

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-54

PROCEDURAL HISTORY

On May 25, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Seattle 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 May 29, 2018, 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 June 20, 2018, the District requested an extension of time for the submission of its response. OSPI granted this extension on June 20, 2018, giving the District until June 28, 2018, to submit its response.

On June 28, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on July 2, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On July 11, 2018, OSPI requested additional information from the District. OSPI received this information on July 11 and July 13, 2018. On July 13, 2018, OSPI forwarded this information to the Parent.

On July 12, 2018, OSPI requested additional information from the Parent. OSPI received this information on July 13, 2018, and forwarded it to the District on the same day.

On July 13, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On July 13, 2018, and July 19, 2018, OSPI requested additional information from the District. On July 17, 2018, July 20, 2018, and July 23, 2018, OSPI received the requested information from the District. OSPI forwarded that information to the Parent on July 23, 2018.

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

OVERVIEW

During the 2017-2018 school year, the Student attended a District middle school and was eligible to receive special education services. At the beginning of the school year, the Student's behavioral intervention plan (BIP) from February 2017 was in place. In January 2018, the District conducted a triennial reevaluation of the Student, which included a functional behavioral assessment (FBA). Also in February 2018, the Student's individualized education program (IEP)

team created a new BIP for the Student. Throughout the 2017-2018 school year, the Student displayed various undesired behaviors and in response, the District utilized a variety of strategies in responding to these behaviors. For example, sometimes the District ignored the Student's behavior, sometimes the District utilized "positive" supports and interventions, and sometimes the District imposed consequences for the Student.

The Parent alleged that the District did not follow procedures for developing the Student's February 2018 BIP. The Parent also alleged that the District did not properly implement the Student's February 2017 BIP and February 2018 BIP. The Parent also alleged that the District did not follow proper discipline procedures for the Student. The District denied each of these allegations.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on May 26, 2017. 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 developing and amending the Student's individualized education program (IEP), including the development of a behavioral intervention plan?
2. Did the District implement the BIP provided in the Student's IEP?
3. If the Student was suspended or removed from class for more than 10 school days during the 2017-2018 school year, did the District follow special education discipline procedures?

LEGAL STANDARDS

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303(b); WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's

special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

Reevaluation – Review of Existing Data: As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. If the student's IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be eligible for special education services, and/or to determine the student's educational needs, the school district must notify the parents of that determination, the reasons for the determination, and the parents' right to request an assessment to determine whether the student continues to be eligible for special education and/or determine the student's educational needs. 34 CFR §300.305; WAC 392-172A-03025. The evaluation group's review does not need to be conducted through a meeting but if a meeting is held, parents must be provided with notice and afforded an opportunity to participate. 34 CFR §§300.305(b) and 300.501(b); WACs 392-172A-03025(3) and 392-172A-05000(2).

Evaluation/Reevaluation Standards: In completing an evaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so 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. No single test or measure may be used as the sole criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student. School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. Additionally, districts must ensure that the assessments and evaluation materials they use are selected and administered so as not to be discriminatory on a racial or cultural basis. Assessments must be provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so. 34 CFR §300.304 WAC 392-172A-03020.

Districts must also ensure that assessments and other evaluations are used for the purposes for which they are valid and reliable, and are administered by trained and knowledgeable personnel and in accordance with any instructions provided by the producer of the assessment. Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need, and must best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment accurately reflects the student's aptitude or achievement level rather than reflecting the student's impairment. If necessary as a part of a complete assessment, a district may obtain at its expense a medical statement or assessment indicating any additional factors that affect the student's educational

performance. Students should be comprehensively assessed in all areas of suspected disability, and districts must use assessment tools and strategies that provide information that directly assists those determining the student's educational needs. Finally, districts must ensure that evaluations of students who transfer from one district to another within the state during a school year are coordinated with the student's prior and subsequent district as necessary and as expeditiously as possible, to ensure prompt completion of the full evaluation. 34 CFR §300.304; WAC 392-172A-03020(3).

Functional Behavioral Assessment (FBA): An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a behavioral intervention plan (BIP) that will reduce or eliminate the misbehavior. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2). 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, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

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. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4). The IDEA does not specify who is qualified to conduct an FBA, for example there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

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 and if the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why: the student cannot participate in the regular assessment and the particular alternate assessment selected is appropriate for the student; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (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.

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).

IEP Development Generally: In developing each student's IEP, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of their student, and the results of the initial or most recent evaluation of the student, and the academic, development, and functional needs of the student. WAC 392-172A-03110(1). A general education teacher of a student eligible for special education, as a member of the IEP team, must, to the extent appropriate, participate in the development of the student's IEP, including the determination of appropriate positive behavioral interventions and supports for the student and supplementary aids and services, program modifications, and support for school personnel. WAC 392-172A-03110(2)(b).

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's individualized education program (IEP), the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (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).

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

The parent is an integral part of the IEP development process. The district must consider the parent's concerns and any information s/he provides. The district is not required, however, to adopt all recommendations proposed by a parent. The IEP team work toward consensus on IEP content, but if team members are unable to reach consensus it remains the district's responsibility to ensure that the IEP includes the special education and related services that are necessary to provide the student with a free appropriate public education. An IEP may therefore be properly developed under IDEA procedural requirements, yet still not provide the student all of the services that the parent believes are necessary components of the student's educational program.

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. 34 CFR §300.323; WAC 392-172A-03105. The initial IEP must be implemented as soon as possible after it is developed. 34 CFR §300.323(c); WAC 392-172A-03105(2). 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(3)(a). "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Disciplinary Removals – No Change of Placement: School districts may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not

more than ten consecutive school days to the extent those alternatives are applied to students without disabilities and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155. 34 CFR §300.530(b)(1); WAC 392-172A-05145(2). A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or fewer in that school year, if it provides services to a student without disabilities who is similarly removed. 34 CFR §300.530(d)(3); WAC 392-172A-05145(4).

Instructional Hours: "Instructional hours" means those hours students are provided the opportunity to engage in educational activity planned by and under the direction of school district staff, as directed by the administration and board of directors of the district, inclusive of intermissions for class changes, recess, and teacher/parent-guardian conferences that are planned and scheduled by the district for the purpose of discussing students' educational needs or progress, and exclusive of time actually spent for meals. If students are provided the opportunity to engage in educational activity that is part of the regular instructional program concurrently with the consumption of breakfast, the period of time designated for student participation in breakfast after the bell, as defined in RCW 28A.235.200, must be considered instructional hours. Breakfast after the bell programs, as defined in RCW 28A.235.200, including the provision of breakfast, are not considered part of the definition or funding of the program of basic education under Article IX of the state Constitution. RCW 28A.150.205.

FINDINGS OF FACT

Background Facts

1. The District initially determined that the Student was eligible for special education services while he was in preschool, and from that time on, the Student has continued to be eligible for special education.
2. During the 2014-2015 school year, the Student attended third grade in the District. In November of 2014, the Parent obtained an independent educational evaluation of the Student. The resulting independent educational evaluation report included roughly five pages of recommendations.¹
3. On February 3, 2015, the District completed a reevaluation of the Student. The Student's evaluation group found the Student eligible for special education under the emotional behavioral disability category. The February 2015 reevaluation report noted that "[the Student's] poor emotional regulation and reactivity produce inappropriate types of feelings and/or behavior under normal circumstances," and that these tendencies negatively impacted his school performance. The February 2015 reevaluation report recommended the Student receive specially designed instruction in the areas of social/behavioral skills and study/organizational skills. The February 2015 reevaluation report recommended the

¹ A representative sampling of these recommendations is included later in the facts.

Student receive the following supplementary aides and services: additional classroom instructional assistant support, communication consultation, and sensory motor consultation.²

2016-2017 school Year

4. During the 2016-2017 school year, the Student attended fifth grade at a District elementary school.
5. In February 2017, the Student's individualized education program (IEP) team developed his annual IEP. The February 2017 IEP included annual goals in the areas of study/organizational skills and social/behavior and provided for specially designed instruction in a *general education setting* to address those goals for the remainder of the 2016-2017 school year, and provided for supplementary aides and services.

The February 2017 IEP also provided for specially designed instruction and supplementary aides and services in a *general education setting* from September 1, 2017 through February 19, 2018, when the Student would attend a District middle school.

6. Additionally, the Student's February 2017 IEP included a behavioral intervention plan (BIP). The February 2017 BIP identified the following target behavior³:
 - "[Student] can be impulsive and defy teacher requests. This may also be in the form of touching/taking others' belongings."

The February 2017 BIP noted that the Student demonstrated this target behavior in the following instructional and/or environmental conditions or circumstances:

- "[W]hen [Student] is confronted/corrected by his 1:1 IA, his teacher, or in response to a peer."
- "While these behaviors occur across settings, they are least frequent in [Student's] afternoon literacy class."

The BIP provided for the following replacement behavior:

- "[Student] will...self monitor his behavior and...use advocacy skills to ask for help when he needs assistance in any school setting."

The BIP recommended the following intervention strategies be utilized to encourage the Student to exhibit the replacement behavior:

- Setting Event Strategies⁴
 - "Teachers will carefully select [Student's] partnerships and groupings in their classroom settings."

² The February 2015 reevaluation report utilized data from the Student's November 2014 independent educational evaluation.

³ Behavior that impedes the student's learning or the learning of others.

⁴ How the environment will be set up to decrease the likelihood of the target behavior and increase replacement behavior.

- “[Student’s] math teacher and IA will check in with him to assure his understanding of concepts.”
- “When [Student’s] 1:1 IA is absent, a familiar special education IA will serve as his substitute.”
- Antecedent Strategies⁵
 - “[Student] will continue to be taught to self monitor his emotional state, and to use strategies such as taking a break when needed and using a non-verbal cue to ask for help or to take a break.”
 - “[Student] will continue to receive prompts for positive student behaviors before lunch and before each recess to promote expected student behaviors in these less structured settings.”
- Teaching Strategies⁶
 - “[Student’s] 1:1 IA will provide ongoing direct instruction and prompting to promote [Student’s] demonstration of expected student behaviors. [Student] receives this instruction through modeling, coaching, role play, practice, and reflection opportunities.”
 - “[Student] will be part of a small team of students who serve as conflict managers at recesses periodically. He will work closely with his 1:1 IA and the playground supervisor as he practices these skills.”
 - “[Student] continues to receive ongoing social skills instruction as part of his general education curriculum.”
- Consequence Strategies
 - When Replacement Behavior occurs:
 - “Verbal and gestural praise.”
 - “Opportunities to engage in preferred ‘jobs’ in the classroom.”
 - “Decrease proximity of the 1:1 IA as [Student] increases replacement behaviors.”
 - When Target Behavior occurs:
 - “Option to take a break to cool down.”
 - “Option to take a walk and talk with a staff member.”
 - “Time for reflection and discussion of the behavior with a staff member.”

The BIP recommended the following plans be followed to encourage the Student to exhibit the replacement behavior:

- Reinforcement Plan
 - Verbal and gestural praise.
 - Student selected reinforcements including: involvement in the conflict manager program and decreasing the proximity of [Student’s] 1:1 IA.
- Response Plan⁷
 - Option to take a break to cool down.
 - Option to take a walk and talk with a staff member.
 - Time for reflection and discussion of the behavior with a staff member.

⁵ How the events that immediately precede the target behavior will be addressed to minimize or prevent the target behavior.

⁶ The skills that will be taught to the Student, and how the staff will teach those positive behaviors.

⁷ What the staff will do if the Target Behavior occurs.

- De-escalation Plan⁸
 - “When [Student’s] behavior is escalating, his verbal aggression increases and his breathing becomes heavier and more rapid.”
- Crisis and Recovery Plan⁹
 - Provide a break and an opportunity to cool down.
 - Option to take a walk and talk with a staff member.
 - Reflection and discussion with a staff member.

The BIP also identified the following target behavior:

- “[Student] engages in hands on behavior during unstructured periods such as when he is in line or at recess.”

The BIP noted that the Student demonstrated this target behavior in the following instructional and/or environmental conditions or circumstances:

- “[I]n less structure [sic] settings such as when [Student] is in line during transitions between classes, at lunch, or at recess.”
- “[W]hen students are in close physical proximity or during active play.”

The BIP provided for the following replacement behavior:

- “[Student] will continue to be taught to self monitor. He will be taught to recognize his need for more space and to ask for more space or to move when he is in line or at the lunch table. During active play he will be taught to slow himself down or remove himself from the situation and find another activity if the game is becoming too physically intense.”

The BIP recommended the following intervention strategies be utilized to encourage the Student to exhibit the replacement behavior:

- Setting Event Strategies
 - “[Student] will be provided verbal and/or gestural cues to prompt him for expected student behavior prior to lunch and recess by his 1:1 IA.”
- Antecedent Strategies
 - “[Student] will continue to be taught to self monitor his emotional state, and to use strategies asking for more space or moving to another place in line or at the table, removing himself from the game, or asking for adult assistance.”
 - “[Student] will continue to receive prompts for expected student behaviors before lunch and before each recess to promote these behaviors in these less structured settings.”
- Teaching Strategies
 - “[Student’s] 1:1 IA will provide ongoing direct instruction and prompting to promote [Student’s] demonstration of expected student behaviors. [Student] receives this instruction through modeling, coaching, role play, practice, and reflection opportunities.”
 - “[Student] will be part of a small team of students who serve as conflict managers at recesses periodically. He will work closely with his 1:1 IA and the playground supervisor as he practices these skills.”

⁸ Identifies the signs the staff will observe which indicate escalation and steps to follow should the student’s behavior escalate.

⁹ Steps to follow in the event of a crisis and steps to help the student return to baseline.

- “[Student] continues to receive ongoing social skills instruction as part of his general education curriculum.”
- Consequence Strategies
 - When Replacement Behavior occurs:
 - “Verbal and gestural praise.”
 - “Decrease proximity of the 1:1 IA as [Student] increases replacement behaviors.”
 - When Target Behavior occurs:
 - “An individualized verbal warning. If a second warning is needed, [Student] will be asked to reflect on and discuss the situation with the IA or teacher.”
 - “An option to take a break to cool down.”
 - “An option to take a walk and talk with a staff member.”
 - “Loss of privilege such as some of his recess may occur.”
 - “If there is extreme hands on behavior that is unsafe or results in injury to another student, the school’s disciplinary rules will apply to [Student].”

The BIP recommended the following plans be followed to encourage the Student to exhibit the replacement behavior:

- Reinforcement Plan
 - Verbal and gestural praise.
 - Student selected reinforcements including: involvement in the conflict manager program and decreasing the proximity of [Student’s] 1:1 IA.
- Response Plan
 - The Student will receive an individualized verbal warning. If a second warning is needed, the Student will be asked to reflect on and discuss the situation with the IA or teacher.
 - Option to take a break to cool down.
 - Option to take a walk and talk with a staff member.
 - Loss of privilege such as some of his recess may occur.
 - If there is extreme hands on behavior that is unsafe or results in injury to another student, the school’s disciplinary rules will apply to [Student].
- De-escalation Plan
 - “Signs which indicate escalation include use of aggressive language, rapid heavy breathing, and aggressive posture/body language.”
- Crisis and Recovery Plan
 - Provide a break and an opportunity to cool down.
 - Option to take a walk and talk with a staff member.
 - Reflection and discussion with a staff member.

The Timeline for this Complaint Begins on May 29, 2017

7. On June 1, 2017, the Student’s IEP team met to discuss the Student’s progress toward his IEP goals and determine his placement for the 2017-2018 school year. As noted in the District’s June 2, 2017 prior written notice, the team determined that the Student had made progress in meeting several of his IEP goals since his February 2017 IEP. As a result, the team recommended slowly removing the support of a 1:1 instructional assistant. The team

determined that, during this transition, “access level services¹⁰ [were] most appropriate for [Student].” The June 2, 2017 prior written notice also stated:

[Student] will receive instruction in social/behavior and study/organization in the special education setting (25 minutes each/day), provided by a special education teacher.
[Student] will continue to receive social skills instruction in the general education setting deliver by an instructional assistant.

8. The IEP team agreed to amend the Student’s February 2017 IEP. The June 2017 amendment continued to include annual goals in the areas of study/organizational skills and social/behavior. The amended IEP provided for the following specially designed instruction take place in a *general education setting* from June 6-August 31, 2017:

- Social/behavior – 200 minutes one time weekly (provided by an IA)
- Study/organizational skills – 30 minutes one time weekly (provided by a special education teacher)
- Social/behavior – 50 minutes one time weekly (provided by a special education teacher)
- Study/organization skills – 100 minutes one time weekly (provided by an IA)

The amended IEP provided for the following supplementary aides and services be provided in a *general education setting* from June 6-August 31, 2017:

- Occupational therapy – 10 minutes one time monthly (provided by an occupational therapist (OT))
- Communication – 10 minutes one time monthly (provided by a speech language pathologist (SLP))

Additionally, the amended IEP provided for the following specially designed instruction in a *general education setting* from September 1, 2017 through February 19, 2018:

- Social/behavior – 200 minutes one time weekly (provided by an IA)

The amended IEP also provided for the following specially designed instruction in a *special education setting* from September 1, 2017 through February 19, 2018:

- Social/behavior – 25 minutes five times weekly (provided by a special education teacher)
- Study/organizational skills – 25 minutes five times weekly (provided by a special education teacher)

The amended IEP provided for the following supplementary aides and services to be provided in a *general education setting* from September 1, 2017 through February 19, 2018:

- Occupational therapy – 10 minutes one time monthly (provided by an OT)
- Communication – 10 minutes one time monthly (provided by an SLP)

¹⁰ Access level services are intended to provide specially designed instruction to students with more intensive academic and functional special education needs. These services support students who are able to make progress on their IEP goals while spending most of their instructional time, including specially designed instruction, in general education settings with a range of supports.

https://www.seattleschools.org/departments/special_education/service_matrix_and_descriptions.

2017-2018 School Year

9. The District's 2017-2018 school year began on September 6, 2017. At that time, the Student began attending a District middle school and his February 2017 IEP, as amended in June 2017, was in place.
10. Throughout the 2017-2018 school year, the middle school had a policy of assigning students detention at two different times: lunch detention (which could occur on any school day) and afterschool detention (which occurred on Mondays and Wednesdays).
11. On or about September 6, 2017, the Student switched advisory classes, moving from his IEP case manager's advisory class to the language art teacher's advisory class. In an email to the Parent on September 6, 2017, the case manager said the Student had demonstrated "great advocacy skills" when he "politely and directly asked to switch advisories" because the case manager's advisory class included students that he had had difficulties with in the past.
12. The Student's class schedule for the middle school's first semester was as follows:
 - Period 1: World History – general education setting
 - Period 2: Language Arts – general education setting
 - Period 3: Advisory/Homeroom – general education setting
 - Period 4: Science – general education setting
 - Period 5: General Study Skills – special education setting
 - Period 6: Physical Education – general education setting
 - Period 7: Mathematics – general education setting
13. On September 11, 2017, the Parent emailed the case manager, explaining that the Student "really needs help with organization." More specifically, the Parent stated that the Student needed support "to keep his tasks and papers organized and remember them."
14. On September 13, 2017, the Parent emailed the case manager, stating:

[Student] is having some major problems. He told me there was some physical altercation in gym class and that it's been going on for some time getting worse. I'm extremely concerned that he hasn't got enough support socially. At this very moment he's refusing to go to school. He's been melting down every day for the past several days. I know this is related to direct stress from things he's unable to figure out at school. Can we get him in to talk to the school counselor and can you please talk with him? I'm concerned that this is going to explode and the physical altercations will get worse. I know that he said [another student] is involved during gym class and has been picking on [Student]. What can we do to be proactive?

Later that same day, the case manager forwarded the Parent's email to the middle school security specialist.
15. According to the Student's discipline record, on September 14, 2017, the Student "flash[ed] a laser pointer around the room disrupting the learning environment." The Student's discipline record contains the following comments in regards to this incident: (1) "IEP

manager working directly with student and teacher;" (2) "student conference with assistant principal;" (3) "IEP manager to contact home;" and (4) "similar incident could result in daily searches."

16. On September 22, 2017, the Parent emailed the case manager, expressing concern that the Student was "struggling with talking about school work...and keeping himself organized." The Parent also expressed concern that the Student was "struggling to get to [math class] on time due to the gym class, changing clothes, and getting there prepared in time." Later that same day, the case manager responded, stating:

[Student] will need to move quicker...to get to math in time. I will go to the locker room starting Monday to make sure he can get ready and out to class...[Student] is a great addition to our classroom and has been respectful, kind, and receptive to the program.

17. The documentation in this complaint contains a document entitled, "ABC Analysis Data Sheet," (Data Sheet) that details certain behavioral incidents involving the Student throughout the school year. According to the Data Sheet, on September 25, 2017, the Student talked to his peers during silent reading time. As a result, the teacher "redirect[ed]" the Student to the assigned task.

18. On September 29, 2017, the Parent emailed the ultimate frisbee coach,¹¹ expressing concern that a student was on the team that the Student had had difficulty with in the past. The Parent noted:

I thought things were going well until Saturday when I heard the [other student's] mother say some pretty awful things about [Student]. Then yesterday [Student] said that the boy called him a bad name so [Student] wanted to avoid having any problems and decided he did not want to go to practice...[Student] knows to ignore [the other student] however the boy did get pretty mean last year and I don't trust the situation as [Student's] social skills still need an extra level of support and encouragement.

The coach forwarded the Parent's email to the case manager, security specialist, and the assistant principal.

19. According to the Data Sheet, in October 2017, the District stressed the following interventions to use with the Student when he displayed target behaviors:

- Added new break policy.
- Visual schedule.
- Increased check-ins with the Student for breaks.
- New video game contract made for the Student as incentive for Fridays.

¹¹ Ultimate Frisbee was part of a school-wide (general education) behavior incentive program called the 'choice list.' According to the District's supplemental response to this complaint, under the 'choice list,' "Students earn points for good behavior and work completion toward the reward of free time to participate in a preferred activity for one afternoon per quarter on 'Choice Day.' Activities may include Ultimate Frisbee or other physical activity, watching a movie, playing a game, etc."

20. On or about October 2, 2017, the Student intervened in a fight when his friend was being “punched and kicked.” According to the Parent, after this incident, the aggressor in the fight “tried to get [Student] to engage in a fight” and “threatened [him].”
21. According to the Data Sheet, on October 4, 2017, the Student argued with staff and played video games during “silent work time.” The staff chose to “ignore” this behavior. The Student then left the room.
22. On October 10, 2017, the substitute PE teacher emailed the case manager:
Now you warned me about [Student]. I’ve witnessed his quick temper and he tries (& I said “tries”) to take it out on me but to no success. This is what irritates him; but tough holly! [*sic*] But can he please change into his PE clothes before coming to class? On a couple of occasions, his lock and his PE shirt went missing and again, he’s been in a couple of confrontations in the boys’ locker room.

The case manager responded, “[Student] can suit up on time and without issue or he will be sent to me...and consequences will follow.” The PE teacher responded:

[The other PE teacher] and I were suggesting this because he’s been in near altercation in the boys’ locker room and there are some kids who keep hiding his shirt/lock. With him suiting up before coming to PE would not give the other kids an opportunity to do this nor him going off on someone—another reason why we’ve suggested it. Though if this is still a “no-go,” can you please remind him to not sass at me (even though he knows I don’t allow it) whenever he’s involved in a situation?

In response, the case manager agreed to the plan recommended by the substitute PE teacher.

23. On October 11, 2017, the case manager emailed the Parent, stating:
There has been so [*sic*] horseplay going on in the locker room...not just [Student]...but a few boys...[Student] says he gets caught up in the play...Nothing serious but the PE teacher wants to avoid any of this due to safety. We spoke to [Student] today and talked through the issues of safety/play in the locker room. Until he can take his responsibly [*sic*] seriously, he will stay out of the locker room for now before and after class. This should help him get to the 7th period on time.
24. On October 11, 2017, the language arts teacher emailed the case manager, stating that the Student shared a story in class that day about his friend “being beaten up at lunch last week,” and how he “helped his friend by pushing the bullies away.” The language arts teacher further stated:
[I] made it clear to the rest of the class that it’s not ever ok to put your hands on someone else at school—even if they hit you/push you first. That our expectations are that you can hold your arms up to block an attack or you walk away.
25. On October 17, 2017, the case manager emailed the Parent, stating that the Student had “refus[ed] to follow the assigned task in [the language art teacher’s class]...[the language arts teacher] asked [Student] to redo the work and he refused and started arguing with her.” The Parent replied:

[W]hy did he refuse?...Generally he refuses something like that when he's struggling or if it causes him to miss something important to him such as a planned activity or social group such as gym or free time that allows him a social connection. He has a severe anxiety about being seen as "different" or "special needs" by his peers. Still working on his confidence with that.

The case manager responded:

[The language arts teacher] gave the class 30 minutes to work quietly and individually. [Student] finished in 3 minutes and then started talking to other kids. [The language arts teacher] asked him to be quiet and he started talking back to her. [Student] and I spoke about responsibilities and giving his best effort...This is a small blip on the radar and [Student] is doing great here. We will continue to work...on his behaviors.

26. Also on October 17, 2017, the language arts teacher emailed the Parent, stating:

Currently, [Student] chooses the fastest way to do almost every assignment...when I try to talk to him about his work, he gets agitated with me.

For example, today, I tried to talk to him about how he didn't fully fill in the blanks. At first glance, I thought he just didn't understand what he was supposed to do. I tried repeating the directions to him and [he] grew upset. He started interrupting me...so I changed my tactic...to explaining how he needed to redo/go back to do more. He shrugged his shoulders and [shook] his head, saying something like it was good enough. From my experience, it looked like he thought it was more "cool" to not care about doing a good job. I asked him to step outside...so that we could speak privately (I didn't want him to feel uncool for caring about doing well as school). Stepping outside the classroom seemed to upset him more.

In the hallway, I tried repeating how it's important that he try. [Student] started arguing with me. I tried to remind him about what is a respectable tone of voice and expression to use when talking to someone. [Student] could not understand what I was talking about. I couldn't ignore the rest of my students so I told him to stay in the hall to cool off. When I checked on him after a couple minutes, he was still upset. I gave him another couple minutes, by then, he had cooled off. He could talk to me in a normal tone of voice and expression. I welcomed him to come back into the classroom.

Again, I wanted to bring this to your attention because I hoped you could work with [Student] on understanding that it is my job to push him to do his best....Also, I would appreciate it if you could talk to him about how it's okay not to agree with your teacher, but it's not okay to interrupt her or make faces while she's talking.

Later that same day, the Parent responded:

I am not surprised about the reactions and behaviors. [Student] has gone from having a full time one on one helper to being in the access program. This activity is right on par with behaviors I would expect to see when he isn't fully understanding. Sometimes it's not unnecessarily [sic] three lesson [sic] he doesn't understand but can be the verbiage of the request...[Student] shows unwanted behaviors for a reason. What that reason is often can be difficult to identify.

The Parent and the language arts teacher then scheduled a meeting for October 19, 2017, to discuss these concerns.

27. Also on October 17, 2017, the case manager emailed the Parent, stating:
[Student] argued with me and did not want to work on HW/classwork in our room. He tried to argue and give us excuses about finishing his HW at home...I told him he has only 1 choice in our room...to complete classwork and HW now. I also reminded him that I do not argue or negotiate with 6th graders, but that I would love to finish this conversation with him afterschool...he politely declined to work after school...[h]e made a great choice and he is working quietly now.
28. According to the Data Sheet, on October 18, 2017, “staff remind[ed] [Student] of expectations” when he refused to read during silent reading time.
29. On October 18, 2017, the language arts teacher emailed the case manager, “[Student] has a behavior plan? Can you please share that with me?”
30. On or about October 19, 2017, the Student was assigned detention.¹² On this day, the Parent emailed the principal and the case manager with concerns about the detention, stating:
If [Student] is being disciplined even though we have a [BIP] we may not have the proper support services in place...[Student] said he is yelled at by people who are supposed to be helping him and the space where he is supposed to be receiving the supports [is] a source of frustration and distraction for him. This may be causing more anxiety, more unwanted behaviors and overall less confidence to seek help for the proper behaviors and coping mechanism.
31. On or about October 20, 2017, the math teacher had the Student “step outside the classroom,” presumably because of a behavior-related incident. On that same day, the Parent emailed the math teacher, stating, “It was good that you were...direct with [Student] about expectations.”
32. On October 20 and 23, 2017, the Student was given lunch detention. The documentation in this complaint does not explain the reason the detentions were assigned.
33. On October 23, 2017, the Parent emailed the case manager, expressing concern that detention was not “much of a consequence for [Student]” since she believed that all he did was “spend his time goofing around.” The Parent continued:
Is it possible for him to actually make amends to the teacher personally?...I truly believe that in order for him to learn that he offended someone or acted inappropriately in a teacher’s classroom...he has to be directly involved at the source as a consequence.
34. The documentation in this complaint contains a form that summarizes when District personnel had “discussions” with the Student (hereinafter “Discussion Summary Form”).

¹² The record is unclear as to whether the Student received a lunch detention or an after school detention or both. The record is also unclear as to whether the Student had to attend detention on multiple days during this time period or only on one day.

According to the Discussion Summary Form, on October 23, 2017, the Student threw a couple lunch bags down the stairs, hitting a teacher. The language arts teacher and the advisory teacher “both spoke with [Student] about the incident...we spoke about safety and how he was lucky it didn’t hit anyone on the head. He now understands it is never okay to throw anything down the stairs.”

35. On October 24, 2017, the Student was given lunch detention. The District’s documentation is not clear as to the reason the Student received the detention.
36. On October 24, 2017, the Parent emailed the case manager, expressing concerns about the Student being assigned detention, “How are we meeting the needs of support by putting [Student] in a punitive juvenile delinquency situation when he clearly [would] not be punished [for a] developmental delay? This is not following the [BIP].”
37. On October 30, 2017, the Student was removed from his math class for repeatedly disrupting other students. The Student was “escorted to [the case manager’s] room...and assigned a Lunch Time Reflection” for October 31, 2017. After being informed of these developments via email, the Parent replied:

I’m getting more concerned that behaviors are getting in the way of [Student’s] education. Clearly the majority of his classroom teachers are frustrated and he seems to be in need of reminders, prompts, and encouragement towards his goals. I am also becoming increasingly concerned about the conversations taking place with [Student] and [the instructional assistant]. There seems to be a lot of friction and not a lot of positive things happening...We need to take a bigger look at his [BIP]. Perhaps it is in need of updating for more appropriate middle school support.
38. According to the Data Sheet, in November of 2017, the District began to allow the Student to take “up to 15 minute breaks if [he] earned [them].”
39. On November 6, 2017, the Parent emailed the case manager, expressing frustration that the substitute ultimate frisbee coach had yelled at the Student. The Parent further stated that she was “worried about him participating in general education classrooms without really having support from his...teachers.”
40. On November 7, 2017, the PE teacher emailed the case manager, explaining that the Student was “not [yet] ready to use the Boys’ Locker Room.” In this email, the PE teacher stated that the Student had recently refused to follow his directions and had made a rude remark.
41. On November 14, 2017, the case manager emailed the Parent, asking, “How are things with you [and Student] at home?” Later that same day, the Parent emailed the case manager, “[Student] had a good morning today. We had a pretty rough weekend and Monday morning. I spoke with [the school counselor], she is going to touch base with him and start seeing him twice per week.”
42. On November 14, 2017, the PE teacher emailed the Parent, stating that the Student’s behavior in her class “has not been as great as it once was.” The PE teacher stated that the

Student had been distracting other students during instructional time. The Parent responded to this email later that same day, asking what supports were in place for the Student during the PE class and stressing the importance of the Student's BIP. The PE teacher then responded to the Parent, stating:

I will speak with [the case manager] as I so want to know what tools I can remind [Student] to use when I am having an issue with his impulse control. I will reread his [BIP]; [Student] has been quite good in PE I think I forgot he had a BIP in place. It really has just been recently that I have seen behaviors which are not quite up to par. I did not see the behaviors that were happening in the locker room.

43. Also on November 14, 2017, the PE teacher emailed the case manager, "Can I get you [to] resend me a copy of [Student's] BIP? Also is there some tool he has been taught that helps him get a grip on his impulses?"
44. Also on November 14, 2017, the case manager emailed the school counselor a copy of the Student's February 2017 BIP.
45. The District was on break November 23-24, 2017.
46. On November 27, 2017, the Parent emailed the case manager, stating:
What happened today? [Student] broke down as soon as he got into my car today with all of his frustrations and the way he feels he's been spoken to and not given opportunities for Corrections or solutions to challenges. He's got detention again? He also said that he requested to go to [the school counselor's] office today but was told he couldn't. What's going on?
47. On November 28, 2017, the school nurse emailed the principal, stating:
[Student] was in the foyer of the gym when the fire department arrived to attend a call from the wellness center. [Student] waved and attempted to beckon the fire fighters into the gym instead of the main building where they were needed. [One of the other nurses] and one of the firefighters addressed this concern with [Student] and explained how his behavior could have disrupted the speed in which the fire fighters attended to the person in need. Admin, please follow up on this as his actions could have led to a more serious consequence.
48. On December 1, 2017, the Student was given detention. The documentation in this complaint does not state the reason the Student was assigned detention.
49. On December 5, 2017, the Parent emailed the case manager, stating, "I have offered [Student] extra incentives throughout the week to take [him to the local game store] more days during the week if he has a good day at school." The Parent also said, "We are getting [Student] in twice this week with [the school counselor] and hopefully soon connected to the [regional hospital's Autism Center] for social skills groups or therapy as well."
50. On December 7, 2017, another language arts teacher at the middle school emailed the Student's language arts teacher, "[Another student] made some poor choices during detention as did [Student]."

51. On December 7, 2017, the Parent emailed the case manager, expressing concern that the Student was having difficulties with substitute teachers. The Parent also expressed her concern that the BIP was either not being followed or needed “to be updated to work with the changing structure of middle school.”
52. On December 7, 2017, the case manager emailed the Student’s teachers, stating, “You all have [Student] in your classes. Please do not engage in “arguments” with him. Your word is the law and the final word. Be specific and clear and walk away.”
53. On December 12, 2017, the case manager emailed the Student’s teachers, stating, “If [Student] cannot follow simple staff directions please put him [in the] delay room, email me, and we will come up with the minutes to be served.” The language arts teacher responded to the case manager later that same day:
- I am glad you emailed this. I have noticed an uptick in inappropriate behaviors...in my classroom...[T]wo days in a row...I found him without permission in the halls during science class. Then later, during passing period...I saw [Student] and told him to grab his math packet from my room before heading to your room...He said, “Nah, I don’t want it.” A few minutes later he’s at my door asking for the packet.
- The case manager responded, “[Student] has been way off task all week. Let’s start at 30 minute delay...and he can earn it back (or earn more) based upon behavior.”
54. On December 13, 2017, the Student was referred to administration by the sixth grade teaching committee for earning multiple lunch time reflections. The committee requested:
- [That] the next step is not more lunch detention but possibly after school and/or admin conference with student about next steps of the discipline matrix. Concerned [*sic*] that [Student is a] leader amongst [his] peers and [his] peers perceive that [he is] getting away with...violations.
55. On December 14, 2017, the Student was “on the Choice list for behavior.” As explained in an email from the case manager to the math teacher, “[Student] is half time but has the choice to earn back time from yesterday, today, and tomorrow...so far he has earned back 15 minutes.”
56. On December 15, 2017, the Parent emailed the case manager, stating, “When you get back lets set up the meeting to figure out what changes, if any, need to happen for [Student’s BIP].” The case manager responded later that same day, stating, “We will set it up for the new year!”
57. The District was on break December 18, 2017 through January 1, 2018.
58. According to the Data Sheet, in January of 2018, the Student had “1:1 conferences every day...with [the assistant principal], [the case manager], and [the principal].”

59. In an email to a school counselor and another staff member, dated January 4, 2018, the assistant principal noted the following areas of concern regarding the Student: opposition to authority and disrespect.

60. On January 4, 2018, the PE teacher emailed the case manager, stating:

[Student] is saying unkind things to some of the girls in the class. Saying they are ugly, can't do push-ups etc. Calling another student a creepy nose picker etc. any chance of holding him out a day and have him write about what it looks like and sounds like to be kind. And why it is hurtful to say unkind things to students...If this is not feasible I can just write him a lunch detention; but it should be for not suiting up as he hasn't had a PE shirt for weeks now.

This email was then forwarded to the Parent, who replied, "It sounds like we need to remind [the PE teacher] that [Student] has an IEP and needs reminders and prompts as to how to speak positively and have a positive attitude." Later that same day, the Parent emailed the PE teacher directly, stating:

Remember [Student] has a [BIP] so holding him out of class and disciplinary tactics will backfire with him and are not in his [BIP] plan for a reason. [Student] needs reminders continuously and positive prompts and encouragement to do the right thing rather than dwelling on what he does wrong. [Student] will get through these little challenges...as long as we can continue as a group to provide positive encouragement and reminders for him as well as samples and examples of positive behaviors.

On January 5, 2018, the PE teacher responded:

I do understand about [Student's] disability but sometimes there are consequences for unkind behavior. I will have him do a lunch time reflection with [the case manager] around being kind, saying kind things or nothing and how unkind comments hurt the feelings of the targeted student(s). He will come to class but if he continues to say unkind comments to the same students it will be seen as bullying. Yes, I know he has a disability but I cannot allow students to be verbally harassed. I will remind [Student] during each transition to help him remember to say kind things or nothing.

Later that same day, the Parent forwarded the PE teacher's response to the case manager, stating:

It seems to me that the [BIP] isn't fully outlined and understood here. We know that punitive removal of [Student] from class is not going to fix this problem and that [Student] needs a lot of constant reminders and encouragement. If [Student] is removed from participation (based on something he doesn't even realize he's doing wrong) how will he feel upon returning and how will the teacher expect to see positive changes in [Student]?

61. According to the Data Sheet, on January 8, 2018, the Student earned a lunch detention for yelling at a teacher. Additionally, the middle school staff held a "1:1 conference" with the Student and the "case manager [was] called."

62. On January 9, 2018, the language arts teacher emailed the case manager, stating that she saw the Student throw the lock to his locker over his shoulder at the end of the school day without looking to see where he was throwing it or where it hit. The language arts teacher reported

that, “luckily, it landed on the floor without hitting another student.” The language arts teacher picked up the lock and told the Student “it was not...okay to throw his lock.” According to the language arts teacher:

[Student] immediately started arguing with me and wouldn’t stop interrupting me. He refused to acknowledge the safety concern with throwing his lock and walked away from me. I told him that it would be a lunch detention for that reason. In retrospect, I don’t believe...lunch detentions are having much of an effect on his behaviors. I wonder if it is time to start assigning lunch detention with [the principal].

63. On January 11, 2018, the Student was given a lunch time reflection.¹³

64. On January 13, 2018, the substitute PE teacher emailed the case manager, stating:
On Friday...during 6th period I had to send [Student] to your room. He had to be escorted out by Security [sic] because he would not leave. Though beforehand, he kept talking and had several chances to keep quiet but would not. Instead, he implied that “I’m not his Teacher.”

65. On January 18, 2018, the Student was “persistently disruptive” during his science class, which was being taught by a substitute teacher. In response, the District decided that the Student “will sit out of [the substitute science teacher’s] room tomorrow.”

66. A “Behavior Tracking Form”, dated January 18, 2018, stated that the Student recently demonstrated the following “Tier 1 Behaviors:”

- Disrespect/non-compliance/defiance
 - Making faces, huffing, sighing, rolling eyes
 - Laughing at or being unkind to others
 - Ignoring/not listening
 - Not participating in group work, not working independently

The “Behavior Tracking Form” also stated that the Student had recently demonstrated the following “Tier 2 Behaviors:”

- Any Tier 1 behavior chronic or more extreme

The “Behavior Tracking Form” stated that the following interventions were used:

- Connect and correct
- Teach and reteach
- Change of seats
- Direct communication with family

The narrative portion of the “Behavior Tracking Form” stated, “After multiple warnings [Student] was continually disruptive to the learning environment. I called [the case manager’s] room and sent him there.”

¹³ According to the District’s supplemental response to this complaint, “Lunch time reflection is sometimes referred to as lunch detention. Students eat and do a short reflection about whatever the behavior was that resulted in the detention, and when the reflection is complete, they can go be with their friends.”

67. On January 18, 2018, the parent of another student emailed the assistant principal:
We spoke earlier today about [my child] being bullied by [Student] and [another child]....[my child] did tell me that the two of them had repeatedly chased him, punched him, grabbed his shirt, and threatened to “beat him up.” Mostly it was the two of them together who would gang up and do this, however, [Student] has chased him on his own as well. This has taken place in the bathroom most of the time, but [my child] says also in PE when [the teacher] was either out with a sub, or not in the gym yet. Both of those boys are in his PE class.
68. On January 19, 2018, a language arts and social studies teacher noted that a group of boys, including the Student, were “congregating [in] the bathroom” and demonstrating “increasingly unsafe and disruptive behavior.”
69. On January 22, 2018, the math teacher emailed the case manager, asking if the assistant principal had spoken with the Student regarding his behavior in the restroom. The math teacher noted, “This is...the 3rd referral for bathroom behavior for [Student].” The case manager replied later that same day, “We can talk to him again...the bathroom should be locked.”
70. On January 23, 2018, the case manager emailed the PE teacher, stating:
We are keeping [Student] after the bell because he cannot keep his hands to himself and he continues to not be safe or follow instructions...last week in the foyer he was wrestling with another kid without any adults around...we will send him at 2:05 to your class everyday...will this work?!
71. On January 24, 2018, the language arts teacher emailed the Parent, stating, “[T]oday, when redirected to stay on task, [Student] accepted the redirection without arguing.” The Parent replied later that same day, noting that the Student “feels good about himself when he...receives praise for his accomplishments...once he is more comfortable about himself we will see the unwanted behaviors reduced.”
72. On January 25, 2018, in response to a request for observations of the Student in her classroom, the PE teacher emailed the case manager, stating:
[Student] has a positive, happy demeanor. He participates in all class activities to the best of his ability. If off task he can be redirected with a private one-to-one conversation, if redirected verbally where others can hear, he often talks back and points out others that might also be in need of redirection. [Student] has trouble controlling his impulse to comment out loud when the teacher corrects another student. It is difficult for [Student] to be quiet so the teacher can give classroom instructions on the upcoming activity.
73. On January 29, 2018, the language arts teacher submitted the following “Classroom Teacher Input” to the case manager:
- Positive Behaviors
 - “[Student] almost always arrives on time and prepared with materials. He always completes his homework and usually turns it in on time. [Student] shows a lot of independence by starting tasks without teacher prompting.”
 - Behaviors that Need Improvement

- “[Student] often wants to be the exception in my classroom. He’ll ask to do something that would be a privilege because it’s outside of what students are allowed to do. When I remind him of the class rules and expectations, he’ll try to argue with me. When I tell him that I will not engage in a debate with him, then he’ll announce loudly that he won’t do any work for me.”
74. On January 30, 2018, the case manager emailed the assistant principal, “[Student] has agreed to speak to the Science Sub afterschool. The sub threw out a few kids last period again...[Student] was one of them.”
75. On January 30, 2018, the Parent emailed the case manager regarding an upcoming field trip. The Parent asked what accommodations were in place for the field trip for the Student and expressed that after the conversation she had with the case manager about relationships and positive cheerleading for the Student, she was concerned about the field trip.
76. On January 30, 2018, the Parent provided consent for the District to conduct a functional behavioral assessment of the Student.¹⁴
77. On January 30, 2018, the District completed a triennial reevaluation of the Student. The reevaluation addressed the following areas: general background, cognitive, communication, motor, social/behavior, study/organizational skills. The January 2018 reevaluation also included a Functional Behavior Assessment (FBA).
78. The January 2018 reevaluation report included the following information in the area of General Background:
- Feedback from the Parent
 - “[T]he transition to middle school has been difficult for [Student]. Although he is motivated to be part of the large traditional middle school community, he reports feeling the need to be ‘ready for a fight’ at any time.”
 - “[Student] is motivated to disrupt and make others laugh in class as a way to connect with peers and make friends. [Student] does have friends in the neighborhood, and seems to do better in smaller, familiar environments. Understandably, his anxiety increases and social skills are more taxed in the larger social setting at school.”
 - Feedback from the Student
 - “[Student] indicated that his behavior (e.g., attention, follow-through) depends on the task or context.”
 - “[Student] noted that listening to music on his earbuds helps him focus.”
 - “[Student] acknowledged that he has ‘challenges that other kids don’t,’ but feels that seeing his counselor once a week would be sufficient in helping him cope. He feels he gets along with peers better now, and only once in a while gets in a small disagreement about attributes of video games etc. He stated that he argues with teachers, but gets lunch detention so ‘there’s no point’ in arguing.”
 - Feedback from the Student’s Case Manager
 - “[Student]...has significant difficulty complying readily with teacher direction. [The case manager] encourages staff to ignore [Student’s] automatic defiant response to teacher

¹⁴ The Parent signed the consent form on January 30, 2018. The document itself, though, is dated January 17, 2018.

direction and redirection. [Student] has a tendency to question why he is being asked to complete a task, or to deny that he is not on-task or compliant. This behavior seems to function as both work avoidance and control, often in response to anxiety.

79. The January 2018 reevaluation included the following information in the area of Social/Behavior:

- Results from the Behavior Assessment System for Children – Third Edition (BASC-3)¹⁵
 - The Parent and the Student’s math teacher rated the Student as either at-risk or clinically significant in the following areas: hyperactivity, aggression, conduct problems, depression, and adaptability (being flexible with change).
- Observations from the Student’s Teachers
 - The Student’s math teacher noted that the Student “struggles following simple directions re: staying on task and talking to others. He can repeat the expectations and the moment my back is turned or helping another student, he is disruptive to the students around him.”
 - The Student’s history teacher noted that the Student “seems to take more pride in disobeying and being defiant with school staff than in his academic success.”
 - “Other teacher reports indicate concern for oppositional and defiant behavior. [Student] tends to engage in this behavior when he is asked to do something he doesn’t want to do, has a substitute teacher, or feels things have been changed without his prior knowledge.”

80. The January 2018 reevaluation included the following information in the area of Study/Organizational Skills:

- Results from the Behavior Rating Inventory of Executive Function – Second Edition (BRIEF-2)¹⁶
 - The following behaviors were identified as occurring “often” by both [the Student’s case manager] and the Parent: is fidgety, impulsive, out of seat at wrong time, trouble putting brakes on his actions, not aware how his behavior affects others, gets stuck on one topic or activity, trouble transitioning from one activity to another, difficulty coming up with different ways to solve a problem, small events trigger big reactions, mood changes frequently, needs to be told to begin a task even when willing, short attention span, difficulty finishing tasks, needs help from an adult to stay on task, does not plan ahead for school assignments, gets caught up in details and misses the big picture, starts assignments/chores at the last minute, work is sloppy, does not bring homework, assignment sheets, materials etc.

81. The January 2018 reevaluation report included the following summary:

[Student] has an Emotional/Behavioral Disability that manifests in inappropriate types of behaviors or feelings under normal circumstances and a tendency to develop physical symptoms or fears related to school or personal problems. [Student] could also be eligible under the Other Health Impairments category due to impacts of Attention Deficit

¹⁵ The BASC-3 “measures positive, or adaptive, and negative, or clinical, aspects of behavior utilizing rating scales completed by students, parents, and teachers.”

¹⁶ The BRIEF-2 “measures everyday behaviors typically associated with executive functioning skills utilizing rating scales completed by students, parents, and teachers.”

Hyperactivity Disorder (ADHD).¹⁷ Specifically, [Student's] disability adversely affects his ability to modulate his emotions, utilize coping strategies, and inhibit problematic reactive behaviors. Moreover, he has substantial difficulties with executive functioning as it relates to planning, organization and attention. Though he has made great strides over the past few years in reducing his problematic behaviors and increasing his pro social skills, [Student] continues to have difficulty complying with adult direction and engaging in non preferred activities. [Student's] social, emotional, and organizational skill deficits prevent him from fully accessing, participating in, and learning from the general education curriculum, and he requires special education services in the areas of social/behavior and study/organizational skills in order to continue to make educational progress with his peers in the general education setting.

82. The January 2018 reevaluation group determined that the Student continued to be eligible for special education under the category of emotional behavioral disability. The January 2018 reevaluation report recommended that the Student continue to receive specially designed instruction in social/behavior and study/organization skills, but recommended that the Student no longer receive supplementary aides and services in the areas of occupational therapy or communication.

83. The Student's January 2018 FBA identified the following target behaviors:

[F]ighting, yelling out, interrupting instruction, arguing when told "No," refusing to follow directions, and shutting down. When given an instruction instead of complying [Student] will try to negotiate a reward or activity or try to get out of doing the work. When he does not get what he wants he will argue and refuse to stop. His teachers note that [Student] perseverates on past arguments and past experiences when he feels that things are not fair. When asked to do academic work, [Student] will avoid work by arguing, walking away or trying to obtain something for completion of his work.

The January 2018 FBA noted that the Student demonstrated these target behaviors in the following instructional and/or environmental conditions or circumstances:

- "[W]hen [Student] is not told in advance that something is going to happen. When he doesn't get something highly desirable to him. When asked to do something/give a task he does not want to do."
- "Time does not appear to be a specific factor."
- "In any classes with his familiar teachers. It can happen in the class if there is a substitute."
- "When [Student] believes an adult talks to him with a negative or disrespectful tone or in a shaming way. It is reported that [Student] can be triggered when he does not get something highly desired."

The January 2018 FBA provided for the following replacement behaviors:

- "[Student] will be taught to seek a trusted adult if he feels unsafe as an alternative to flight behaviors or threatening/aggressive behaviors."
- "[Student] will be taught to step outside of the stressful room for 2 minutes in order to gather himself to return to class and assigned task."

¹⁷ The Student was first diagnosed with "ADHD Combined Type" in January 2015.

The January 2018 FBA recommended the following intervention strategies be utilized to encourage the Student to exhibit the replacement behavior:

- Setting Event Strategies - "On days that his classroom teacher is out, a staff member will meet with [Student] to go over the day and review the schedule. They will talk briefly with the substitute teacher."
- Antecedent Strategies - "[Student] will be taught strategies such as taking a break or seeking a trusted adult if he feels he is becoming anxious or fatigued."
- Teaching Strategies - "[Student's] will receive [specially designed instruction] in appropriate social interactions with peers and in self monitoring strategies. His general education teacher will give him ongoing direct instruction and prompts regarding positive behaviors."
- Consequence Strategies - "[Student] will be given additional instructional support in the classroom unless he is unsafe to the point that an admin is called for a debrief."

The January 2018 FBA noted that the following prior implementations had been utilized:

- 1:1 Support;
- Removal from classroom environment;
- Verbal and gestural redirection;
- Positive reinforcement such as praise and ability to earn a preferred activity such as playing video games with a self-chosen friend during his study hall.

84. On January 31, 2018, after being informed of the Student's behavior in science class by the substitute science teacher, the math teacher referred the Student to "admin for intervention" for continuing to display unwanted behaviors. Specifically, it was noted that the Student lacked self-control, talked constantly, and refused to participate in class activities. The case manager emailed the math teacher on February 1, 2018, stating, "[The assistant principal] and myself met with [the Parent] regarding [Student] this week. We have changed his schedule out of the science class where he was having the most difficult time."

85. The District's second semester began on February 1, 2018. The Student's class schedule for the middle school's second semester was as follows:

- Period 1: World History – general education setting
- Period 2: Language Arts – general education setting
- Period 3: Advisory/Homeroom – general education setting
- Period 4: Physical education – general education setting
- Period 5: Science – general education setting
- Period 6: Communications – general education setting
- Period 7: Mathematics – general education setting

86. According to the Data Sheet, in February of 2018, the District provided the Student with the following "possible earned incentives:"

- Free time.
- Leaving [the language art teacher's] room early if [school rules] are followed.
- Game time.
- Head phone break.

87. On February 1, 2018, the case manager emailed the Parent, informing her that an instructional assistant (IA-1) and the case manager would attend an upcoming field trip to assist the Student if he needed it.
88. On February 2, 2018, the SLP emailed the science teacher, "I need to get testing done with [Student] before his IEP meeting."
89. On February 9, 2018, the SLP emailed the OT, stating, "I don't know if you know, but [the case manager] no longer has [Student] in a SPED classroom. [Student's] mother requested that he be in all gen ed classes I guess."
90. A prior written notice, dated February 12, 2018, proposing to initiate an assessment revision, noted:
SLP consult minutes were removed from [Student's] reevaluation report [dated January 30, 2018] and at this time he is not considered eligible for services because they have been removed from the reevaluation. [Student's] mother requested further testing, the testing has been completed and the team needs to discuss the findings and report at an assessment revision meeting.
91. According to the Data Sheet, on February 14, 2018, the Student threw an apple at one of his classmates. As a consequence, the Student had to pick up the apple and clean up the table.
92. On February 15, 2018, the assistant principal emailed the math teacher, stating:
Per [the principal], we will be moving forward with progressive consequences for the following students...[Student]. The next steps for these students are in-school and afterschool detentions. Parent conferences will also be a priority. Also, [the principal] stated to continue the open dialog with parents.
93. On February 15 and 16, 2018, the Student violated "school rules" by using his cell phone during instructional time.
94. The District was on break February 19-23, 2018.
95. On February 27, 2018, the Parent emailed the case manager, stating:
Having [Student] exit the classroom as a first or even a second step is very exclusionary and does not provide [Student] with the tools to improve but rather further segregates him from his peers and negatively impacts his self-esteem. I believe that this will create a pattern for [Student] which will also have a snowball effect...(kicking him out of class, lowering self-esteem, he will seek to recover self-esteem by acting as if he thinks it's cool to be in trouble).

The Parent also recommended that the Student be provided a visual calendar, daily tasks, and a checklist.

96. On or about February 27, 2018, the Parent emailed the case manager, recommending that the certain "positive supports and strategies" be used by the District when addressing the Student's behavior. In this email, the Parent noted that these techniques came from a

previous independent educational evaluation of the Student, as well as from the suggestions of a doctor that previously worked with the Student at a regional hospital's Autism Center. The "positive supports and strategies" included, in part:

- Educational Placement:
 - Clear routines and expectations.
 - Smaller classroom size with low level of stimulation.
- Managing Disruptive Behaviors in the Classroom:
 - Verbal and visual reminders.
 - Positive verbal reinforcement.
 - A reward system for appropriate behavior.
 - Remaining calm and matter-of-fact in interactions with Student.
 - Providing the Student with breaks when necessary.
- Teaching Alternative Behaviors:
 - Provide Student with a daily binder to stay organized.
 - Visual schedule/checklist for the Student to use as a self-management system.
- Consequence
 - Student needs to be provided with "reflection opportunities" to consider his behavior.

The case manager responded, "Excellent. I welcome all [of] these recommendations."

97. On February 28, 2018, the District completed an "Assessment Revision" of the Student in the area of communication. As explained in the "Assessment Revision" document:

It was discussed at the [January 30, 2018], reevaluation meeting between the mother and team, that she felt that [Student] often gets in trouble when he is just trying to communicate a point to the teacher and when he feels he is treated unfairly by the teacher he becomes difficult. She stated that she was concerned [Student] was not able to communicate his needs appropriately socially....[The Parent], after further discussion, requested that the SLP do further social language testing with [Student], particularly whether he is able to socially infer information correctly to use social language appropriately with teachers and peers.

In response to the Parent's concerns, the SLP evaluated the Student using certain subtests of the Comprehensive Assessment of Spoken Language-2 (CASL-2).¹⁸ "[F]rom the subtests that were assessed, [Student] showed no difficulty and in fact achieved standard scores above the average for his age level." In fact, the "CASL-2 test scores for the supralinguistic and pragmatic judgment subtests administered showed exceptional to above average standard scores and percentile ranks for his age for those particular subtests." Regardless, the Assessment Revision "recommended that [Student] receive supports for school personnel to provide social language advice to teachers and IA's to use in social situations in which [Student] has social behavior issues."

98. A prior written notice, dated February 28, 2018, proposing to initiate an assessment revision, noted:

An assessment revision needed to be done to revise the reevaluation report dated 1/30/2018. In that report, the SLP exited [Student] from SLP services. The Assessment

¹⁸ The CASL-2 measures a student's oral language processing skills of comprehension and expression.

Revision is adding support for school personnel from the SLP to the reevaluation report...[Student's] mother continues to be concerned that [Student's] social behaviors often results from social language deficits, particularly in perspective taking. The SLP is adding support for school personnel to the reevaluation report and IEP in order for the SLP to give advice to teachers and IAs in how to respond to [Student] when he becomes disruptive in the classroom in ways that will encourage [Student] to respond positively to them rather than with disruptive or defiant behavior.

99. Also on February 28, 2018, the Student's IEP team developed his annual IEP. The February 2018 IEP included annual goals in the areas of social/behavior and study/organization skills. The February 2018 IEP provided for the following specially designed instruction in a *general education setting*:

- Social/behavior – 10 minutes five times weekly (provided by a general education teacher)
- Study/organization skills – 5 minutes ten times weekly (provided by an IA)

The February 2018 IEP provided for the following specially designed instruction in a *special education setting*:

- Study/organization skills – 10 minutes two times weekly (provided by a special education teacher)

The February 2018 IEP provided for the following supports for school personnel to take place at various locations within the school, at least once a week: "SLP support for social language advice to teachers and IAs."

100. According to the District's response to this complaint:

At the request of the Parent, the February 2018 IEP removed services that had previously been provided, thus reducing significantly the number of special education minutes the Student was served each week. The reason for the reduction was that the Parent objected to the Student being pulled out of general education to get services in a special education setting. As a result, services in the special education setting were reduced from 250 minutes per week, as provided in the June 2017 IEP Amendment, to just 20 minutes per week.

101. According to the Parent's reply to the District's response to this complaint, she believed that the Student's least restrictive environment was in the general education setting. The Parent stated that the Student grew frustrated and anxious when he was placed in a special education setting with other students with "different levels of need...and support."

102. The Student's February 28, 2018 IEP also included a BIP. The February 2018 BIP identified the following target behavior:

- "[Student] can be impulsive and defy teacher requests. [Student] has difficulty compromising and not getting his way."¹⁹

¹⁹ The Student's February 2018 BIP also noted that the Student's behaviors "include running away from the classroom or school, engaging in arguments, making perceived rude comments and outbursts. These behaviors can stop classroom instruction, have made peers scared or fearful, and have caused injury to peers and staff."

The February 2018 BIP noted that the Student demonstrated this target behavior in the following instructional and/or environmental conditions or circumstances:

- “During all classroom settings, every day, every class.”
- “In any location with any staff (both consistent and substitute).”

The February 2018 BIP provided for the following replacement behavior:

- “[Student] will be taught to seek a trusted adult if he feels unsafe as an alternative to flight behaviors or threatening/aggressive behaviors.”
- “[Student] will be taught to step outside of the stressful room for 2 minutes in order to gather himself to return to class and assigned task.”

The February 2018 BIP recommended the following intervention strategies be utilized to encourage the Student to exhibit the replacement behavior:

- Setting Event Strategies
 - “On days that his classroom teacher is out, a staff member will meet with [Student] to go over the day and review the schedule. They will talk briefly with the substitute together.”
- Antecedent Strategies
 - “[Student] will be taught strategies such as taking a break or seeking a trusted adult if he feels he is becoming anxious or fatigued.”
- Teaching Strategies
 - “[Student’s] will receive SDI in appropriate social interactions with peers and in self monitoring strategies. His general education teacher will give him ongoing direct instruction and prompts regarding positive behaviors.”
 - “Allow for standing breaks/walks.”
 - “Proximity control seating close to teacher away from distractions.”
 - “Have [Student] repeat directions to gain understanding/go over lesson if needed.”
- Consequence Strategies
 - “[Student] will be given additional instructional support in the classroom unless he is unsafe to the point that an admin is called for a debrief.”
 - “Predictable, with clear routines and expectations.”
 - “Preparation for transitions through the use of...prompting, timers, and visual schedules.”
 - “Focus on social engagement.”
 - “Ready access to teachers and assistants to problem solve situations.”
 - “[IA] to provide educational and behavioral assistance both in the classroom and during unstructured time (e.g., recess and lunch).

The February 2018 BIP recommended the following plans be followed to encourage the Student to exhibit the replacement behavior:

- Reinforcement Plan
 - Free time for completing assignments and participating in instruction appropriately.
 - Use of phone if...all work finished and no arguments.
 - Out of class early to play games.
 - Telephone call home to mom telling of great day.
- Response Plan
 - The Student will be reminded to follow directions, follow the schedule to earn a reward.
 - The Student will be made aware of the telephone home to parent to discuss.
 - Visual prompts, encouraging reminders.

- De-escalation Plan
 - DO NOT ENAGE IN ARGUMENTS.
 - Remind the Student to stay calm.
 - Take deep breaths: “navy seal breathing.”
 - Count to 5.
 - Ask the Student what he needs to complete task.
 - Point out how much he has already accomplished.
 - Help him break down steps on a given task.
 - Remind student to stay on schedule.
 - Encourage positive choices to earn breaks—reduce problems.
- Crisis and Recovery Plan
 - Take deep breaths and count to 5.
 - Give him space and time.
 - Offer a safe environment to take a break; i.e., therapist setting.

103. On March 5, 2018, the Student got into an argument with another student. The humanities teacher that witnessed the incident stated that the other student was “very upset with something [Student] did.” The humanities teacher further stated, “I’m not sure what precipitated this but it was close to breaking into a fight whatever it was.”

104. On March 6, 2018, the Student violated “school rules” by using his cell phone during PE class.

105. According to the Student’s Discussion Summary Form, on March 9, 2018, the science teacher sent the Student to the “flex” space for disrupting his class. According to the science teacher, the Student then “began to disturb other classrooms...[another teacher] took [Student] to sit outside [the science classroom] on the bench. When office was notified, [Student] was absent.”

106. On March 9, 2018, the Student was given a lunch time reflection.

107. On March 12, 2018, the case manager emailed the Parent, stating that “the mediation between [Student] and [the other student with whom Student got into an altercation with on March 5 was] completed and they are good.” The case manager further stated:
 [The assistant principal] and I spoke with the boys involved with the fighting/future fighting. [The assistant principal] informed all students that fighting is absolutely not allowed, putting hands on each other is not allowed, and that any issues moving forward will result in a suspension...Every boy said they understood the situation and the ramifications if they choose to fight moving forward.

108. On March 12, 2018, the Student “roamed the building” when he was excused to use the boys’ restroom. The language arts teacher then emailed the case manager, recommending that detailed rules be implemented regarding the Student’s ability to take a break during her class.

109. On March 14, 2018, the language arts teacher and the case manager reviewed the new rules regarding the availability of breaks for the Student.

110. On March 14, 2018, the Student violated “school rules” by using his cell phone during PE class. When the PE teacher told the Student to put his phone away, the Student argued with the PE teacher. Also on March 14, 2018, the science teacher took the Student’s phone from him after he had it out in class for the second time.
111. On March 16, 2018, the case manager emailed the substitute PE teacher, stating, “[Student] will have to sit out of PE if he continues to bring [his cell phone to class]...this is from his mom!”
112. On March 16, 2018, while on a field trip to an art museum, the Student disobeyed directives and repeatedly touched several of the exhibits. When museum security and the language arts teacher attempted to correct the Student, the Student argued with them. According to the language arts teacher, the Student cursed at her multiple times. The Student was issued a one-day, in-school suspension for his behavior at the art museum.
113. Also on March 16, 2018, the Student was involved in an incident that took place in the school elevator. According to another student’s parent, the Student cursed at one of his classmates who was also on the elevator. Allegedly, the Student also slapped the other student’s hand away when she tried to select her desired floor.
114. On March 19, 2018, a visiting PTSA²⁰ representative was given “all kinds of rude responses” by the Student when she told him he needed to return to class.
115. On March 19, 2018, the case manager emailed the principal and the assistant principal, stating, “I am meeting with [Student] and Mom today to discuss a new plan and possible increase in SPED support. I will update everyone after the meeting.”
116. On March 20, 2018, the PE teacher emailed the Parent, stating that the Student continued to talk while she was speaking and to disobey class rules. Later that same day, the Parent responded, stating:
- My first question is what type of supports are in place for him right now in your class? Maybe those supports need a little adjustment? The problem here is I can talk to him however, the reason for [Student’s] IEP and BIP are in place is that due to his disability he needs the extra supports, extra reminders, extra set up for success in order to be equal to his typical developing peers.

Later that same day, the PE teacher responded, stating:

I redirect, remind, reteach; daily. I thought perhaps just a little reminder from you that we can redirect, remind, reteach but the actual being quiet and following the rules he knows can only come from him. In the long run he needs to step up and be more attentive to his behaviors so he can start to gain a little self-direction so teachers aren’t always reminding him. His comment to me is I am always redirecting him (on him is his interpretation) so I just thought that perhaps a reminder from you and my trying to catch him prior to the beginning of the class to give him the focus idea might lead to greater

²⁰ PTSA stands for Parent-Teacher-Student-Association.

growth for [Student]. If he begins to catch himself before he needs redirection he won't feel like I am on him all the time.

117. On March 20, 2018, the Parent emailed the consulting teacher,²¹ stating that since she was “now getting multiple emails and phone calls several times a week about [Student]...[perhaps] we need to go back to the table with another IEP meeting.”
118. On March 21, 2018, the Student served his one-day, in-school suspension for his inappropriate behavior at the art museum on March 16, 2018.²²
119. On March 21, 2018, the Parent emailed the assistant principal, stating:
[M]y understanding is we are going to look into what type of supports were in place during the field trip; and aside from “re-directing” what other strategies were employed during the field trip. During our conversation, I reminded you that this is a child who has a history of becoming dysregulated in crowded and eventful environments.
- Your voice message this morning did not explain any details you may have learned during any investigation that was done to discover if this particular incident is directly related to his disability. If you are punishing [Student] for something outside of his control during a dysregulated emotional state then you are punishing him for being disabled.
- As we discussed suspending him under these circumstances will not create changes in unwanted behavior, in fact, it will have the opposite effect and you will see more unwanted behaviors for punishing him for something very possible outside of his control.
120. A prior written notice, dated March 22, 2018, proposing to hold an IEP meeting on March 23, 2018, stated:
[Student] has had an increase in negative, physical behaviors, including: hitting a girl, bullying other girls, cussing at teacher...[The Parent] has refused more service minutes and wants more strategies used...[the special education teacher] suggests male counseling services and new processing form and teachers will meet, when possible, to process negative interactions with [Student] and repair relationship.
121. The District and the Parent met on March 23, 2018, to discuss the Student's worsening behavior and to develop new strategies for dealing with the same.
122. On March 23, 2018, the school counselor emailed the Parent, stating:
I will work with [Student] to try and figure out why there are rising behavior issues. Two things come to mind re: strategies. The first: [Student] responds within the context of relationships. If he feels respected, if people take the time to try and engage positively with him, to recognize his strengths, I think he responds better...My second strategy is that both at home and at school, [Student] needs to have clear expectations for behavior

²¹ According to the District's supplemental response to this complaint, “The consulting teacher supports the team with additional resources and expertise to assist the Student. She serves as a quasi-administrative resource.”

²² According to the District's supplemental response to this complaint, “The Student did attend school [on March 21, 2018], and was offered and accepted academic and behavioral instruction in an alternative setting.”

with consistent follow through on rewards and consequences...the key is consistency...I think that the combination of respectful relationships and consistency of expectations and boundary setting could help [Student] at home and school.

123. On March 27, 2018, the case manager, the Parent, and the Parent's advocate exchanged emails concerning the fact that the Student was possibly bullying some of his female classmates.

124. On March 28, 2018, the case manager emailed the science teacher, stating:
At the last meeting we spoke about...lunch time reflections as not working to curb some behaviors. Mom suggests an afterschool reflection time with the teacher whom he needs to repair a relationship. Will this work afterschool for you or another time this week?

The science teacher responded on March 29, 2018, stating that he was not available after school.

125. On April 5, 2018, the Student "took a [female classmate's] binder (as a joke) and placed it in the Boys' Locker Room."

126. On April 5, 2018, the Student was involved in an altercation with other male students in the boys' restroom. According to the math teacher, the Student exited the bathroom "red in the face and wincing in pain." According to the Student, the other boys, whom he apparently owed five dollars each, pushed him against the bathroom wall, where he hit his arm and head.

127. According to the Student's Discipline History, on April 5, 2018, he "hit two students [during the computer class] instead of going to his seat. One student (male) stated he asked [Student] to stop and he did not. The other student's (female) face was really red from the hit." The Student was issued a one-day, in-school suspension for his behavior in the computer classroom, which he served on April 6, 2018.²³

128. On April 6, 2018, the case manager emailed the language arts teacher, stating, "[Student] is on a progressive discipline schedule...it will continue to increase each [time an] administrative incident [occurs]."

129. The District was on break April 9-13, 2018.

130. The record contains a document entitled "No-Contact Contract." This document pertains to the incident between the Student and his female classmate that occurred on April 5, 2018 in the computer classroom. The document purports to begin on April 5, 2018. It was signed by the Student, the Student's parents, the Student's female classmate, and the Student's female classmate's parents on April 16, 2018. It reads:

²³ According to the District's supplemental response to this complaint, "The Student stayed home [on April 6, 2018], and was sent his academic work (to his mother via email). He was not offered 'behavioral' instruction at home that day—his behavior instruction was all school-based."

The following circumstances have resulted in need for a No-Contact Contract: [Student's female classmate] is being verbally and physical abused; hit, yelled at, called names, teased, laughed at, and bullied by [Student]. I [Student] do not agree that I did this.

131. On April 16, 2018, the Parent emailed the case manager:
[Student] came home very frustrated about his communications class again today...[the communications teacher] was showing the class a movie, asking the class if anyone wanted her to back the video up. [Student] asked her to back it up and she responded, "no." Another student...asked [the communications teacher] to back the video up a few seconds after [Student] did and [the communications teacher] responded, "sure"...purposefully shunning and shaming [Student], especially in front of his peers is the opposite of helpful. This is a good example of what I meant by teachers not implementing the BIP the way it is "intended." Perhaps we need to have a meeting with this teacher and talk about better strategies to use?
132. On April 17, 2018, the Student was involved in a physical altercation with another male student. According to the case manager, this altercation began as play fighting and escalated into more serious physical exchanges. The case manager stated that the Student "showed a great deal of maturity" after the incident occurred. According to the case manager, the Student was remorseful, and consciously chose to sit and cool down before going to his next class. A "mediation" between the two boys was scheduled for the next day, April 18, 2018.
133. On April 18, 2018, the Parent emailed the case manager and the consulting teacher, stating:
[Student] was extremely frustrated yesterday from [the science teacher's] class. He reported that there were several instances in which he felt that [the science teacher] signaled him out or purposely tried to embarrass and humiliate him in front of the entire classroom...A key part of our BIP is not fully being utilized as it is intended in helping [Student] learn or reinforcing positive behaviors and helping to work toward his goals. Can you please get [the science teacher], [the PE teacher], and [the communications teacher] on board with a language which is more useful for supporting [Student] in their classrooms as these have been consistently problematic.
134. On April 23, 2018, the Parent provided consent for the District to conduct another FBA of the Student.²⁴
135. On April 24, 2018, the parent of another student emailed the assistant principal, stating that she was concerned a different student was bullying several students at the school, including the Student.
136. On April 25, 2018, the Parent emailed the communications teacher and the case manager, stating:
I would like [to] arrange a meeting to discuss implementation of [Student's] IEP, BIP and ways to better support him in communications class. I realize we are almost done with

²⁴ The Functional Behavioral Assessment Consent form was signed by the Parent on April 23, 2018. The document itself is dated April 17, 2018. It was apparently received by the District on April 30, 2018.

the school year and we are re-evaluating [Student's] support plan but it is also important to get [Student] through the final weeks of school on a positive note and prevent further [lunch time reflections], exclusion from class, embarrassment in front of his peers and negative reactions to any challenges he faces.

137. According to the District's response to this complaint, on April 30, 2018, the consulting teacher and the case manager "met with the Student's general education teachers...to provide additional training about the Student's BIP and to ensure consistent implementation."
138. On May 1, 2018, the Student repeatedly left class without permission.
139. Also on May 1, 2018, the case manager emailed the Parent, noting, "[Student] seems more relaxed and happy and willing to talk things out if he is stressed."
140. On or about May 1, 2018, the Student drew a picture on his textbook cover. The Student, the case manager, and a security officer "spoke at length about how the drawing could be perceived by teachers and others as negative. [Student] said he would not draw any more of these pictures."
141. According to the Data Sheet, on May 2, 2018, the Student was "talking out" during "whole group instruction." As a consequence, the Student was "redirect[ed]...back on task."
142. On May 8, 2018, the math teacher emailed the principal, the assistant principal, and the case manager, stating:

[Student] did not complete the warm up. After multiple attempts and redirections to help him complete...his homework (one problem) he continued to talk to the person sitting behind him every time I wasn't looking directly at him. I let him know the consequences for his choices (leaving the room and not being able to complete the math review). He continued to talk, I changed his seat closer to me. At this time he had put away the one assignment I asked him to complete multiple times and was drawing on a white board. (I had given another student permission to use them because they were done with the assignment).

I asked [Student] to step out. He left and walked to [the case manager's] room. I called there and asked [the case manager] to send him back. I attempted to explain to him why he had been sent out. He said that I told him it was okay to use the white board, I corrected him and told him I was speaking to the other student and it was clear I was not talking to him. His response, "no offense, but why are you being mean to me? Why don't you just let it?" I told him [I] was not being mean and I was clearly explaining why he was sent out. He then walked off. I told him to go directly to the office.
143. On May 11, 2018, the SLP emailed the assistant principal and the Student's teachers. This email has the following subject line: [Student's] disappearances from the classroom. It stated:

I am aware this is an ongoing issue, are there other social communication issues with [Student] (not only your ability to communicate to him so he understands you but his

ability to communicate his needs to you) that I can try to help you with. I am supposed to be available to offer support to school personnel. When I first approached you all after the IEP, you generally said social communication was not the problem and you didn't need advice at the time. His mother feels like [Student] is unable to communicate with all of you. I am taking that with a grain of salt, but I want to give him the benefit of the doubt as well.

144. On May 17, 2018, the substitute PE teacher emailed the PE teacher, stating, Just letting you know that [Student] is going to be kept from the Boy's Locker Room until Tuesday 5/22. For 3-days he's been bringing food to the Boy's Locker Room and I just informed [the case manager] as well.
145. During PE class on May 17, 2018, the Student grew frustrated about what he claimed were unfair teams. The Student made derogatory remarks towards the PE teacher and "threw or kicked a rotten orange," hitting her in the shin.
146. On May 17, 2018, the Parent emailed the case manager:
I am coming to pick him up...He told me about [the communications teacher] locking him out of the classroom yesterday. He called me today after being very frustrated in her classroom because she was refusing to help him with his work, asked him to spit out his gum and offered the rest of the classroom lollipops but told him that he couldn't have one because he has been late to class. Trying to punish and humiliate him is not what I would call supportive or giving incentive for him to change any unwanted behaviors.

The case manager replied later that same day, stating:

[Student] had a tough day...he called [the PE teacher] a derogatory name referring to her sexuality. Staff are reporting he is refusing to take his headphones and put his phone away in hallway and other classes or follow basic [school] rules. However, this week he is coming to our room and he is working and going great: polite, follows the rules, does his assigned work...he is allowed his phone and headphones in here. I said bye to him because I was leaving the area...Not for him to leave the school. I offered my room and the office as a place to cool out. He walked away from me and [the principal]. We will try again tomorrow. Up until today he had a great week.

The Parent replied:

It has been well documented that [the PE teacher] calls [Student] derogatory names like dumb and stupid and tells him to use his brain and then [Student] is not believed especially when he told [the assistant principal] and [the assistant principal] asked him if he was lying. The reason we are doing another FBA is because the intervention plan and the IEP are either not working or not being followed by certain teachers. You and I have discussed this and your response has been that you cannot get teachers to change their ways. I don't expect [Student] to be able to keep his mouth shut when he is frustrated if he is not being supported. That has been my main point every time we have a meeting.

[Student's] headphones are his comfort blanket, so to speak. When he is feeling frustrated, out of sorts, shamed and humiliated the way he does in [the PE teacher's] class and [the communications teacher's] classroom those are things that help him get through the day, so it is not at all surprising to me that he is refusing to take them off.

He has told me that he has been happier coming to your room in order to avoid the frustrations in [the communications teacher's] class and I know that he tries very hard to get past [the PE teacher's] treatment of him because he loves PE so much and is more motivated to stay in PE class, otherwise I would expect him to walk out of that as well...[A]s many times as [Student] has been kicked out of a classroom or suspended or in trouble in that way he fully expects that to be the go-to tool that the school uses.

147. On May 21, 2018, the Parent was informed by the assistant principal that the Student had earned a one-day, in-school suspension for the incident that took place during the PE class on May 17, 2018. The in-school suspension would take place on May 22, 2018.

148. On May 22, 2018, the Parent emailed the assistant principal, stating that the Student denied making any derogatory remarks to the PE teacher. The Parent also stated that the only reason the behavior occurred was because the PE teacher did not follow the BIP—specifically, the Parent alleged that the teacher did not utilize “positive interventions,” “positive supports,” or “alternative teaching strategies.” The Parent also expressed concern that the Student would not receive services during the in-school suspension. The assistant principal replied to the Parent later that day, stating, “[Student] will receive services while serving his one day of in-school suspension. [The case manager] will provide [Student] with services and [Student] has a counseling session today which [the case manager] will attend.”

149. Also on May 22, 2018, the Student was scheduled to serve his in-school suspension. However, according to the District's response to this complaint, on May 22, the Parent pulled the Student from school. The Student did not return to school until June 11, 2018.

150. On May 22, 2018, the consulting teacher emailed the southwest regional supervisor (SW supervisor) and the District's attorney, stating:

We have been collecting data for a new FBA/BIP...At the last meeting with [the Parent], she expressed concerns about alternate teaching strategies and positive interventions. We discussed and agreed to a couple of things such as [Student] meeting with general ed. Teachers to process (rather than sped teacher). Also ignoring low grade behaviors and avoiding engaging in battles with [Student]. I met with the entire team of teachers to discuss his BIP and these strategies. Subsequently, teachers reported an improvement in daily behaviors. Except for the fact that he has refused to go to LA/SS and he has been getting the instruction in the flex space or Access classroom. He recently stated that he was bored and wanted to return to class according to the case manager.

151. On May 30, 2018, the Parent emailed the SW supervisor, as well as several District personnel, including the consulting teacher, the principal, the assistant principal, and the case manager, stating that she was “uncomfortable” with the idea of the Student attending a re-entry meeting since a revised BIP had not been offered yet. The Parent also requested a specific instructional assistant (IA) attend to the Student if he were to return to school. The Parent also requested an independent educational evaluation (IEE). The case manager replied to the Parent's email on May 31, 2018, stating that the requested individual was actually “a certified teacher and is not able to be an IA. He has a full caseload and has stated he does not want to take on any more students.”

152. On May 30, 2018, the Student's evaluation group, including the Parent, met to review the results of the Student's FBA. According to the District's response to this complaint, at this meeting, "the parties discussed many aspects of the Student's behaviors and the Parents' concerns, and so did not complete discussion of the FBA...[the discussion] was continued to June 11, 2018." The May 2018 FBA identified the following target Behavior:

- "Refusing to bring materials to class (for certain teachers in particular), arriving late to class, not initiating tasks, insulting others, talking during work times, leaving class, aggression."
- "Refuses to comply with academic and behavioral standards, becomes combative or insulting and aggressive."

The May 2018 FBA noted that the Student demonstrated these target behaviors in the following instructional and/or environmental conditions or circumstances:

- When the Student is "assigned work tasks or transitions."
- "When the teacher isn't watching."
- "Throughout the school day...in class or during passing period/lunch."

The May 2018 FBA provided for the following replacement behaviors:

- "Persisting through challenging tasks (with breaks or support if necessary)."
- "Seek attention from peers in a positive way (ignoring non-preferred peers and engaging with preferred peers only)."
- "Seek trusted adult to help problem solve."

The May 2018 FBA recommended the following intervention strategies be utilized to encourage the Student to exhibit the replacement behavior:

- Setting Event Strategies
 - "Highly structured and responsive classroom environment."
 - "Providing forced choices and allow the natural consequences (lower grade, reflection, etc.) to follow without engaging in a battle with [Student]."
 - "Ignore low grade behaviors to avoid constant negative engagement with [Student]."
- Antecedent Strategies
 - "Engage with [Student] in a positive way daily (greeting, noticing something about him, asking a question)."
 - "Allow [Student] to take a short break to self-regulate as a prearranged system."
 - "Offer academic clarification or support when tasks are assigned."
 - "Pair with peers who [Student] gets along with for work tasks."
 - "Inform [Student] in advance, when possible, of any changes in routine or expectations."
- Teaching Strategies
 - "Modeling calm disposition."
 - "Prompt [Student] to seek adult support for problem solving (academic or behavioral)."
 - "Teach acceptance of consequences for his choices (help him connect the dots) with nonjudgmental/neutral feedback."
- Consequence Strategies
 - "Allow natural consequences when [Student] disregards expectations of academic readiness (bringing materials to class etc.)"
 - "Give as little attention as possible to him in the moment when he is trying to engage in battle."

The May 2018 FBA noted that the following prior implementations had been utilized:

- Individual support.
- Redirection.
- Breaks.
- Allowed to work in alternative work space.
- Verbal processing.
- Earning a preferred activity.

153. A prior written notice proposing to update the FBA, dated May 30, 2018, stated: [The Parent] was concerned that the adults who work with [Student] were not following the BIP...The team considered breaking down [Student's] target behavior further to include only aggression or non-compliance. The team considered these behaviors linked and thus agreed keeping the target behavior the same was best.

154. From June 1-6, 2018, the consulting teacher and the Parent exchanged emails. These are summarized below:

- June 1 – the consulting teacher emailed the Parent, requesting clarification on whether she was requesting “an independent FBA.” The consulting teacher also stated:
I think we need to talk about how to get [Student] to school ASAP...After our last meeting, we worked closely with the team of teachers to ensure that everyone was aware of the plan and doing their utmost to be positive with [Student], provide accommodations, and support. We subsequently gave him the option to complete work in alternate locations for the classes that he didn't feel good about his relationship with the teacher...It also became clear that [Student] is given incentives throughout his school day and he is given (and currently seeks out) processing and teaching from several trusted professionals. The current plan was to meet with the two teachers that you believe we need to repair the relationship and then meet with those teachers and [Student] to ensure there is a repair. I thought we agreed that this was appropriate, but I left the meeting...when it wasn't quite over. At this point, we'd be happy to develop another plan with you that would enable you to feel that you could send [Student] back to school.
- June 5 – the Parent responded:
I feel that an IEE conducted by an autism expert, independent of the school district since we've already conducted two FBAs, who specializes in [Student's] specific challenges and needs will give us as much information as possible in order to create an appropriate BIP for him. I would like to make sure that my request for a full independent evaluation by an autism expert is clear...[T]he administration needs to understand that there is a strong possibility that certain teachers may NOT be following the IEP/BIP in the way the IEP team intended. I also would like to get [Student] back into school as soon as possible. Since the current accommodations have proven to have many challenges which resulted in his second suspension and not attending all of his classes I am concerned that we are placing him back into the same situation. What will prevent him from wandering the halls if he becomes dysregulated, feels unsafe, wants to avoid the work, cannot properly ask for or receive the help he might need or overall has a difficult time communicating? We don't have a de-escalation plan in place.
- June 6 – the consulting teacher replied:

[N]ow that it is clear that your request is for an [IEE] regardless (from your email on June 5), we will wrap up the current FBA on Monday, June 11 (8:15 AM) and send you the final copy. You are more than welcome to attend, but we understand that at this point you'd rather come to school to attend to other matters such as repair and re-entry for [Student]. [The southwest regional supervisor] will be communicating with you regarding the details of your request for an independent FBA.

Regarding the re-entry, I've been informed that the team offered many supports to enable a smooth and speedy re-entry for [Student] including: a meeting with adults and teachers regarding repair and then a repair meeting with [Student], tutor to help [Student] make up academic work that he missed, allowing [Student] to work in various alternate locations in the building with support until repairs were completed according to your and his satisfaction, a one-on-one IA for the remainder of the school year, continued support for processing and support for academic and social-behavioral issues with various adults in the school...and continued positive reinforcement for work time with choice time... We continue to believe that this plan is a good one and that just because [Student] made an error or was testing boundaries, doesn't mean he did not receive appropriate support and instruction. As the [the school counselor] stated in the meeting, students with autism need boundaries, consistency, and consequences even more than students without autism. Further stated in the meeting was that [Student] had begun to seek out academic and social-emotional support in a way that he has been resistant to earlier this school year. The team has worked hard to provide [Student] with positive incentives, emotional support and SDI and his willingness to accept this help was a big step towards his future success. Students don't become successful at mastering skills overnight and they will have mishaps along the way. Some consequences for the more extreme behaviors is part of what students need to feel safe and for a good overall plan. Additionally, the team has noted that [Student's] behaviors increased after he was removed from study skills at your request (2/5/18). The team should consider adding this time for [Student] to access the support and instruction that he needs.

Regarding the FBA and building trust, we must continue to be honest with each other to develop any trust at all. The draft FBA states under "maintaining consequences": negative attention from peers and adults in school and positive attention from home. We've discussed this dynamic at every meeting that I've attended this year regarding [Student]. We've encouraged you to advocate for [Student] as fiercely as you'd like, but to do so privately so that [Student] doesn't get confused and inadvertently reinforced for his aggressive behaviors. The team believes that this is a maintaining consequences (not a cause but something that helps to maintain the behavior) that could not honestly be left out of the FBA.

155. On June 6, 2018, the case manager emailed the consulting teacher, stating: Here is the interventions list (list is not exhaustive)...for [Student] that you requested. The interesting thing the IEP team noticed...is that after Mom requested [Student] to be removed from the Study/Social skills class, his issues with truancy, absenteeism, tardiness, and unexcused absences spiked.

The intervention list included, in part, the following strategies:

- Help the Student to identify appropriate range of responses for the situation and to select one.
- Permit the Student some 'leeway' on assignment or classroom expectations (as an acknowledgement of the life or situational stress that they might be experiencing).
- Teach the Student non-stigmatizing ways to get academic help, support in the classroom.
- Teach the Student to take 'calm-down' break.
- Preview rules/behavioral expectations.
- Redirection.
- Reprimand.
- 1:1 Conferences.
- Timeout/Detention/In-school suspension.

156. On June 7, 2018, the Parent emailed the consulting teacher and the SW supervisor, stating:

Once again, I want to be clear so there is no confusion, as stated in my email dated 5/30/2018, I am requesting an IEE, not another FBA, done by an independent autism expert.

There is not a de-escalation plan in place for [Student]. Specifically, what alternative teaching strategies will be utilized other than allowing him to walk out or asking him to leave? I would like for [Student] to be back into school by Monday morning...It is not a good idea to start him off talking to him about "mistakes" Monday morning to kick off the week. This "repair" meeting can be done efficiently. Specifically, what will the discussion be so we can prepare as we want to keep things as simple, professional, and direct as possible without emotion.

157. On Friday, June 8, 2018, the assistant principal, the Parent, and the Student met to create a plan so the Student could return to school the following Monday—June 11, 2018. At this meeting, it was determined that the Student would not serve the in-school suspension that he had been assigned for the incident in the PE class on May 17, 2018.

158. On June 11, 2018, the case manager emailed the communications teacher, the science teacher, the PE teacher, and the assistant principal, stating:

[Student] is back at school today. [The assistant principal] held an intake meeting with Mom and [Student]. Please remember: ignore the little stuff that may come up; redirect his behavior; ask him to take a break—aka go to [the case manager's] room; write up behavior that results in a [Behavior Tracking Form]. Mom and [Student] understand that consequences will happen if his behavior warrants it.

[The assistant principal] reminded [Student] to be on time, do his best, and ask for a break when he feels dysregulated.

Reminder: if he is late, or leaves class, or does not show up mark him "late" or "absent."

159. Later in the day on June 11, 2018, the language arts teacher emailed the case manager, stating, "I hope someone was there to support [Student] today with my sub." The case

manager replied, “[Student] refused to go to your class or work on HW/classwork or work with the tutor.”

160. Also on June 11, 2018, the case manager emailed the Parent, stating, “[Student] refused to work on any work today and refused to work with the tutor.” The Parent replied, “[W]hat did he actually do during the class times and which classes did he attend today?” The case manager replied:

[Student] came to our room and got on his phone to play video games. We asked him to put away the phone and he refused. He told us he is not working on any classwork and will not work with the tutor. He left [the communications teacher’s] room yesterday and came to our room and pulled out his phone to play video games again. Can he keep the phone at home?

161. According to the District’s response to this complaint, District personnel met on June 11, 2018, to finalize the May 30, 2018 draft FBA. According to the District’s response to this complaint, “because the Parent disagreed with the May 2018 FBA, no revisions have yet been made to the February 28, 2018 BIP.” On June 11, 2018, the case manager emailed the Parent a copy of the “updated” FBA.

162. On June 11, 2018, the consulting teacher emailed the SW supervisor, stating:
[The Parent] clarified today that she would like a complete comprehensive independent evaluation and functional behavioral assessment before proceeding with a new behavior intervention plan and IEP.

163. On the morning of June 12, 2018, the case manager and the Parent had an “impromptu meeting...to clarify [Student’s] schedule for the remainder of the year.” At this meeting, it was determined that the Student would get a break pass that he could use at any time without even asking for a break, an individual tutor during first and second period “when [Student] is interested and a tutor is available,” and the ability to check in with the case manager “or other designated adults” at any time during the school day.

164. In its response to this complaint, the District stated that the Student got in a fight with another student on June 12, 2018. According to the District:

[Student] was running down the hall and bumped another student. That student chased the Student in this complaint. They grabbed each other before a teacher attempted to break up their fight. In front of the teacher, the Student took a swing at the other student, and hit him in the face. That student responded in kind. Both students were issued one-day, in-school suspensions. The Student’s one-day suspension was to be implemented June 13.

165. On June 12, 2018, the case manager, the consulting teacher, and the assistant principal met with the Parent and the Student “to iron out an even more detailed plan...for the remainder of the school year.” At this meeting, it was determined that: (a) the Student would ask for breaks to go to the case manager’s classroom whenever he felt it necessary to do so; (b) prior to any discipline being assigned to the Student, a conference between the case manager and the assistant principal would take place; (c) certain changes to the Student’s

schedule would be made to make it easier for him to progress through the school day; and (d) a visual plan of work would be created for the Student.

166. Later on June 12, 2018, the Parent emailed the SW supervisor, the consulting teacher, and the OSPI special education parent and community liaison, stating:

[Student] has an incident today...in which he was running and knocked over a student by accident. The other student began to pick a fight with [Student]. Upon talking to [the assistant principal]...we could not find a way to have a conversation that wasn't hostile and argumentative. I want to be clear that I am not trying to keep [Student] from natural consequences and discipline. I do feel however that when you take a child who has hyperactivity disorder and attention span issues and put him in a hallway in an office for 6 hours secluded from all peers all day that we are not offering additional strategies which will help prevent [Student] from repeating the same behavior. I will keep [Student] out of school on Wednesday [June 13].

167. On June 15, 2018, the case manager emailed the Parent, stating that the District was concerned the Student was missing too much school. The Parent responded later that day, stating that she was keeping the Student from school because she had not yet received "clarification as to what [Student's] daily routine, plan, and support will be." The case manager responded to the Parent on June 18, 2018, stating:

As for a plan of [Student] sitting in the hallway of the office, that contradicts everything that we've said in meetings about the services [Student] will receive during [in-school suspension]. We've made it very clear that [Student] will receive individual instruction from [the case manager] throughout the day (with as many breaks as necessary, of course)...Due to his disabilities, we let a lot of lower-grade behaviors go without consequence for [Student]—we let verbal processing suffice. Our grave concern is what [Student] is learning from this situation. He throws an object at a teacher and curses her out, after she's changed the teams for him. Then, he treated [sic] as the victim and not allowed to spend the day getting individual instruction in school. We are not here to vilify students or shame them in any way for their mistakes, but merely to help them learn from them. On the day of that incident, [Student] had admitted that he made a big mistake to several adults. As stated in the re-entry meeting, he was doing better and had started to seek help from trusted adults. Since that time his behaviors have regressed and attitude change. In my opinion, [Student] was testing boundaries in order to feel safe that the adults are in charge. Unfortunately, I believe he's learned the opposite. In the end, we can only do what we can for him in school and as his parent you have to advocate for him as you see best. I'm asking you to trust our VAST experience with students and [our] interest in helping him learn what he can so he can use his enormous potential as successfully as possible. We are all trying our best for him.

168. The Student returned to the school on June 18, 2018.

169. According to the District's response to this complaint, the Student did not attend school from June 19, 2018 through the end of the school year—June 22, 2018.

170. According to the District's Student Rights and Responsibilities (2017-2018):

[The District] may not suspend the provision of educational services to a student as a disciplinary action.

While students may be excluded from classroom and other instructional activity areas for a period of suspension or expulsion, [the District] must provide students with an opportunity to receive educational services during that time.

If educational services are provided in an alternative setting, the alternative setting should be comparable, equitable, and appropriate to the regular education services a student would have received without the exclusionary discipline.

CONCLUSIONS

Issue 1: BIP Development – The Parent alleged that the Student’s February 2018 BIP was “created minimally” because its underlying FBA did “not contain...enough or proper data to create appropriate content.”²⁵ The Parent also alleged that the District did not add “many [of the] interventions and de-escalation strategies...to the [BIP]” that she requested.

In developing a student’s IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student’s behavior. If an IEP team determines that a student requires a BIP in order to receive a free appropriate public education (FAPE), then it must develop a BIP that meets the requirements of WAC 392-172A-01031. There is no requirement that a district first conduct an FBA prior to developing a student’s BIP. While an FBA is one way an IEP team can be informed a student’s behavior needs, the IEP team can and must also rely upon other sources of information about a student when developing an IEP. This would include information and recommendations provided by a parent; however, a district is not required to adopt all recommendations proposed by a parent. An IEP team must work toward consensus on IEP content, but if team members are unable to reach consensus, it remains the district’s responsibility to ensure that the IEP includes the special education and related services that are necessary to provide the student with a free appropriate public education. An IEP may therefore be properly developed under IDEA procedural requirements, yet still not provide the student all of the services that the parent believes are necessary components of the student’s educational program.

Here, the Student’s IEP team considered information from the Student’s January 2018 reevaluation report when developing his February 2018 IEP and BIP. The January 2018 reevaluation report included results from the BASC-3 and the BRIEF-2, as well as observations from the Student’s teachers about his behavior. The IEP team also considered the results of the Student’s February 2018 FBA. Additionally, the District considered the Parent’s input, both during the reevaluation process and the creation of the February 2018 BIP. For example, on January 24, 2018, the Parent emailed the language arts teacher, stating that in order to decrease unwanted behaviors, it was important for the Student to “receive praise for his accomplishments.” On January 30, 2018, the Parent emailed the case manager, stressing the

²⁵ As the development of the February 2017 FBA and BIP falls outside of the one-year timeframe that applies to this investigation, OSPI lacks the jurisdiction to investigate issues pertaining to the same.

importance of “positive cheerleading” for the Student. On February 27, 2018, the Parent emailed the case manager a list of various “positive supports and strategies” that came from a previous independent educational evaluation of the Student. The Student’s 2018 BIP reflects many of these things. The Student’s February 2018 BIP included positive behavioral interventions.²⁶ For example, the Student’s February 2018 BIP included the following ‘Antecedent Strategy’: “[Student] will be taught strategies such as taking a break or seeking a trusted adult if he feels he is becoming anxious or fatigued.” The February 2018 BIP also recommended that the Student’s school: implement an incentive program to reward the Student for good behavior, “point out how much [Student] has already accomplished” whenever he gets discouraged, avoid engaging in arguments with the Student, and utilize a breathing and counting program to calm the Student whenever he gets upset. Therefore, the District followed procedures for developing the Student’s February 2018 BIP. It is also noted that based on the Parent’s concerns about the February 2018 FBA, the District agreed to make changes to the FBA and has continued to try to work with the Parent to resolve her concerns about the Student’s FBA and BIP.

Issue 2: BIP Implementation

Interventions Utilized – The Parent alleged that the District did not properly implement the Student’s BIPs that were in effect during the 2017-2018 school year. Specifically, the Parent alleged that the District did not use “positive” interventions or supports in dealing with the Student. (As detailed in the record, the Parent believed the following interventions and supports to be “positive” in nature: speaking to the Student in a neutral, non-argumentative manner, providing the Student with verbal reminders to stay on task, implementing a reward system for the Student for demonstrating appropriate behavior, and providing the Student with breaks when needed.)

A district must ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. Similarly, a district must use a BIP proactively. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child’s IEP. A material failure occurs when there is more than a minor discrepancy between the services provided and those required by the IEP. In this case, each of the Student’s BIPs that were in place during the 2017-2018 school year included the interventions the Parent identifies as “positive.” Furthermore, the record is clear that these “positive” interventions and supports were utilized. For example, on September 25, 2018, the Student talked to his peers during silent reading time. In response, the teacher “redirect[ed]” the Student to the assigned task. Additionally, the documentation in this complaint shows that on October 17, 2017:

[Student] argued with [the case manager] and did not want to work on HW/classwork in [the case manager’s] room. He tried to argue and give [the case manager] excuses about finishing his HW at home...[The case manager] told him he has only 1 choice...to complete classwork and HW now. [The case manager] also reminded him that [the case manager does] not argue or negotiate with 6th graders, but that [the case manager] would love to

²⁶ See also Issue 2 below.

finish this conversation with him...afterschool...[the Student] politely declined to work after school...[h]e made a great choice and he is working quietly now.

As another example, on October 17, 2017, the language arts teacher allowed the Student to take a break when he became frustrated with having to complete a certain assignment. According to the “ABC Analysis Data Sheet,” in November of 2017, the District began to allow the Student to take “up to 15 minute breaks if [he] earned [them].” As demonstrated by these facts, the “positive” aspects of the Student’s various BIPs were properly implemented by the District.

The Parent appears to take issue with the fact that the District also utilized detentions and suspensions in dealing with the Student. It is important to note, though, that both of the Student’s BIPs in place during the 2017-2018 school year explicitly allowed for the implementation of punitive interventions. For example, the February 2017 BIP read, “If there is extreme hands on behavior that is unsafe or results in injury to another student, the school’s disciplinary rules will apply to [Student].” The February 2017 BIP also required that the Student be given time to reflect on his behavior when it presented issues. (The Student’s school required students that had been given lunch time detention to use that time to reflect on their inappropriate behavior.) The February 2018 BIP stated that the Student “will be given additional instructional support in the classroom unless he is unsafe to the point that an admin is called for a debrief.” Therefore, this was not an implementation failure.

Accessibility – A district must ensure that each student’s BIP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. In this case, the District’s documentation suggests that several teachers were not aware that the Student had a BIP. For example, on October 18, 2017, the language arts teacher emailed the case manager, “[Student] has a behavior plan? Can you please share that with me?”

This is a violation of the IDEA. All of the Student’s teachers during the 2017-2018 school year should have been informed of the Student’s February 2017 BIP by the beginning of the school year or the first time they began providing instruction or services to the Student. Similarly, all of the Student’s teachers during the 2017-2018 school year should have been informed of the Student’s February 2018 BIP as of the first day of its implementation—February 28, 2018.²⁷ The District will provide written guidance to all special education administrators, the principal, and certified staff, including educational staff associates (ESAs), at the Student’s middle school, concerning the requirement that each student’s BIP be accessible to the individuals responsible for its implementation.

Issue 2: Discipline Procedures – The Parent suggested that the District did not follow appropriate discipline procedures with the Student. School districts may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an

²⁷ The issue of whether the Student’s teachers had access to the Student’s BIPs at the appropriate time is different from the issue of whether the Student’s BIPs were correctly implemented. As discussed above, despite the fact that a couple of the Student’s teachers may have not been aware of the February 2017 BIP at the appropriate time, the record shows that the District adequately implemented the strategies and interventions included in the BIPs.

appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement. A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or fewer in that school year, if it provides services to a student without disabilities who is similarly removed. Instructional hours during a school day means those hours where students are provided the opportunity to engage in educational activity.

In this case, the Student served two day-long suspensions during the 2017-2018 school year.²⁸ The record also demonstrates that the Student served numerous lunch time detentions.²⁹ However, because the District does not provide academic instruction during lunchtime, these detentions do not count towards the ten-day removal discipline calculation. Finally, the record demonstrates that the Student was occasionally asked to leave class for misbehaving. On some of these occasions, it was clear that the Student received services when he was asked to leave. For example, on October 30, 2017, the Student received services in the case manager's room after being removed from math class for being disruptive. On other occasions, it is not clear that the Student received services when he was asked to leave the class. For example, on March 9, 2018, the science teacher sent the Student to the "flex" space for disrupting the class. According to the science teacher, the Student then "began to disturb other classrooms...[and another teacher] took [Student] to sit outside [the science classroom] on the bench." Regardless, the record does not support the conclusion that the Student was removed for more than ten days of academic instruction during the 2017-2018 school year for punishment related to misbehavior. Therefore, this is not a violation of the IDEA.

CORRECTIVE ACTIONS

By **August 10, 2018** and **October 2, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By **September 30, 2018**, the District will ensure that special education administrators, the principal, the assistant principal, and certified staff, including educational staff associates (ESAs), at the Student's middle school receive written guidance regarding the requirements of WAC 392-

²⁸ The Student served a day-long, in-school suspension on March 21. The Student served a day-long, out-of-school suspension on April 6. The Student was scheduled to serve a day-long, in-school suspension on May 22, but the Parent "pulled him from school" before he could serve that suspension.

²⁹ Also referred to as "lunch time reflections."

172A-03105(3) (Accessibility and Awareness of IEP and BIP).³⁰ ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. The guidance will include examples.

By **August 10, 2018**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by August 24, 2018.

By **October 2, 2018**, the District will submit documentation that all required staff received the guidance. This will include a roster of the following personnel at the Student's middle school: special education administrators, the principal, the assistant principal and certified staff, including educational staff associates (ESAs). (This roster will allow OSPI to verify that all required staff members received the guidance.)

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

Dated this ____ day of July, 2018

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.)

³⁰ If determined necessary, a behavioral intervention plan "is a plan incorporated into a student's IEP."