant principal and damaging school property, the assistant principal followed the BIP and kept the Student in the office until he calmed down, and then returned him to class. Based on the documentation provided in this complaint, the District followed procedures for implementing the Student's BIP during the October 31, 2016 incident. The Parents also alleged that the District failed to implement the Student's BIP during an incident on November 2, 2016, when the Student pushed another student and shoved a teacher. The Student's March 2016 BIP stated that when the Student shoved a peer, he would take a break and includes a list of strategies the Parents preferred staff to use whenever possible. One strategy suggested in the BIP stated the Student did not do well when confronted "head on" regarding a situation, and stated the Parents preferred that staff approach a given situation with the Student in a blame-free way. Based on the documentation, on November 2, 2016, the Student pushed another student and when the teacher approached the Student to take a break, he became verbally aggressive toward the teacher. Additionally, the documentation shows that when the Student responded aggressively, the teacher discontinued the interaction, but that the Student shoved the teacher as he walked past her, not during the interaction. The documentation substantiates that the teacher implemented the Student's BIP when she asked him to take a break when he pushed his peer. While the Parents may have preferred that staff not confront the Student about his behaviors, the District cannot ignore behavior that is a safety risk to other students. The District has a responsibility to ensure all students are safe at school.

The Parents further alleged that the District failed to implement the Student's IEP when it improperly provided paraeducator support during the spring of 2017. The Student's March 2017

IEP (in relevant part) provided for supplementary aids and services provided by a paraeducator for 60 minutes/5 times weekly in a general education setting, and specially designed instruction in social/behavior skills provided by a paraeducator for 1095 minutes weekly, also in general education. The Parents alleged that the paraeducators were not supporting the Student by breaking down his work with him, rather just gathering data and monitoring. The paraeducator support in the Student's IEP was implemented to support the Student with regulating his emotions and emotional response across all settings, but particularly during unstructured times, as well as helping the Student to break down assignments to avoid getting overwhelmed. The District emailed the Parents a breakdown of how the academic support was provided by the paraeducators for the Student. Additionally, discipline reports and observations by the house administrator provided in response to this complaint showed that the paraeducators were actively providing social/behavior services to the Student. Due to the Student's reoccurring physical aggression toward peers and staff, the District provided a paraeducator in proximity to the Student to ensure his safety, and the safety of other students and staff, in addition to providing paraeducator support for breaking down academics. Documentation provided by the District in response to this complaint showed that the paraeducators working with the Student provided emotional support as well as academic support as set forth in the IEP. Therefore, OSPI find that the District implemented the Student's IEP during the 2016-2017 school year.

#### **CORRECTIVE ACTIONS**

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

None.

Dated this \_\_\_\_ day of September, 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 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.)