

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-75

PROCEDURAL HISTORY

On October 23, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Shoreline School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On October 23, 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 November 14, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on November 15, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On November 29, 2017, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On December 15, 2017, OSPI requested additional information from the District. On December 15, 2017 and December 18, 2017, OSPI received the requested information from the District and forwarded the information to the Parent on December 20, 2017.

On December 19, 2017, OSPI requested additional information from the District. On December 19, 2017, OSPI received the requested information from the District and forwarded the information to the Parent on December 20, 2017.

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

OVERVIEW

At the beginning of the 2016-2017 school year, the Student attended a District preschool and was not eligible for special education services. In September 2016, the Parents provided written consent for the District to evaluate the Student for special education services, and in October, the Student's evaluation group determined the Student was eligible for special education services. Also in October 2016, the District asked the Parents to keep the Student out of school until a program was put in place to address the Student's challenging behaviors. Later in October, the Student's individualized education program (IEP) team developed the Student's initial IEP and the Student returned to school. In November 2016, the Parents provided written consent for the

District to complete a functional behavioral assessment (FBA). However, during the course of the school year, the Student's behaviors improved and the District decided not to complete the FBA. At the beginning of the 2017-2018 school year, the Student transitioned into a District kindergarten class and again began exhibiting challenging behaviors. In September 2017, the Parents asked the District to provide a 1:1 paraeducator to help the Student in the classroom. Also in September, the Parents again provided written consent for the District to complete a FBA. In October 2017, the District completed the FBA and developed a BIP for the Student. The Parents alleged that the District failed to follow procedures: for evaluating the Student, including conducting a FBA, for responding to the Parents' request for a 1:1 paraeducator, for implementing the Student's IEP, and for disciplining the Student who receives special education services. The District admitted the allegations in part and denied in part.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on October 24, 2016. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUES

1. Did the District follow procedures for evaluating/reevaluating the Student, including conducting a functional behavioral assessment?
2. Did the District follow special education disciplinary procedures during the 2016-2017 school year?
3. Did the District follow procedures for responding to the Parent's request for 1:1 support?
4. Did the District follow procedures for implementing the Student's individualized education program (IEP) during the 2017-2018 school year?

LEGAL STANDARDS

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

Initial Evaluation – Specific Requirements: When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent. The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005. A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all of the student’s special education and related service needs, whether or not they are commonly linked to the disability category in which the student has been classified. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. 34 CFR §300.304; WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040.

The evaluation must comply with the IDEA’s procedural requirements. A group that includes qualified professionals selected by the district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, in order to determine if the student is eligible for special education and the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities. 34 CFR §300.304(b); WAC 392-172A-03020(2). A student will not receive special education and related services unless he or she is qualified for those services under one or more of the eligibility criteria established by WAC 392-172A-01035.

Functional Behavior Assessment (FBA): A functional behavioral analysis (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, the IEP Team must include a BIP in the child’s IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2). An FBA focuses on identifying the function or purpose behind a child’s behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a behavioral intervention plan (BIP) that will reduce or eliminate the misbehavior. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2). An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a

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

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

Suspensions: Suspension shall mean a denial of attendance (other than for the balance of the immediate class period for "discipline" purposes) for any single subject or class, or for any full schedule of subjects or classes for a stated period of time. A suspension also may include a denial of admission to, or entry upon, real and personal property that is owned, leased, rented, or controlled by the school district. WAC 392-400-205(2).

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

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior

that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or behavior intervention plan. 34 CFR §300.530(e); WAC 392-172A-05145(5).

If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct a functional behavioral assessment, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or, if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and, except for special circumstances, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan. 34 CFR §300.530(f); WAC 392-172A-05145(6).

When a disciplinary exclusion exceeds ten school days and the behavior in question is found not to be a manifestation of the student's disability, a district may apply the same relevant disciplinary procedures, in the same manner and for the same duration as it would to a student not eligible for special education, except that: the student must continue to receive services that provide a FAPE and enable the student to continue to participate in the general education curriculum and progress toward meeting annual IEP goals, even if services are provided in another setting; and receive, as appropriate, a functional behavioral assessment and behavioral intervention services that are designed to address the behavior violation so that it does not recur. 34 CFR §300.530(c)-(d); WAC 392-172A-05145(3)-(4).

Disciplinary Exclusions: Protections for Children Not Yet Eligible for Special Education Services: In general, a student who has not been determined to be eligible for special education services may assert any of the protections provided to students receiving special education services if the district is deemed to have knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. 34 CFR §300.534(a); WAC 392-172A-05170(1). A district will be deemed to have knowledge that a student is a student eligible for special education if the parent of the student had expressed concern in writing to personnel of the district that the student is in need of special education services; the parent requested an evaluation of the student pursuant to WAC 392-172A-03005; or a teacher of the student or other district personnel have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or other supervisory personnel. 34 CFR §300.534(b); WAC 392-172A-05170(2).

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.

FINDINGS OF FACT

Background Information

1. The Student lives with his mother and his father (Parents). The Student's mother filed this complaint.
2. During the 2015-2016 school year, the Student was a resident of the District and attended a private preschool program and was not eligible for special education services. According to the Parents' complaint, in the fall of 2015, they referred the Student to be evaluated for special education services, and on November 23, 2015, the District decided not to evaluate the Student for special education services.
3. According to the District's response to this complaint, in mid May 2016, the Student's mother telephoned the school psychologist (school psychologist 1) and they discussed whether to consider evaluating the Student for special education services.
4. Between May 27-31, 2016, school psychologist 1 and the Student's mother exchanged emails. The mother stated that she was in the process of obtaining release of information documentation so that school psychologist 1 could speak with the Student's private providers. School psychologist 1 responded that she would like a special education teacher to observe the Student in his classroom. The Parent replied that there were four school days left in the private school's school year and requested to have the Student observed "early in the next [school] year".
5. The District's 2015-2016 school year ended on June 24, 2016.

2016-2017

6. The District's 2016-2017 school year began on September 7, 2016.
7. On September 8, 2016, the District sent the Parents notice that a meeting to determine whether to evaluate the Student for special education services was scheduled for later that afternoon.
8. Also on September 8, 2016, the Parents met with District staff to discuss evaluating the Student for special education services. The referral form stated staff from the Student's

private preschool and the Parents expressed their continuing concerns with the Student's behaviors. The District decided to evaluate the Student in the areas of social/emotional skills and adaptive skills.

9. Also on September 8, 2016, the Parents provided written consent for the District to evaluate the Student for special education services. The consent form stated the Student would be assessed in the areas of social/emotional and daily living/adaptive skills.
10. Additionally, on September 8, 2016, the District issued prior written notice, proposing to evaluate the Student for special education services.
11. On September 9, 2016, the Parent enrolled the Student in a preschool program at the District's children's center. The Student was scheduled to start on September 14, 2016, and attend preschool Monday through Friday from 9:00 a.m. until noon.
12. On October 6, 2016, the District sent notice to the Parents that a meeting to review the results of the Student's initial evaluation and determine the Student's eligibility for special education services was scheduled for October 13, 2016.
13. On October 11, 2016, the Student's District preschool teacher emailed the District director of the children's center (director). The preschool teacher stated that the Student poked other students with a pencil, scratched a student, and attempted to rip up another student's artwork. She also stated the Student's father came to pick the Student up from school because of the Student's behavior. The preschool teacher further stated that she no longer felt safe with the Student in her classroom. The preschool teacher recommended contacting the Parents to ask them not to bring the Student to school until after the individualized education program (IEP) team meeting when there was a program in place for the Student.
14. According to the Parents' reply to the District's response in this complaint, on October 11, 2016, the Parents received a voicemail from the District, stating that the Student was "not welcome back at school". The Parents stated it was not a mutual decision to keep the Student home until after the Student's IEP team met to develop the Student's IEP.
15. On October 13, 2016, the Parents, the special education teacher (special education teacher 1), school psychologist 1, and the Student's preschool teacher met to review the results of the Student's initial evaluation and determined the Student was eligible to receive special education services under the category of developmental delay. The evaluation report stated the Student was referred for a special education evaluation when the Parents and the Student's private preschool staff expressed continued concerns regarding the Student's behavior, adaptive, and social/emotional skills. The evaluation report stated "the Student was asked not to return to the [children's center] until after his special education evaluation was completed" and that the District made the decision after a "string of significant incidents that involved the safety of both other children and [the Student]". The report stated the Student demonstrated a delay in his overall adaptive skills and he engaged in unsafe behaviors at school and needed to develop the skills to follow classroom routines and rules

independently. The report stated the Student's assessment results in the areas of conceptual domain, social domain, and practical composite were below average, and that the Student demonstrated a delay in his social/emotional skills. The report stated the Student was diagnosed with post-traumatic stress disorder (PTSD)¹ and this impacted the Student's daily functioning. The report said the Parents and school staff had concerns about the Student's low executive functioning, and that he needed significant adult support and scaffolding to help re-wire his response to situations that he perceives as dangerous and/or overwhelming. The evaluation report recommended the Student receive specially designed instruction in the area of daily living/adaptive skills and social/emotional skills.

16. Later on October 13, 2016, the District issued prior written notice, proposing to initiate the Student's eligibility.
17. On October 18, 2016, the District sent the Parents a written invitation to attend an IEP team meeting to develop the Student's initial IEP and determine placement. The meeting was scheduled for October 21, 2016.
18. On October 21, 2016, the Student's IEP team met to develop the Student's initial IEP. The IEP stated the Student's strengths were his cognitive and motor skills, but that he had developmental delays in the area of daily living/adaptive and social/emotional skills. The IEP also stated that the Student rated below average in the areas of functional pre-academics, health, safety, self-care, self-direction and social. The IEP further stated the Parents and school staff had concerns about the Student's impulse control, working memory, self-monitoring, planning, prioritizing, task initiation, and emotional regulation/control. The IEP stated when the Student was "triggered", his response was to "freeze or flee" and that the Student demonstrated a significant level of externalizing problem behaviors. The IEP also stated that the Student's behavior impeded his learning and that of others. The IEP provided for accommodations for the Student, including a behavioral intervention plan (BIP) and visual aids; however, the IEP did not include a BIP. The IEP included one annual goal in the area of daily living/adaptive skills and two annual goals in the area of social/emotional skills. The IEP stated the Student would be placed in an "inclusion classroom with fifty percent typically developing peers"². The IEP provided for 270 minutes per week of specially designed instruction in the area of daily living/adaptive skills and 270 minutes per week of specially designed instruction in the area of social/emotional skills in the general education setting.
19. On October 21, 2016, the District issued prior written notice, proposing to initiate the Student's special education services and placement on October 25, 2016. The notice stated

¹ The District's documentation in response to this complaint shows that the Student experienced early life trauma prior to being adopted by the Parents.

² According to the District's response to this complaint, the District's preschool inclusion classroom is located at the District's children's center. "The preschool classroom is staffed by one special education teacher, one general education teacher, and one special education paraeducator, and students eligible for special education services receive their free and appropriate public education (FAPE) and specially designed instruction in this setting".

the IEP team considered keeping the Student in his current preschool classroom, but rejected that idea because the Student was “unable to remain safe in the larger class environment”.

Timeline for the Complaint begins October 24, 2016

20. During the month of October, the Student was removed from school for ten (10) days from October 11 -24, 2016.
21. On October 25, 2016, the Student began attending preschool in the inclusion classroom, as per his IEP. The Student was scheduled to attend preschool on Tuesdays, Wednesdays, and Thursdays from 1:00-4:00 p.m.
22. On November 1, 2016, school psychologist 1 emailed the Parents, stating she was sending the Student home with a consent form, which would allow the District to conduct a functional behavioral assessment (FBA). School psychologist 1 stated that she and special education teacher 1 began working on a draft but “did not want to formally complete it until [the Student] was able to get a little more settled”.
23. On November 18, 2016, the Student’s mother emailed school psychologist 1, stating she did not receive the consent form and requested a copy of the consent form to complete. School psychologist 1 responded and attached a copy of the consent form.
24. On November 22, 2016, the Student’s mother provided written consent for the District to complete an FBA. The consent form contains the mother’s handwritten notes, stating the Student should be assessed for self-regulating, social skills, and “whatever the professionals think necessary”.
25. During the month of November 2016, the Parents and special education teacher 1 exchanged emails regarding the classroom lessons, events, and activities and the Student’s behaviors during school that month. Generally, special education teacher 1 and the Parents discussed the Student’s behavior and shared strategies they used with the Student.
26. On December 14, 2016, the Student’s father emailed special education teacher 1. The father stated he was inquiring why the Student exhibited more behaviors on Thursdays and stated the Student could be anxious about the transition into the weekend. The father also stated that the Student has taken “huge strides already this year”.
27. On January 5-6, 2017, the Student’s mother and special education teacher 1 exchanged emails regarding the classroom lessons and the Student’s behavior. Special education teacher 1 stated the Student got “de-regulated” a few times, but was able to calm quickly.
28. During the month of February 2017, the Parents and special education teacher 1 exchanged emails regarding the classroom lessons, events, and activities and the Student’s behaviors during school that month. Generally, special education teacher 1 and the Parents discussed the Student’s behavior and shared strategies they used with the Student.

29. On February 9, 2017, the District issued progress reporting regarding the Student's progress toward his annual IEP goals. The report stated the Student made significant progress on his daily living/adaptive goal and both social/emotional goals.
30. On March 11-14, 2017, the Student's mother and special education teacher 1 exchanged emails about the Student's transition into kindergarten the following year. The mother stated she wanted to understand the family's options to ensure the Student transitioned well, and that she did not believe the Student would be successful in a typical classroom without supports. Special education teacher 1 stated they could speak with elementary school staff about continued supports for the Student.
31. On April 27, 2017, special education teacher 1 completed a "functional assessment checklist" based on her observations and knowledge of the Student. The checklist stated the Student's problematic behaviors included aggressive and noncompliant behaviors. The checklist also stated the problematic behaviors occurred two to four times a week during structured activities and transition times. The checklist also stated the Student's behavior had improved significantly since the beginning of the school year and that staff were able to redirect the Student approximately eighty percent of the time.
32. According to the District's response to this complaint, special education teacher 1 and school psychologist 1 discussed the Student's improved behaviors during the 2016-2017 school year and determined not to complete the Student's FBA. The response also stated this decision was not communicated to the Parents and an IEP team meeting was not convened.
33. On May 17, 2017, the District sent the Parents a written invitation to attend an IEP team meeting to review the Student's instructional needs and services minutes for his transition into kindergarten. The meeting was scheduled for May 19, 2017.
34. Also on May 17, 2017, the District issued progress reporting regarding the Student's progress toward his annual IEP goals. The report stated the Student made significant progress on his daily living/adaptive goal and both social/emotional goals. The report also stated the Student had become independent with transitions at least eighty percent of the time, that he had improved tremendously at "circle time", and that he was responsive to positive reinforcements to peers who are doing the expected behaviors or following directions.
35. On May 19, 2017, the Student's IEP team, including the Parents and a special education kindergarten teacher (special education teacher 2), met to review the Student's October 2016 IEP. The IEP team discussed the Student's transition and then adjusted the Student's service minutes for resource room support. The IEP team considered placing the Student in a Behavior Learning Support classroom, but rejected the idea because the data showed the Student was making progress on his annual goals regarding his behavior. The IEP team then amended the October 2016 IEP to reflect the Student's upcoming transition from the inclusion preschool program to a general education kindergarten classroom at a District elementary. The amended October 2016 IEP provided for the following specially designed instruction from May 24, 2017 through July 31, 2017:

- Daily living/adaptive skills: 270 minutes, one time per week – general education setting
- Social/emotional: 270 minutes, one time per week – general education setting

The amended October 2016 IEP provided for the following specially designed instruction to be delivered by a special education staff from August 1, 2017 through October 24, 2017:

- Daily living/adaptive skills: 15 minutes, five times per week – general education setting
- Social/emotional: 30 minutes, one time per week – general education setting
- Social/emotional: 30 minutes, one time per week – special education setting

36. Also on May 19, 2017, the District issued prior written notice, proposing to amend the Student's IEP.

37. On May 23, 2017, special education teacher 1 and the Student's father exchanged emails. Special education teacher 1 contacted the father to pick up the Student earlier that day and the father asked the special education teacher to explain what happened to cause the Student's behaviors. This was the eleventh (11) day during the 2016-2017 school year that the Student was removed from school because of his behaviors.

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

2017-2018 School Year

39. The District's 2017-2018 school year began on September 6, 2017. The District's kindergarten programs began on September 11, 2017.

40. On September 11, 2017, the Student's general education kindergarten teacher emailed the Parents, stating the Student had "a good first day", although he did have incidences with his classmates and hit another student.

41. On September 12, 2017, the kindergarten teacher emailed the Parents regarding the Student's behavior. She stated that the Student was "exhibiting many of the behaviors [the Parents] described" and that the Student had a few incidences today. The kindergarten teacher stated the Student punched another child, dumped his water cup, and stated he hated everyone.

42. Also on September 12, 2017, the Student's mother emailed special education teacher 1, special education teacher 2, the kindergarten teacher, a school psychologist (school psychologist 2), the school principal, school counselor, and the Student's father. The mother stated that the Student struggles with "big transitions like the start and end of school" and that he does not have the "executive functioning to deal with it". The mother inquired if an additional person could "help [the Student] to do some thinking and planning for the next week of class". Later that day, special education teacher 2 responded to the mother's email, stating the "school based team" was getting together to discuss a short-term plan and a long-term plan for the Student's behaviors.

43. On September 13, 2017, the Student's father responded to the kindergarten teacher's September 12 email, providing background information about the Student and strategies she could use to manage the Student's behaviors.
44. On September 15, 2017, special education teacher 2 emailed the Parents, stating that the Student's IEP provided for a BIP as an accommodation, but that a BIP had not been developed. Special education teacher 2 stated that having a BIP in place would help the Student with the struggles he had adapting to his new school environment. Special education teacher 2 further stated the Student's "school based team" met on September 14, 2017, to discuss an FBA which was the first step in developing a BIP.
45. On September 15, 2017, the Student's mother again provided written consent for the District to complete an FBA for the Student.
46. On September 18, 2017³, the District sent notice to the Parents that a meeting to review the results of the Student's FBA was scheduled for October 2, 2017.
47. On September 19, 2017, the Student's father was contacted to pick up the Student from school because of the Student's behaviors.
48. Also on September 19, 2017, the Student's mother emailed special education teacher 1, special education teacher 2, and school psychologist 1. The mother stated that the Student was removed from school that day because of his behaviors. The mother inquired how to obtain 1:1 paraeducator for the Student to help with his executive functioning. On September 19, special education teacher 2 responded to the mother's email, stating that the process to evaluate the Student and develop a BIP was underway. Special education teacher 2 also stated that a behavior support specialist and school psychologist 2 were going observe the Student on September 20, 2017. Special education teacher 2 also stated that 1:1 is considered the most restrictive environment "and so it is considered very carefully after everything that can be implemented to supporting a student has been tried".
49. Also on September 19, 2017, the Student's father and the kindergarten teacher exchanged emails regarding the Student's challenging behavior. The father stated the Student could not cooperate with staff when "his brain is in fight, flight or freeze" and inquired about what may have triggered the Student to throw a magnet, which injured another student. The father also asked the kindergarten teacher to support a "push for a one-on-one for [the Student]", and the teacher agreed.
50. Also on September 19, 2017, the Student's mother emailed the Student's IEP team, expressing her frustrations regarding the school staff's strategies for responding to the Student's challenging behaviors. The mother stated that the Student had an IEP and that the District "could not just send [the Student] home or threaten to suspend him". The mother

³ The date on the Notice of Meeting is September 8, 2017, but this is assumed to be a typographical error and that the correct date is September 18, 2017.

then provided strategies that the Parents used with the Student in home and in church. The mother also stated she had “been begging for a one-on-one para” for the Student and asked how to obtain 1:1 paraeducator for the Student.

51. On September 20, 2017, special education teacher 2 responded to the Student’s mother’s September 19, 2017 email, stating that the school has a zero tolerance policy for unsafe behaviors that cause harm to other students. Special education teacher 2 provided examples of some of the strategies the staff was using with the Student and stated the behavioral specialist was coming in again to observe the Student the next day and that staff were going to meet the following week to formalize the BIP. Special education teacher 2 further stated the Student’s IEP team needed to meet to review the FBA and BIP, and that they could have a “deeper conversation” about the Parents’ concerns at the meeting.
52. Also on September 20, 2017, the Student’s mother and the kindergarten teacher exchanged emails about the Student’s behavior. The kindergarten teacher stated the Student poked a classmate, threw his shoe, and hit another student on the head, which left a bump. The teacher also stated she did not know what triggered the Student and that the plan was for the school counselor, special education teacher 2, and school psychologist 2 to provide support in the classroom, and that she would “ask the District for a one on one”. The Student’s mother responded, stating that the Student does “crazy stuff to have someone yell at him because he is scared and doesn’t know what to do. Causing chaos gets him a guaranteed reaction. This is why we have begged for a one-on-one to start the year”. The kindergarten teacher replied, stating that she was not familiar with the process to provide the Student with “a one on one” but that “having someone there, would help”.
53. On September 21, 2017, the District behavior support specialist emailed special education teacher 2 and school psychologist 2, stating that a meeting to develop the Student’s BIP was scheduled for September 25, 2017.
54. On September 22, 2017, the Student ran out of the elementary school building towards the road. As a result, school staff asked the Parents to pick up the Student early from school.
55. Also on September 22, 2017, special education teacher 2 emailed the Parents. She stated that she would email the Parents weekly summaries for the next three weeks as school staff continued to “learn about [the Student] and develop/implement systems and supports that will help him learn best”. Special education teacher 2 also stated that the Student was supported by two to three adults in the classroom and that the primary support staff included herself, school psychologist 2, the school counselor, the behavior specialist, and the principal. Special education teacher 2 stated that safety was the urgent concern and then provided information about incidents when the Student had injured his classmates. Special education teacher 2 also stated the Student ran out of the school towards the road and that is why the Student’s father was called to pick up the Student from school that day.
56. On September 27, 2017, special education teacher 2 emailed the Parents a copy of the Student’s FBA and proposed BIP. Special education teacher 2 stated that the Student’s BIP

could be modified as the Student's IEP team learned more about the Student's reinforcers. Special education teacher 2 then suggested dates to hold an IEP meeting and the Student's mother responded, stating the Parents were available on October 2, 2017.

57. On October 2, 2017, the Student's IEP team met to review the Student's FBA and develop a BIP. The FBA included data from the kindergarten teacher, special education teacher 2, the school counselor, school psychologist 2, and the behavioral specialist. The FBA identified the Student's problematic behavior as running around the classroom, hitting and kicking, throwing and breaking objects, threatening to harm peers and students, and growling and lunging to intimidate others. The FBA stated the antecedent events included when the Student was reprimanded, told no, was redirected to complete an activity, when the Student was made to be still for more than three minutes, and during transition times. The FBA stated the desired behavior was for the Student to keep his hands and feet to himself and to use "appropriate language toward peers and adults". The FBA recommended a BIP for the Student. The IEP team also developed a BIP for the Student, which included giving the Student reminders during times when his problematic behavior was likely to occur, clarifying rules and expectations, and modifying the Student's assignments. The BIP also stated that when the Student engaged in problematic behaviors, staff could provide the Student with a break or snack and that staff should initiate a break if the Student continued to exhibit unsafe behaviors. The BIP included teaching strategies, such as providing the Student with a visual schedule and visual cues for behavioral expectations. The BIP also included a plan to provide the Student 1:1 instruction within the classroom during the school day to teach expected behaviors and replacement behaviors for two weeks from October 2-13, 2017, and then fade the support by thirty minutes on October 16 or 17. The BIP stated if the Student was successful, the 1:1 instruction within the classroom would continually fade in thirty-minute increments, two times a week.
58. On October 2, 2017⁴, the District issued prior written notice, proposing to initiate a BIP based on the Student's FBA to begin on October 3, 2017. The notice stated that the Student had engaged in unsafe behaviors at school. The notice did not state that the Student's October 2016 IEP had been amended to include the agreed upon BIP.
59. On October 2, 2017, special education teacher 2 emailed the Parents a weekly summary regarding the classroom lessons, events, and activities and the Student's behaviors during school that week.
60. On October 3, 2017, the District sent the Parents a written invitation to attend an IEP team meeting to develop the Student's annual IEP. The meeting was schedule for October 11, 2017.

⁴ The prior written notice is dated September 28, 2017. It is assumed this is a typographical error and the correct date is October 2, 2017.

61. On October 6, 2017, special education teacher 2 emailed the Parents a weekly summary regarding the classroom lessons, events, and activities and the Student's behaviors during school that week.
62. According to the District's documentation, on October 10, 2017, the District contacted the Student's father to pick up the Student because of his behaviors. The documentation stated that the Student was scheduled for early dismissal due to a dentist appointment "but left earlier than expected due to the behavior concerns".
63. On October 11, 2017, the Student's IEP team, including the Parents, met to develop the Student's annual IEP. The IEP stated the Student was a bright and fun loving boy and had the academic skills required to be successful in kindergarten. The IEP also stated the Student had demonstrated significant difficulty in adapting socially and emotionally within the kindergarten setting. The IEP stated the Student used threatening and inappropriate language and when the Student was given directions, he would become unsafe and had to leave the classroom. The IEP also stated that at the beginning of the 2017-2018 school year, an adult helped the Student through classroom routines and directions one hundred percent of the time and also kept those around the Student safe. The IEP further stated that the Student is able to follow directions and navigate classroom routines seventy-five percent of the time "with a temporary 1:1 support person implementing the behavior[a]l intervention plan". The IEP said that the Student's behavior impeded his learning and that of others. The IEP provided for accommodations for the Student, including a BIP, visual aids, and a designated break area. The IEP included one annual goal in the area of daily living/adaptive skills and two annual goals in the area of social/emotional skills. The IEP provided for the following specially designed instruction:
- Daily living/adaptive skills: 30 minutes, five times per week – general education setting
 - Social/emotional: 30 minutes, five times per week – special education setting
64. Also on October 11, 2017, the District issued prior written notice regarding the Student's new IEP. The notice stated the Student continued to require specially designed instruction in the areas of social/emotional skills and daily living/adaptive skills. The notice also stated that beginning in September 2017, the school counselor was serving as a temporary 1:1 paraeducator for the Student and that the BIP included a plan to fade the 1:1 support. The notice stated that the IEP would be implemented on October 16, 2017.
65. On October 17, 2017, the Student's father emailed the District members of the Student's IEP team, stating he wanted to ensure that the Student's needs were met, and also provided strategies the Parents used with the Student in home and in church. The father asked the District to provide prior written notice, stating why it declined to provide the Student with "an extra aide in the classroom (for more than the hour per day that was already provided for all students)". The father stated the Student's IEP identified that the Student needed constant supports, reminders, and check in's, and asked if a student peer, parent volunteer, or other staff member could support the Student throughout his day in the classroom. The father also stated that he disagreed with the term "temporary 1:1" because the school counselor was also helping other students in the classroom, and asked that the language be

corrected. The father also disagreed with the plan to fade the temporary 1:1 support for the Student because the Student had regressed from meeting his annual IEP goals.

66. On October 18, 2017, special education teacher 2 responded to the father's email, stating the staff has been working with the Student and collecting data, and that the Student's IEP may require adjustments. Special education teacher 2 stated she would like to schedule an IEP team meeting to review the Student's IEP and inquired if the Parents were available to attend an IEP meeting on November 6 or 7. Special education teacher 2 also stated that they could discuss the Parent's request for 1:1 paraeducator at the next IEP meeting and stated that the school counselor was "providing support for [the Student] to ensure the safety of [the Student] (he has left the building) and other students in the classroom (hitting). This is a transitional measure that was implemented upon observing unsafe behaviors". The Student's father responded that the Parents were available to meet on November 6, 2017.
67. On October 18, 2017, the Student's mother emailed the behavior specialist, expressing her disappointment regarding the behavioral strategies school staff were using with the Student. The mother stated the Student was sent home that day because of defiant behaviors and ripping up papers. The mother stated the Student's "brain was wired differently due to trauma and that he needed different strategies than neuro typical kids". The mother expressed her frustration that "it was the middle of October and supports are still not in place". She inquired whether the behavioral specialist knew if anyone on the staff was "trauma-informed" and could provide support for the Student.
68. October 20, 2017, special education teacher 2 emailed the Parents a weekly summary regarding the classroom lessons, events, and activities and the Student's behaviors during school that week.
69. During the month of October 2017, the Student was removed from school due to his behaviors for two (2) days on October 10 and 18. The Student was removed from school for four (4) days during the 2017-2018 school year.
70. The District's response to this complaint included documentation from special education teacher 2, describing the special education services provided to the Student during the 2017-2018 school year. The documentation stated from September 6, 2017 through October 15, 2017, the Student received the following specially designed instruction:
 - Daily living/adaptive skills: 15 minutes, Monday through Friday from 10:45-11:45 a.m. – general education setting
 - Social/emotional: 30 minutes, Monday from 9:30-10:00 a.m. – general education setting
 - Social/emotional: 30 minutes, Tuesday from 1:00-1:30 p.m. – special education settingThe documentation also stated that beginning October 16, 2017, the Student received the following specially designed education:
 - Daily living/adaptive skills: 30 minutes, Monday through Friday from 8:40-9:10 a.m. in the general education setting

- Social/emotional: 30 minutes, Monday through Friday from 1:00-1:30 p.m. in the special education setting

The documentation further stated that since September 2017, the school counselor served as a temporary 1:1 paraeducator working with the Student in the areas of social/emotional skills and daily living/adaptive skills and the Student was receiving more specially designed instruction than provided in his IEP. The documentation stated that the Student's BIP included a "fade plan" to reduce the 1:1 support for the Student. The documentation also stated transition times were difficult times for the Student; therefore, he was not "generally successful" in getting to the resource room so his specially designed instruction was provided in the general education setting during the majority of the day. The documentation further stated the Student had become more successful with transition to the resource room but was not always "cooperative with the instructor".

71. On October 23, 2017, the Student's mother filed this citizen complaint.

CONCLUSIONS

Issue 1: Special Education Evaluation Procedures – The timeline for this complaint begins on October 24, 2016. Therefore, OSPI does not have authority to address potential issues regarding the Student's initial evaluation that arose prior to this date.

The District acknowledged that it did not follow procedures to conduct the FBA. In early November 2016, the District decided to assess the Student's behavior by conducting an FBA. A district is required to obtain consent when conducting a functional behavior assessment (FBA) and must complete the FBA within thirty-five (35) school days after the date of receiving consent. Here, the District obtained written consent to conduct an FBA on November 22, 2016, but did not complete the Student's FBA within 35 school days. The District stated that due to the Student's improved behaviors during the 2016-2017 school year, it did not complete the FBA or develop a BIP and did not provide notice of the decision to the Parents. Although the District and Parents maintained constant communication regarding the Student's improved behavior, this did not alleviate the District's responsibility to complete the FBA. On September 15, 2017, the District again obtained the mother's written consent to conduct an FBA when the Student began to have challenging behavior in his kindergarten class. On October 2, 2017, the IEP team met to review the FBA, which was within eleven (11) school days of receiving the mother's consent.

Issue 2: Special Education Disciplinary Procedures During the 2016-2017 School Year – During the 2016-2017 school year, the District asked the Parents not to bring the Student to school because of their concerns with his behavior until after the Student's October 2016 IEP was in place. Due to this, the Student did not attend school for ten days from October 11-24, 2016. Additionally, on May 23, 2017, the District contacted the Student's father to remove the Student from school because of concerns with the Student's behaviors. Although the District denied disciplining the Student during the 2016-2017 school year, the District removed the Student from school because of the Student's challenging behaviors, which amounts to a suspension as defined by WAC 392-400-205(2). Within ten school days of the district's decision to change the student's

placement through discipline, the district, parents, and other relevant members of the IEP team must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. A change in placement occurs when a student is removed from his current placement because of discipline for more than ten consecutive days; or, when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. Here, on May 23, 2017, the District contacted the Parents to pick up the Student from school, which brought the total number of days the Student was removed from school to eleven (11) school days. This removal from school combined with the Student's 10-day removal from school from October 11-24, 2016, constituted a change in placement. As such, the District was required to determine if the removals constituted a change in placement and whether a manifestation determination meeting was warranted. The District failed to do so.

Additionally, after a student has been removed from his current placement for ten school days in the same school year, during any subsequent days of removal, the school district must provide services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The District's documentation in this complaint does not show that the District provided the Student with services on his eleventh day of suspension. The District is reminded it has a duty to continue to provide services to enable the Student to participate in the general education curriculum, and to make progress toward his IEP goals.

Issue 3: Parent Request for 1:1 Paraeducator – Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. On September 19, 2017, the Student's mother asked that the Student receive 1:1 paraeducator to help with his executive functioning after the Student was removed from school because of his behavior. In response, the District stated an FBA and a plan to develop a BIP for the Student was in process and also stated that 1:1 was the most restrictive environment and would be considered after other strategies have been tried. On September 19, 2017, the Student's father asked the Student's kindergarten teacher to support the efforts of the Parent to obtain a 1:1 paraeducator for the Student. In response, the kindergarten teacher stated she was not familiar with the process to provide the Student with 1:1 paraeducator, but would ask the District. On October 11, 2017, the Student's IEP team met to develop his annual IEP and the District provided prior written notice, stating the District had been providing temporary 1:1 support to manage the Student's behaviors since September 2017, but did not address the Parents request for a 1:1 paraeducator. It is also noted that paraeducator support is a supplementary aid and service, not a placement option on the continuum of alternative placements. When determining a student's least restrictive environment, the District must ensure that the provision of services be provided to the maximum extent appropriate in the general education environment, unless the nature or severity of the student's disability is

such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Issue 4: IEP Implementation During the 2017-2018 School Year – The Parents alleged that the District failed to implement the IEP because the District was not following strategies to keep the Student regulated and also alleged that the temporary 1:1 support was not solely dedicated to the Student. The school district must ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. From September 7, 2017 through October 15, 2017, the Student’s October 2016 IEP was in place. The IEP provided for a BIP, but because the District had failed to develop a BIP for the Student during the 2016-2017 school year, the District was unable to implement the BIP for the Student until October 3, 2017, when a BIP was developed. The failure to have a BIP in place for the Student amounts to a failure to implement the Student’s October 2016 IEP.

The Student’s October 3, 2017 BIP provided for temporary 1:1 support for the Student’s behavioral needs. On October 16, 2017, the District began implementing the Student’s October 2017 IEP, which included the October 3, 2017 BIP. Based on the documentation in this complaint, sometime in September 2017, the school counselor began serving as a temporary 1:1 paraeducator for the Student to maintain the Student’s and his classmate’s safety. The District has substantiated that it followed procedures to implement the Student’s October 2017 IEP.

CORRECTIVE ACTIONS

By or before **January 26, 2018, February 2, 2018, and March 9, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

If the District has not already done so, the District will hold an IEP meeting to consider, discuss, and respond to the Parents’ request for 1:1 paraeducator support for the Student. By **January 26, 2018**, the District will provide: 1) a copy of any meeting invitations; 2) a copy of any new or amended IEP; 3) a copy of a prior written notice; and, 4) any other related documentation.

DISTRICT SPECIFIC:

OSPI accepts the District’s proposed corrective action to provide written guidance with the following modifications:

The District will develop written guidance to be provided to all District special education certificated staff in the Early Childhood Program, including all educational staff associates (ESAs), principals, and assistant principals working with that program, regarding procedures for responding to parent requests, procedures for conducting FBAs and developing BIPs, and special education disciplinary procedures. The guidance will include examples.

By **February 2, 2018**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by February 16, 2018, and provide additional dates for review, if needed. By **March 2, 2018**, the District will provide all District special education

certificated staff, including ESAs, principals, and assistant principals with the written guidance. By **March 9, 2018**, the District will provide OSPI with documentation showing all required staff received the written guidance. This documentation will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross-reference the list with the actual recipients.

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

Dated this ____ day of December, 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.)