

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-57**

### **PROCEDURAL HISTORY**

On May 29, 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 30, 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 18, 2018, the District requested an extension of time to respond to the complaint. OSPI granted the request and extended the timeline to June 28, 2018 for the District to respond.

On June 29, 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 3, 2018, the Parent requested an extension of time to reply to the District's response to the complaint. OSPI granted the request and extended the timeline to July 20, 2018.

On July 11, 2018, OSPI requested clarifying information from the District and on July 12, 2018, spoke with the District's attorney.

On July 20, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District 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 2016-2017 school year, the Student attended a District middle school and was not yet eligible for special education. Prior to the Student being referred for a special education evaluation, the Student had several incidents of conflict with other students where the Student was engaged in conflict or where the Student instigated conflict. In May 2017, the Student was found eligible for special education under the category of emotional behavioral disability and the Student's individualized education program (IEP) team developed her initial IEP, which provided specially designed instruction in the areas of social/behavioral and study/organizational skills, and numerous accommodations. In June 2017, the Parent raised concerns that the Student was not being provided her "modified grading" accommodation and the case manager followed up multiple times with the Student's teachers.

During the 2017-2018 school year, the Student's May 2017 IEP remained in place and the Student continued to be involved in incidents of conflict with other students and began to exhibit a pattern of behavior where the Student would refuse to attend school or would leave class and walk home. In early October 2017, the District shortened the Student's school day and then developed a plan for the Student to return to a full day schedule. Although the Parent met with school staff several times in October, due to confusion regarding the plan, the Student did not attend school most of October 2017. At the end of October 2017, the Student's IEP team met and developed a safety plan for the Student, and the Student returned to a full day schedule. Throughout the school year, the Parent expressed concern that the Student was not being provided with the accommodations listed in her IEP. Each time the Parent contacted the District, the Student's case manager or one of her teacher's responded that they were attempting to work with the Student, but that she needed to come to and remain in class in order for staff to actually implement her IEP. Additionally, throughout the school year, the District changed the Student's class schedule several times to address continued conflict between the Student and other students. The Parent also alleged that the Student was being harassed and bullied by other students.

In March and April 2018, the Parent became increasingly concerned that the Student was not passing her classes. The District responded that they all needed to focus on getting the Student to attend school and stay in class. On May 2, 2018, the IEP team met to discuss a possible change of placement for the Student, which the team decided would take place for high school during the 2018-2019 school year and that the Student would remain in her current program for the remainder of the year. The IEP team met again on May 16 and developed the Student's annual IEP. In mid-May, the Student's case manager transferred to a different District school and following that, the Parent informed the District that the Student would no longer be attending advisory or first period. The District agreed to again shorten the Student's schedule and have her start school at the beginning of second period.

The Parent alleged that the District failed to provide the Student with the accommodations listed in the Student's IEP, that the District improperly shortened the Student's school day in October 2017, and that the District failed to address bullying experienced by the Student. The District admitted that it improperly shortened the Student's school day and denied the other allegations.

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation time period, which began on May 30, 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 implementing the Student's individualized education program (IEP) during June 2017 and during the 2017-2018 school year?

2. Did the District follow procedures for addressing a shortened school day in the Student's IEP in October 2017?
3. Did the Student experience bullying that resulted in a denial of a free appropriate public education (FAPE)?

### **LEGAL STANDARDS**

IEP Definition: An individualized education program (IEP) must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) 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.

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

IEP Revisions: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided

to, or by, the parents; the student's anticipated needs; or any other matters. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student's learning; the language needs of a student with limited language proficiency; instruction in the use of Braille for a student who is blind or visually impaired; the communication and language needs of a student who is deaf or hard of hearing; or the student's assistive technology needs. 34 CFR §300.324; WAC 392-172A-03110. Part of the information the IEP team considers when reviewing and revising a student's IEP is the result of the most recent evaluation. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

Parent Participation in IEP Meetings: The IDEA specifically provides that parents of children with disabilities have an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to their child. 34 CFR §300.501(b); WAC 392-172A-05000(2)(a). Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with 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. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Disciplinary Removals that Result in a Change of Educational Placement: Students eligible for special education may not be improperly excluded from school for disciplinary reasons. 34 CFR §300.530; WAC 392-172A-05140. The procedural rules for the discipline of students who are eligible for special education are based on four general principles: (1) a student eligible for special education should not be disciplined for behavior that is a result of his or her disability; (2) a student eligible for special education may be disciplined for behavior that is not a result of his or her disability, but only in a manner that is consistent with the discipline imposed on nondisabled students; (3) during a period of discipline, a student eligible for special education should continue to receive services that will allow him or her to progress in his or her education after 10 days of removal; and (4) when a student's disciplinary removal from school is significant enough to amount to a change in their educational placement, additional procedural requirements apply. *See generally* WAC 392-172A-05140 through 05155.

A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days; or, when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to

one another. 34 CFR §300.536; WAC 392-172A-05155. After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. WAC 392-172A-05145.

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or behavior intervention plan. If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct a functional behavioral assessment, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or, if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and, except for special circumstances, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan. 34 CFR §300.530; WAC 392-172A-05145.

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

School's Duties Upon Child's Failure to Attend School: If a child required to attend school under RCW 28A.225.010 fails to attend school without valid justification, the public school in which the child is enrolled shall: (a) inform the parent in writing or by telephone whenever the child has failed to attend school after one unexcused absence within any month during the current school year. School officials shall inform the parent of the potential consequences of additional

unexcused absences; (b) schedule a conference(s) with the parent and child at a time reasonably convenient for all persons included for the purpose of analyzing the causes of the child's absences after three unexcused absences within any month during the current school year. If a regularly scheduled parent-teacher conference day is to take place within thirty days of the third unexcused absence, then the school district may schedule this conference on that day. If the parent does not attend the scheduled conference, the conference may be conducted with the student and school official. However the parent shall be notified of the steps to be taken to eliminate or reduce the child's absence; and (c) at some point after the second and before the fifth unexcused absence, take data-informed steps to eliminate or reduce the child's absences. In middle and high school, these steps must include application of the Washington assessment of the risks and needs of students (WARNS) or other assessment by a school district's designee under RCW 28A.225.026. For any child with an existing individualized education program (IEP), these steps must include the convening of the child's IEP team, including a behavior specialist or mental health specialist where appropriate, to consider the reasons for the absences. If necessary, and if consent from the parent is given, a functional behavior assessment (FBA) to explore the function of the absence behavior shall be conducted and a detailed behavior plan completed. Time should be allowed for the behavior plan to be initiated and data tracked to determine progress. These steps must include, where appropriate, providing an available approved best practice or research-based intervention, or both, consistent with the WARNS profile or other assessment, if an assessment was applied, adjusting the child's school program or school or course assignment, providing more individualized or remedial instruction, providing appropriate vocational courses or work experience, referring the child to a community truancy board, requiring the child to attend an alternative school or program, or assisting the parent or child to obtain supplementary services that might eliminate or ameliorate the cause or causes for the absence from school. For purposes of this chapter, an "unexcused absence" means that a child: has failed to attend the majority of hours or periods in an average school day or has failed to comply with a more restrictive school district policy and has failed to meet the school district's policy for excused absences; or has failed to comply with alternative learning experience program attendance requirements as described by the superintendent of public instruction. RCW 28A.225.020.

School Refusal: When school refusal is causally related to a student's disability, the school refusal behavior may need to be evaluated as one of a "constellation of behaviors" that prevent a student from receiving any benefit from his or her education. *In re: Edmonds School District*, OSPI Cause No. 2015-SE-0106X (WA SEA 2015); *District of Columbia Pub. Schools*, 114 LRP 11740 (SEA DC 2014) (finding that a student engaging in extreme truancy required reevaluation; "the failure of a handicapped student to cooperate with his or her educational program does not relieve a school district of its obligations under IDEA to provide the student with a FAPE. To the contrary, a student's lack of cooperation may instead indicated a need for reevaluation"); *Corpus Christi Indep. Sch. Dist.*, 57 IDELR 240 (SEA TX 2011) (finding that a student whose eligibility was based on ADHD had worsening problems with school avoidance and aggression; district violated the IDEA by failing to reevaluate him in the area of emotional disturbance).

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 service 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; 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.

Definition of a Free Appropriate Public Education (FAPE): A free appropriate public education (FAPE) consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit her to benefit from that instruction. An eligible student receives a FAPE when he or she receives, at public expense, an educational program that meets state educational standards, is provided in conformance with an IEP designed to meet the student's unique needs and includes whatever support services necessary for the student to benefit from that specially designed instruction. 34 CFR §300.17; WAC 392-172A-01080; *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 186-188, (1982). Every student eligible for special education between the ages of three and twenty-one has a right to receive a FAPE. 34 CFR §300.101; WAC 392-172A-02000.

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education citizen complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks address the harm a student suffers while denied a FAPE and to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9<sup>th</sup> Cir. 2011). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9<sup>th</sup> Cir. 1994). The award of compensatory education is a form of equitable relief and the IDEA does not require services to be awarded directly to the student. *Park ex rel. Park v. Anaheim Union School District*, 464 F.3d 1025, 46 IDELR 151 (9<sup>th</sup> Cir. 2006).

Disability-Based Harassment: Each school district shall adopt a policy and procedure that prohibits the harassment, intimidation, or bullying of any student. RCW 28A.300.285. Bullying is defined as aggression used within a relationship where the aggressor has more or real

perceived power than the target, and the aggression is repeated or has the potential to be repeated. *Dear Colleague Letter*, 69 IDELR 263 (OSERS/OSEP 2013). However, confrontations between students that are not characterized by a power imbalance generally do not constitute bullying. *District of Columbia Pub. Schs.*, 111 LRP 24663 (SEA DC 2011) (finding that a single incident of two high school students fighting over a girl did not amount to bullying).

Harassment and bullying that occurs based on a student's status of having a disability or receiving special education services and that adversely affects that student's education or prevents the student from receiving meaningful educational benefit may result in a denial of a free appropriate public education (FAPE). If a teacher is deliberately indifferent to the teasing of a student with a disability and the abuse is so severe that the student can derive no benefit from the services that he or she is offered by the school district, the student has been denied a FAPE. *In the Matter of Federal Way School*, OSPI Cause No. 2011-SE-0013 citing *M.L. v Federal Way Sch. Dist.*, 394 F3d 634, 105 LRP 13966 (9<sup>th</sup> Cir. 2005). Additionally, whether or not the bullying relates to a student's disability, any bullying that results in the student not receiving meaningful educational benefits constitutes a denial of FAPE under IDEA and must be remedied. *Dear Colleague Letter*, 69 IDELR 263 (OSERS/OSEP 2013).

As part of an appropriate response, the district should convene an IEP team meeting to determine whether the effects of the bullying have caused the student's needs to change such that the student's IEP is no longer providing educational benefit and whether additional or different services are necessary. The IEP team should be careful when considering a change of placement for a student eligible for special education who was the target of bullying or harassment. A more restrictive placement may constitute a denial of a FAPE in the least restrictive environment (LRE). *Dear Colleague Letter*, 69 IDELR 263 (OSERS/OSEP 2013). While there is no hard and fast rule regarding when the IEP team needs to be convened, a sudden decline in grades, an onset of emotional outbursts, an increase in the frequency or intensity of behavioral incidents, or an increase in missed classes or services would generally be sufficient. *Dear Colleague Letter: Responding to Bullying of Students with Disabilities*, 64 IDELR 115 (OCR 2014). The bullying of a student with a disability may also trigger a district's duty to reevaluate the student. *See, e.g., San Diego Unified Sch. Dist.*, 9 ECLPR 16 (SEA CA 2011) (finding that, although there was no evidence establishing that the student's peers bullied him, the student's social and emotional issues contributed to adverse attention by his peers). Further, if a student with a disability engages in bullying behavior, the IEP team should review the student's IEP to determine if additional supports and services are needed to address the inappropriate behavior. *Dear Colleague Letter*, 69 IDELR 263 (OSERS/OSEP 2013).

## FINDINGS OF FACT

### Background Facts: 2016-2017 School Year

1. In October 2016, the Student transferred to a District middle school from another school district in Washington State. The Student was not eligible for special education at that time.



2. According to the documentation provided by the District in this complaint, in November 2016, the Parent informed the District that the Student was being bullied by another student in her first, second, and fifth period classes. The school counselor contacted the Parent and met with both the Student and the other student individually. According to emails from the counselor, “both agreed to ignore the other person and not interact.” Later in the month, there continued to be conflict between the Student and the other student. According to emails from the counselor, the other student met with the counselor, but the Student refused and the counselor “went to [the Student’s] class to talk to her – told her it would be quick, painless, friendly, and she still refuses.”<sup>1</sup>
3. According to the District’s documentation, in January and March 2017, there continued to be conflict between the Student and multiple other students in her classes. Additionally, one or two other students alleged that the Student was bullying them. According to emails between several of the Student’s teachers, the teachers discussed changing several students’ schedules (including the Student) for the next semester.
4. In March 2017, the Student was referred for special education and was subsequently evaluated.
5. In April and May 2017, according to the District’s documentation, the Student and other students were involved in several incidents. In one case, the Parent alleged that the other student was not disciplined, but that the Student was not allowed to return to school until the Student agreed to participate in mediation. There was also an incident during the District’s spring break in which several students assaulted the Student. In emails, the Parent expressed concern about the Student’s safety at school and one of the assistant principals (assistant principal 1) responded that he would like to meet with the Student to develop a safety plan. A third incident occurred where another student was “picking fights and harassing students,” including the Student. One of the Student’s teachers emailed assistant principal 1 that the Student “has been doing a pretty good job of not engaging.”
6. On May 8, 2017, the Parent and the Student met with one of the Student’s general education teachers, the Student’s special education teacher and case manager (case manager), and the school psychologist to review the results of the Student’s initial evaluation. The group determined that the Student was eligible for special education under the category of emotional behavioral disability. The evaluation report noted that the Student had difficulty “controlling her impulses, following adult directives, resolving conflict without the use of aggression, interacting appropriately with peers, and maintaining healthy friendships” and one teacher noted in the evaluation report that sometimes when the Student “is playing around, other students think she is bullying them. I think she is actually trying to make friends but doesn’t really know how. I think she needs help learning to interpret social cues and

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<sup>1</sup> According to the documentation, the Parent also stated that the Student was assaulted during this time period. It is unclear, based on the documentation, whether or not this was all the same incident with the first student or a separate incident with a different student.

handling anger.” The evaluation report recommended that the Student receive specially designed instruction in the areas of social/behavior and organizational/study skills.

7. On May 14, 2017, the Student received a two-day in-school suspension. The Parent emailed assistant principal 1 and asked why the Student was “in trouble for defending herself.” Assistant principal 1 responded that he investigated the incident and that according to all accounts, the Student “instigated the physical contact in the incident and all the accounts (6 in total) differ greatly from what [the Student] had you share with me on Friday.” Assistant principal 1 stated that he wanted the Student to have the “opportunity to keep up with the learning that is taking place in her classes and also want to make sure her classes are safe environments for her and other students.” Assistant principal 1 stated that the in-school suspension program would allow the Student to stay in school, keep up with her work, and to “enable us to develop some agreements to keep the classroom safe and conducive to learning.”
8. On May 24, 2017, the Student’s individualized education program (IEP) team, including the Parent, developed the Student’s initial IEP. The Student’s IEP noted that the Student’s “past discipline record indicates failure to cooperate, inappropriate language, defiance, physical aggression, disruption and skipping” and that the following supports had previously been used: one on one interventions with administrators and staff, reduced schedule, modified work and work load, taking breaks as needed and counseling.<sup>2</sup>

The May 2017 IEP included goals in the areas of social/behavior and study/organizational skills, and provided for the following specially designed instruction in a special education setting:

- Social/behavior: 25 minutes, 5 times per week
- Study/organization skills: 25 minutes, 5 times per week

The Student’s May 2017 IEP stated that the Student would receive her specially designed instruction in a “study skills class” and that she would participate in the general education setting for electives, math, language arts, and social studies. The IEP also provided for the following accommodations:

- Access to calculator
- Access to directions in verbal and written form
- Access to Notes when note taking is required
- Allow student to doodle during class
- Break larger assignments into smaller parts
- Extra Time
- Extra time for assignments/no loss of credit until close of grading window
- Frequent positive reinforcement of appropriate behavior
- Inform student prior to transitions and/or change in routine
- Modification: Breaks

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<sup>2</sup> It was not clear from the District’s response whether or not the Student had or was receiving counseling through the District. There is some indication in the documentation provided that the Student had a private counselor that she worked with during the second half of the 2017-2018 school year.

- Modification: Separate Setting
  - Modified Grading
  - Pass at Level 2 (during testing)
  - Student-selected break available
  - Other: Behavior plan/contract
9. Also on May 24, 2017, the Parent signed consent for the Student to receive initial special education services.
  10. On Thursday, May 25, 2017, the District provided the Parent with a prior written notice, which stated that the Student's IEP would be implemented that same day and that the IEP team had decided the Student would be placed in the Social/Emotional (SEL) program.<sup>3</sup>
  11. The District was on break on Monday, May 29, 2017.

### **Timeline for this Complaint Begins on May 30, 2017**

12. On May 30, 2017, the Student's case manager emailed all of the Student's teachers and stated that the Student had an IEP, attached the Student's goals sheet, and provided the teachers with a summary of the accommodations and modifications. The case manager stated that the Student had been on a reduced schedule, but would be returning to a full schedule that same day.
13. On June 6, 2017, the Parent informed the case manager that the Student's language arts teacher was not providing the Student with modified grading as required by the Student's IEP and was making the Student sit alone, which according to the Parent, made her feel "singled out."
14. On June 8, 2017, the Parent emailed the case manager and again stated that the Student's language arts teacher refused to provide the Student with modified grading. The Parent stated that "it seems like [the language arts teacher] is playing a game." The case manager responded and stated that she would speak with the language arts teacher.
15. Later on June 8, 2017, the case manager emailed all of the Student's teachers and provided the teachers with a copy of an "At a Glance" version of the Student's IEP, which included the Student's accommodations, and reminded them of the expectations regarding the Student. The case manager stated that the goal was to have the Student "in class and stay in class. If she is there and not disrupting students and learning...this is ok. If she cannot be quiet and disturbs learning, call me."

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<sup>3</sup> The SEL or Social/Emotional placement is a placement on the District's K-12 continuum of placements. Students in a SEL placement have instruction that focuses on the "development of student's social emotional skills, function and understanding, but varies per IEP; the intensity is "more intense, but varies per IEP" (versus "Resource" where the intensity is "mild to moderate"); and, the setting provides students with a "small group learning environment, but varies per IEP." See <http://www.seattleschools.org/cms/One.aspx?portalId=627&pageId=13377871>.

16. On June 21, 2017, the Parent emailed the District’s special education ombudsperson (ombudsperson) that the District was not providing the Student with modified grading, per her IEP. According to the Parent, the modified grading accommodation meant that if the Student “completes 50% of the assignment she will be graded as if she completed 100% of the assignment. We will slowly increase this as her anxiety and ability to deal with becoming overwhelmed gets better.”
17. On June 22, 2017, the ombudsperson emailed the Student’s case manager, the language arts teacher, and another assistant principal at the school (assistant principal 2) regarding the email from the Parent. The ombudsperson asked if the Parent’s interpretation of the accommodation was accurate and if all of the Student’s teachers were on board and knew how to implement the accommodations in the Student’s IEP. The case manager responded and stated that all of the Student’s teachers have a copy of the Student’s IEP “at a glance” and that the teachers knew they should contact the case manager if they needed “help figuring out the P/F grading scale.”
18. Later on June 22, 2017, the ombudsperson emailed the Parent and stated that she had followed up with the Student’s teachers and case manager regarding the modified grading accommodation.
19. According to the District’s response to this complaint, the case manager again followed up with the Student’s language arts teacher and the Student subsequently received a “pass” grade in language arts. According to the language arts teacher, her understanding of the accommodation was that “as long as [the Student] was passing, I should enter it as the grade she would receive.”
20. The District’s 2016-2017 school year ended on June 26, 2017.

**2017-2018 School Year**

21. The District’s 2017-2018 school year began on September 6, 2017. The Student continued to attend the same District middle school and her May 2017 IEP continued to be in place.
22. At the beginning of the 2017-2018 school year, the Student was enrolled in the following classes:

<b>Period</b>	<b>Class</b>
	Advisory/Homeroom
1	Life Skills (Special Education)
2	U.S. History (General Education)
3	Language Arts (General Education)
4	Science (General Education)
5	Math (General Education)
6	Junior Orchestra (General Education)

According to the District’s website, students at the middle school attended all six classes for fifty-five (55) minutes, plus an advisory period before first period on Monday, Tuesday, Thursday, and Friday. On Wednesdays, the school had an early release and students attended all six periods for forty-five (45) minutes.

23. On September 15 or 16, 2017, the Student’s class schedule changed as follows:

Period	Class
	Advisory/Homeroom
1	Science (General Education)
2	General Study Skills (Special Education)
3	Language Arts (General Education)
4	U.S. History (General Education)
5	Math (General Education)
6	Junior Orchestra (General Education)

24. On September 17, 2017, the Parent and the Student’s case manager emailed several times about another student, who the Student had a conflict with the previous school year, and about some of the Student’s behaviors (e.g., wandering the halls and refusing to follow instructions). The case manager stated that the Student would not have classes with the other student.

25. On September 18, 2017, the Student was suspended for five days for fighting with another student and “repeatedly [shoving] the staff member from behind...including in the back of the head.” According to the Parent’s reply to the District’s response to this complaint, the staff person was preventing the Student from accessing a designated room that the Student could take breaks in to calm down.

26. From September 19-25, 2017, the Student did not attend school due to her suspension.

27. On September 19, 2017, the Parent emailed all of the Student’s teachers and introduced herself. She also asked to set up meetings with each teacher to discuss “how this year is going to go” because she wanted to make sure the Student was prepared to go to high school during the 2018-2019 school year and wanted the 2017-2018 school year to be successful.<sup>4</sup> The Parent also requested that each teacher send her the Student’s homework while the Student was suspended.

28. Also on September 19 and 22, 2017, the Parent emailed assistant principal 1 and stated that the Student was “really concerned about going back to school.” The Parent stated that the students that the Student had fought with had “threatened to beat up [the Student] before and/or after school.” The Parent went on to state that the Student wanted to do the right thing, but that it is “easy to say face your problems when you are not the one facing a bully.” Assistant principal 1 responded and stated that “we absolutely want [the Student] to feel

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<sup>4</sup> The Parent wanted the Student to attend a specific high school in the District during the 2018-2019 school year that had a focus on the arts and community engagement.

safe, as evidenced by the numerous efforts to address specific issues large and small...please let me know a good time to call you...to discuss her reentry plan.”

29. Also on September 22, 2017, the Student’s language arts teacher emailed the Parent and stated that all of the assignments were on “Schoolology”<sup>5</sup> and that once the Student returned, she had forty-eight hours to complete the assignments. The Parent responded and stated that per the Student’s IEP she has “extended time to complete assignments.” According to the Parent’s reply, the language arts teacher did not respond or provide the Student with extra time to complete assignments as required by her IEP.
30. On September 26, 2017, assistant principal 1 emailed the Parent that the Student should check into the main office for a reentry meeting that morning before going to class.
31. According to the District’s documentation, the Student was supposed to return to school on September 26, 2017, but she refused to go to class and was “riding a skateboard down the hallway. Refuses to stop and take direction in any way shape or form.” The Student left school and went home.
32. Later on September 26, 2017, the Parent and the Student’s case manager exchanged several emails about the Student leaving campus and walking home. According to the case manager, the Student “chooses a conflict to avoid going to class...every class period (it rotates).” The case manager also wrote that the Student “has a designated room to go to when she is stressed. She chooses not to do so.” According to the Parent, one of the Student’s teachers told the Student to leave. The case manager responded that from her perspective:

[The Student] is not doing what she is supposed to do. [District] does not allow for students to walk off campus. She cannot roam the hallways. She needs to go to class and at this stage we cannot change her schedule to accommodate personality conflicts. I offered for an [instructional assistant (IA)] to go into class with her to make her feel comfortable and to get all parties on track to work without conflict. She refused this.
33. Also on September 26, 2017, assistant principal 1 emailed the principal, another assistant principal (assistant principal 3), the school counselor, and the Student’s case manager regarding the goals for the Student’s reentry. Assistant principal 1 stated that the Student would engage in the reentry process, that they needed a plan for the Student being in class with the other student, and that they needed a plan to restore the relationship between the Student and the teacher involved in the incident. Assistant principal 1 also asked about a new schedule the Student’s IEP team had previously drafted when they considered changing her placement and asked if there was an IEP meeting scheduled to discuss.<sup>6</sup>

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<sup>5</sup> Schoolology is a “Learning Management System” tool that teachers at the Student’s school used to communicate with parents, guardians, and students about daily coursework, dates, assignments, and homework submission. See [http://www.seattleschools.org/district/calendars/news/what\\_s\\_new/the\\_source\\_and\\_schoolology](http://www.seattleschools.org/district/calendars/news/what_s_new/the_source_and_schoolology).

<sup>6</sup> According to the District’s response, the Student’s IEP team had previously considered changing the Student’s placement to the “Access Program”, but that this change of placement and schedule was not implemented. The “Access Program” is part of the District’s K-12 continuum of placements. According to the District’s website, for

34. On September 27, 2017, the Student returned to school, following her suspension, and the Student’s class schedule changed again as follows:

Period	Class
	Advisory/Homeroom
1	Life Skills (Special Education)
2	U.S. History (General Education)
3	Language Arts (General Education)
4	Science (General Education)
5	Math (General Education)
6	Junior Orchestra (General Education)

Additionally, assistant principal 1 noted in the Student’s discipline record that the Student’s “inability to adhere to reasonable directives, in conjunction with her physically aggressive behavior produces safety risk for herself and other students” and that the Student would have a “modified schedule and early release after 3<sup>rd</sup> period. This action may be modified as the year progresses.”

35. Also on September 27, 2017, the Parent and the Student’s case manager exchanged emails about potentially using a point system to encourage the Student to go to her fourth through sixth period classes and allow her to “earn her way towards a schedule change.” The Student’s case manager responded and copied all of the Student’s teachers, stating that they were working “to get [the Student] to 4-6<sup>th</sup> period” and that the teachers would have to sign the Student’s signature sheet. The case manager also reminded the teachers that they should “make sure [the Student] has seating that will keep her from any negative interactions with others in the room.”

In response, the Parent emailed the case manager twice and stated that the Student refused to go to fourth period because she said “everyone stood up threatened her and screamed at her” and that “it seems like majority of the class is against her and she is scared.” The Parent asked if the Student could spend fourth period with the case manager until she could change her schedule.

36. In September 2017, the Student was absent or late the following periods:

- September 8: Absent advisory and 1-6
- September 11: Absent advisory and 1, 2, 5, and 6
- September 12: Absent 4, 5, and 6
- September 14: Absent 2
- September 15: Late 1 and 3, and absent advisory and 4, 5, and 6
- September 18: Absent 2
- September 19-25: Absent all periods – suspended
- September 27: Late 3, 4, 5, and 6

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students in an “Access” placement, their instruction varies by IEP, the intensity is “more intense, but varies per IEP” (versus “Resource” where the intensity is “mild to moderate”), and the setting is a majority general education, but varies by IEP. See <http://www.seattleschools.org/cms/One.aspx?portalId=627&pageId=13377871>.

- September 29: Late advisory

37. On October 3, 2017, according to the District’s documentation, assistant principal 1 made the decision to shorten the Student’s school day. Assistant principal 1 emailed the school counselor, assistant principal 3, the principal, and the Student’s case manager and stated that the Student’s schedule had been changed and that on Monday, Tuesday, Thursday, and Friday, the Student would attend school through third period, and on Wednesday, the Student would attend through second period. Assistant principal 1 stated that a plan had not yet been developed to return the Student to a full-day schedule. The same day, assistant principal 1 also emailed the Parent about the Student’s schedule change.

38. According to the District’s response, the Student was scheduled to continue to receive all of her specially designed instruction during her first period class, even though her school day was shortened.

39. On October 5, 2017, according to documentation provided by the District in this complaint, assistant principal 1 and the case manager met with the Student and the Parent to discuss the Student returning to a full-day schedule. According to the District’s prior written notice regarding the meeting, the group agreed that in order for the Student to “maintain a full schedule, the [S]tudent is to meet the safety plan for two weeks without interruption.” According to the plan:

- Before adjusting the current schedule to reflect a full school day, [the Student] will be in Advisory, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> period classes for two weeks to demonstrate ability to follow school wide expectations.
- [The Student] will use the above check in sheet for each class and each teacher will sign each class period to indicate that she had been on time, stayed in class the entire period and worked on the provided classwork without classroom disruptions.
- [The Student] will meet with each teacher impacted by her behavior so that all parties understand the expectations going forward for [the Student’s] success.
- If [the Student] leaves campus without permission, [the Parent] will escort her back into the building and to class.
- [The Student] has the skills to follow these expectations. Upon her return to school full time, [the Parent] will escort her to 4<sup>th</sup> period to introduce her back into the classroom.
- If [the Student] is not able to accomplish this, her return to school will require her to be in the SEL classroom more than one period per day in order to keep [the Student] in a safe learning environment.

The notice also stated that the Student was “asked about and made aware of the safe places and adults to come to see if she feels stressed about a situation rather than walk home.”

40. Later on October 5, 2017, the case manager emailed the Student’s teachers regarding the meeting with the Student and Parent that day. The case manager attached a sheet for each teacher to track the Student “being in class on time, staying in class the whole time and doing her classwork.” The case manager stated that the Student “will need to follow this plan for two weeks before her full time return...after the 20<sup>th</sup> of Oct. it is my hope that she is back in school, full time, learning.”



41. Also On October 5, 2017, the Parent emailed the Student's case manager and stated that it gave the Student anxiety to sit in the front row of the classroom, and specifically that she wanted to move seats in her language arts class. The Parent stated that the Student did not know how to request that her seat be changed. The case manager responded and stated that she would speak to the Student.
42. On October 10, 2017, the case manager emailed the Parent and assistant principal 1, asking if they could meet on October 11, to discuss the Student returning to school "as per the agreement we made for her last week" and attached a copy of the agreement.
43. On Thursday, October 11, 2017, the Parent emailed the case manager and stated that she was sick and could not walk the Student to school. The case manager responded and stated "our agreement was for you to come back to school with [the Student] upon her walking out of school during the day. For consistency and the integrity of the agreement that we all signed, I think you need to bring her back to school." The Parent responded that she was "good with that," but because she was sick, the Student would not be back until Monday, October 16, 2017.
44. The District was on break Friday, October 13, 2017.
45. On October 16, 2017, the Parent emailed the case manager and assistant principal 1 and stated that "between [the Student] getting sick and me almost ending up in the hospital again...hopefully tomorrow I will be able to walk her to school."
46. On October 17, 2017, the Parent emailed the case manager and stated, "since the contract has changed to me having to walking [sic] her to every class can I get that in writing."
47. Also on October 17, 2017, the Parent emailed the District special education central regional supervisor (regional supervisor), who forwarded the email to one of the District's directors of special education (director 1). The Parent's email provided some background on the Student's disability and IEP and listed the following concerns, in relevant part:
  - The Student has an IEP that allows her to "either go to a calm down 'empty' classroom or the office," but the Student has to wait for staff to determine if she is ready to return to class. This has caused the Student to have to wait "for an hour or more, including her being ignored" and has caused her to miss her classes.
  - The Student leaves class and walks home and the "schools [sic] response is if she leaves campus I have to escort her to every single class...I am not capable of doing this...the schools [sic] response is she can't come back [un]till I agree to escort her to all classes."
  - Because the Student "got in trouble for walking off campus" she was put on a half day schedule and now the Student "has been at half day for pretty much a month. This is not OK."
  - The Student has an issues that "causes her anxiety and stress" with another student, and the school's response is "face your problems."

The Parent stated that the Student was being denied access to an education and that she wanted the school to be investigated. The Parent also stated that she wanted the District to

place the Student in an “alternative school or charter school for the rest of 8<sup>th</sup> grade paid for by the school district.”

48. On October 18, 2017, according to the District’s prior written notice, the Parent and Student met with assistant principal 1 and the Student’s case manager, to discuss the Student’s return to school and the plan that was developed on October 5. The group agreed that the Student would “return to school part time” and that she must follow the plan for “two weeks without leaving campus in order to have her back at school immediately.” According to the notice:

[The Student] was not open to returning to school because of a particular student who she said is making racist remarks in the classroom. [The Student] refused moving to a different seat, having a mediation<sup>7</sup> with the student to resolve issues, having an aid with her at all times during that class and sitting in the class to have an understanding of the work and returning to the SEL classroom to do her classwork in order to avoid conflict. [The Student] walked out of the meeting.

49. Also on October 18, 2017, the Parent emailed the case manager and assistant principal 1, and stated:

The contract I signed I was under the impression that I would be escorting her to 1<sup>st</sup> period. Not every class. Just to make sure she is in the building and ready for the day. Escorting her to every class is not viable. I am not an aide. I am not trained as one. She already has issues with other kids. Having me escort her to every class is only going to make things worse. I will not subject my child to that embarrassment. If the school believes she needs an aide then an IEP meeting needs to happen and have it added. I have no problem walking her to class the first day after school is started...For 2 weeks that’s not ok. If she now has to be escorted everywhere then she should have her full day back. I understand she needs to “face” things. However she is not capable at this point. Again she has a mental health diagnosis that puts her at a disadvantage...She wants to be in school. She loves history but the racist remarks by [a student] are hurting her...<sup>8</sup>

The case manager responded that as indicated in assistant principal 1’s last email, the Parent should let them know when the Student is ready to be in school and follow the plan. The case manager stated, “leaving campus is not an option. She has to understand this fully.” The case manager stated that the goal was to have her be in school, that she understood the Student’s diagnosis, and that they could discuss options at a meeting “when [the Student] is ready to return to school.”

50. On October 19, 2017, the Parent responded to the case manager and stated that the Student was ready to return to school, but that she (the Parent) was “not able to walk her to every class” and that “again it was my understanding that I walk her to 1<sup>st</sup> period and make sure

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<sup>7</sup> According to the Parent’s reply, mediation was required for the Student to “return to school or she was still suspended” on several occasions. The Parent characterized the requirement that students engage in mediation as bullying.

<sup>8</sup> According to the Parent’s reply, the same student also made comments to the Parent that the Parent characterized as “hate speech.” The Parent stated that she reported this to the principal and that her complaint was ignored.

she is ready for the day. If now it's being said I have to walk her to every class then an IEP meeting needs [to be] called and an aide added."

51. On October 23 and 24, 2017, the Parent, assistant principal 1, and the case manager exchanged several emails, summarized as follows:

- October 23: Assistant principal 1 emailed to confirm that they were meeting that morning or whether they needed to schedule another time to meet, so that the Student could return as soon as possible.
- October 23: The Parent emailed and suggested meeting in the afternoon on October 24, 25, or 27, 2017.
- October 23: Assistant principal 1 responded and stated that he hoped they could meet soon, but that they were not able to meet in the afternoon that week. Assistant principal 1 stated that they could meet in the morning October 24, 26, or 27, 2017.
- October 23: The Parent emailed back and stated that the only way the Student was going back to school was at a full day schedule and that the Student had "been punished long enough." The Parent indicated that the Student was not being allowed to take breaks to calm down, as specified in her IEP, and that assistant principal 1 gave the Student "the look whatever it was...of disapproval [that] set her off" when the Student was sitting in the hall calming down. The Parent stated that the Student was now failing her science class because she was being "denied access to classes and homework." The Parent also stated that the District had changed the Student's placement by putting her on a half day scheduled, that she wanted a manifestation determination hearing, and that the Student needed a behavior plan. The Parent also stated that her behavior was related to her disability and that her IEP needed to be followed "to the letter", and that the Student had "already missed too much school because her IEP is not being followed and expectations are being put on her that she is not capable of." The Parent stated that she did not want the Student to "fail any class or have any classroom and homework count into her final grade that she has missed due to the not following of her IEP" and that the Student needed between two and twenty-six days to complete assignments for science, language arts, and history. And the Parent again stated that she could not act as the Student's aide and if the Student needed an aide, this should be put in her IEP.
- October 24: The case manager responded, suggesting times to meet and stated that she had included all of the Student's teachers on the email so that "they can provide information regarding her homework, all of which is on Schoology. I hope she is taking the time to work on this while she is away from school. This will help prevent her from being so far behind." The case manager also clarified for the other teachers that the Student's breaks are allowed, but that the Student "has to alert the teacher or [instructional assistant] IA in the room and come to my classroom. Sitting in the hallway with other kids is not a break. It becomes playtime for all of the students and does not help her get back into class doing her work."
- October 24: The Parent responded and stated that not all of the Student's assignments were on Schoology. The Parent also stated that "4<sup>th</sup> period is still an issue" and that the Student "feels that if she goes in she will lash out physically." The Parent also stated that it seemed liked "everyone was on board at the end of last year then the beginning of this year it seems

as if expectations of her have changed drastically with her not having time to work up to them.”

52. On October 26, 2017, according to the prior written notice, the Student’s IEP team, including the Parent, met to discuss the Student’s attendance. According to the notice, the team determined that “[the Student] being out of school and walking off campus is not conducive to her learning. In order to keep her at school for [at] least a half day, a change of schedule for her shortened day was necessary until a full IEP team meeting can take place.” The team changed the Student’s schedule so that she had orchestra third period “in order to entice her to be in and stay in school.” The team scheduled an IEP meeting for October 31, 2017 to discuss grading, attendance, the Student’s schedule, and the safety plan.
53. Also on October 26, 2017, the case manager emailed all of the Student’s teachers and stated that the Student would return to school that day on the reduced schedule (advisory through third period).<sup>9</sup> The case manager stated that at an upcoming IEP meeting, the team would be discussing her return to a full schedule, the Student’s “make up work/grading,” and that the Student would be in a third period orchestra class for the next four days. The case manager also stated that the Student would have break cards with her name on them and “if she feels she needs a break, she will hand you the card. She will have one herself that specifies she should come to [the case manager’s] room OR the main office for her break.” The case manager stated that the Student was allowed to text the Parent or listen to music to calm down when she was taking a break.
54. Also on October 31, 2017, the Student’s IEP team met, including the Parent, to amend the Student’s May 2017 IEP. The October 2017 amendment to the IEP added preferential seating as an accommodation. According to the prior written notice, the Student’s IEP team determined that the Student would return to a full time schedule because the Student is “ready and willing to participate and follow all school expectations.” The notice further stated:
- The team planned her return with a schedule change in order for [the Student] to feel comfortable at school and to be successful. The team concurred that holding math and music for the end of the day was appropriate as these are her favorite classes and will entice her to stay at school. The team also discussed adding accommodations (preferred seating, positive reinforcement) and modified grading. The team agreed to try and place her in an HCC<sup>10</sup> class in order to challenge [the Student] academically, per Mom. [The Student] and Mom agreed to a more specific safety plan for all parties to follow (see attached). This includes movement breaks, break cards, special places for [the Student] to take a break, calm down and return to class when ready. We also discussed the use of the phone for recording notes (not legal due to privacy issues) and use of headphones

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<sup>9</sup> However, according to the Student’s attendance record, the Student was absent on October 26, 2017.

<sup>10</sup> According to the District’s website, HCC stands for the “highly capable cohort” program, which students may apply for. See <https://www.seattleschools.org/cms/One.aspx?portalId=627&pageId=9443852>.

and music only in the space to calm down. The phone and headphones are put away after breaks as per school expectations.

55. At the October 31, 2017 meeting, the Student's IEP team also developed a "Student Safety Plan," which was implemented on October 31 and which the team planned to review on November 31, 2017. The areas of concern noted on the plan were aggressive behavior and remaining on campus. The plan provided a list of things that the school/staff, the Student, and the family would do:

- Give the Student a break pass and allow her to leave class without penalty when feeling escalated.
- Provide quiet spaces away from other students for to deescalate in. These spaces are 128 B and the office hallway.
- Allow the Student to use her phone as a calming device to listen to music in 128 or office.
- Provide a check in sheet to help the Student monitor behavior.
- Teacher inform the office manager when the Student is taking a break.
- The office manager will call the case manager to let her know when the Student is taking a break.
- Monitor student for signs of potential escalation, like: flushed face, no expression on her face, not responding.
- When the Student exhibits these signs, staff should ask the Student to use her break card and take a break.
- Student will complete her check in sheet during the school day.
- Student will indicate that she is feeling upset.
- Student will inform the teacher that she needs to take a break to calm down.
- Student will use her break pass to go to Room 128 or the office hallway.
- Student will quietly get headphones to listen to music to deescalate when needed.
- Student will let staff know she is done with her break and return to class.
- Student will remain at school during the school day.
- Student will let her case manager know about issues with other people.
- Parent agrees to notify the school when the Student returns home.
- Parent agrees to bring the Student back to school if she returns home when the Student is de-escalated.
- Parent agrees to monitor and support the Student with this safety plan and to contact the school if a problem persists.
- Parent is welcome to contact the school at any time to check on the effectiveness of the plan.

56. In October 2017, the Student was absent or late the following periods:

- October 2: Absent 4, 5, and 6 (shortened schedule)
- October 3: Late advisory and 1, absent 4, 5, and 6 (shortened schedule)
- October 4: Absent 3, 5, and 6 (shortened schedule)
- October 5-6: Absent 4, 5, and 6 (shortened schedule)
- October 9: Absent 4, 5, and 6 (shortened schedule)
- October 10-30: Absent all periods
- October 31: Absent 4, 5, and 6 (shortened schedule)

57. On November 1, 2017, the Student returned to school on a full day schedule and was enrolled in the following classes:

<b>Period</b>	<b>Class</b>
	Advisory/Homeroom
1	Life Skills (Special Education)
2	Language Arts (General Education)
3	General Science (General Education)
4	U.S. History (General Education)
5	Math (General Education)
6	Junior Orchestra (General Education)

58. On November 6, 2017, the Student moved to a different second period language arts class and a different fourth period U.S. history class.

59. On November 7, 2017, the case manager emailed all of the Student’s teachers a copy of the Student’s safety plan and a copy of the Student’s updated IEP “at a glance.”

60. The District was on break November 10, 23, and 24, 2017.

61. In November 2017, the Student was absent or late the following periods:

- November 1: Late 4
- November 2: Absent all periods
- November 3: Absent 4, 5, and 6
- November 7: Absent 4
- November 8-9: Absent 1-6
- November 13: Late 3, absent 4
- November 14: Absent all periods
- November 15: Late 3
- November 16: Absent 6
- November 20: Absent all periods
- November 21: Absent 3, late 5 and 7
- November 22: Absent 1-6
- November 27: Late 2
- November 28: Absent all periods advisory, 1-6
- November 29: Absent 1-6
- November 30: Absent 4

62. On December 13, 2017, the Student was suspended for two days, and the suspension was served on December 14 and 15, 2017.

63. In December 2017, the Student was absent or late the following periods:

- December 1: Absent 4
- December 11: Absent advisory
- December 12: Late periods 5 and 7, absent 6
- December 13: Absent 4 and 5

64. The District was on break December 18, 2017 through January 1, 2018.

65. On January 23 and 24, 2018, the Parent and the Student’s language arts teacher exchanged emails regarding the Student’s assignments and the “extra time for assignments” accommodation. The language arts teacher stated that the Student would have extra time, but that the teacher needed to discuss that with the Parent. The teacher stated that the Student “needs to do her part to TRY. How can we make sure her phone is put away, she comes to class...on time, and works with the group who are working on the packet together?” He also wrote that the Student could “certainly do the packet by the end of the semester. I with good faith believe she can accomplish this. Let’s start there.”

66. In January 2018, the Student was absent or late the following periods:

- January 2: Absent all periods
- January 3: Absent 1
- January 4-8: Absent all periods
- January 9: Absent 4, late 5
- January 10: Absent 4
- January 11: Late advisory, 3
- January 12: Absent 1, 2, and 4, and late 3
- January 16-17: Absent 5 and 6
- January 18: Absent advisory and 4, and late 5
- January 19: Late advisory, absent 6
- January 23-24: Late 1, absent 4, 5, and 6
- January 25-30: Absent all periods

67. On February 2, 2018, the District’s second semester started and the Student was enrolled in the following classes:

Period	Class
	Advisory/Homeroom
1	Life Skills (Special Education)
2	Language Arts (General Education)
3	General Science (General Education)
4	U.S. History (General Education)
5	Math (General Education)
6	Junior Orchestra (General Education)

68. On February 14, 2018, the case manager emailed the Parent in response to the Parent’s email earlier that day, asking if the Student was at school, and stated that the Student “has hardly been in her classes all week.” The case manager wrote that:

[The math teacher] told me this morning that he has hardly seen her since the beginning of the semester. [The language arts teacher] is also not seeing her on a regular basis. [The science teacher] will move her seat after mid-winter break so she does not have to sit next to someone she does not like. She is welcome to work in my room, however, the skipping class issue is a problem. Making up this work will be challenging. She will be woefully behind in math. Her phone continues to be a distraction. Let me know what I can do to help. She needs to be in class but is full of excuses to not be...

69. The District was on break February 19-23, 2018.

70. On February 26, 2018, the Parent emailed the case manager and asked why the Student was marked absent from school if she was in the case manager's class for second, third, and fifth period. The case manager responded that the Student refused to participate in classes, that the Student:

Came to my room during 2<sup>nd</sup> and third for a bit but then left. She was asked to go to class. She was not in distress or upset. She was disrupting and distracting my other students. She is upset because I took her phone after asking her at least 6 times to put it away during class. She is taking advantage of her arrangement today. I cannot excuse her. There is no reason for her to not be in class.

The Parent responded that she would start taking away the Student's allowance every time the Student was absent.

71. On February 28, 2018, the case manager emailed the Parent about the Student's continued refusal to go to class and her tendency to distract other students in the special education classroom, rather than using the room as a place to calm down and take a break.

72. In February 2018, the Student was absent or late the following periods:

- February 1: Absent 5 and 6
- February 2: Absent 6
- February 5-6: Absent 1-6
- February 7: Late 1 and 3, absent 5
- February 12: Absent 5 and 6
- February 13: Absent 2
- February 14: Late 1 and 3
- February 15: Late 2, absent 3-6
- February 16: Absent 1-6
- February 26-28: Absent 1-6

73. On March 1, 2018, the case manager and the Parent emailed regarding the Student's refusal to go to class. The case manager stated that the Student "refuses to go and do her work...which she could easily do" and that the issue in her science class, specifically, was "not about seating." The Parent responded that the Student does not like her language arts teacher, that she "feels singled out by him," and that there was another student in that class that the Student "needs to be kept away from."

74. According to the Parent's reply, the Student's science teacher "put her in a desk right next to hers away from all the other kids in the class like she was being punished," which "set [the Student] up for being bullied and made fun of by the other kids in the class."

75. On March 14, 2018, the Parent and the case manager exchanged several emails. The emails are summarized as follows:

- The Parent stated that the Student said her backpack and locker were searched because she was accused of stealing a set of keys from the office. The Parent stated that she was upset



that she was not notified by the school about this incident and other times when the Student has left the school campus. The Parent stated that the Student was not safe at school and that she wanted the Student placed “in online school or some place [sic] other than [the middle school] for the rest of the year and not lose her chance getting into [the high school].” The Parent also wrote that the Student “feels she can not [sic] use her calm down area due to other students being allowed to run from class to class. This is not fair and she has fought for a quiet area where she determines when she is calm...So fix that.”

- The case manager responded that the Student was in the office with a group of girls when the keys were taken. According to the case manager, the Student offered to let her look in her backpack and locker, but the case manager declined because she did not believe the Student took the keys. The case manager stated that she “did not feel it was a heightened situation that warranted a phone call home because I believed her.” The case manager also stated that the Student has never been told that “she cannot access her calm down area” but that the Student “refuses to go...she refuses to use the area designated for her to relax.”
- The Parent responded that the Student does not feel welcome at the school and that she “feels like if she blinks wrong she will get in trouble.” The Parent stated that when the Student goes to her calm down area, another student “came in and would not leave her alone. [The Student] said that since it is your classroom nothing can be done.” The Parent also wrote that the Student was having trouble in her language arts class and that the language arts teacher “does not communicate” back to the Parent to her requests for a meeting to “air things out.”

76. On March 15, 2018, the Parent emailed the case manager and requested that the Student be excused from “sex Ed” in her science class because the Student had already learned this material in fifth grade and if the Student “has to take it twice she is going to be board [sic] and act up.” The case manager responded as follows:

[The Student] does not have to sit in on the discussion with [the nurse] when she talks about the physiology piece of the lesson. She will have to stay in class for my lessons on emotions, friendship and relationships which are part of the Life Skills class. Frankly, boredom is her go to excuse for all of her classes. There is nothing wrong with being bored. If she would simply stay in the room, at this point, that would be enough. She could read, she could color/doodle she could sit and listen and participate orally with the discussion. She cannot be on her phone. She refuses to do any make up work, she refuses to even go to music, she refuses to go to class, she refuses to use the quiet space in my other room (there is no one else there). I had a very frank and direct talk with her yesterday about all of this and she simply shrugged at every question. I am using all the supports I have for her at this school and I am sorry to say, she refuses all of it.

77. On March 18, 2018, the Parent emailed the middle school attendance specialist and stated that the Student would not be attending school because she does not feel safe. The attendance specialist emailed assistant principal 1 and asked him to look into the Parent’s email.

78. On March 19, 2018, the Parent emailed assistant principal 1 and stated that “Friday a kid where I live threatened [the Student] with a knife,” according to the Parent, this person was friends with students at the Student’s middle school and had been spreading rumors about

the Student. According to the Student, there were other students “wanting to jump her.” The Student said she felt unsafe at school and did not want to return until she talked to her counselor. The Parent asked again about online school, stated that she did not want the Student to lose out on attending the high school she wanted, and stated that the Student’s language arts teacher called her “stupid, iep [sic] kid, and talks down to her.”<sup>11</sup> Assistant principal 1 forwarded the email to the Student’s case manager, and the case manager responded and asked to set up a meeting with the Parent, Student, and the Student’s private counselor.

79. On March 24, 2018, the Parent emailed the District ombudsperson and a District special education central region program specialist (program specialist), and alleged that the District refused to meet with her when she requested IEP meetings and that the District was not providing the Student with any of the accommodations listed in her IEP. The Parent also stated that she requested a manifestation determination meeting on January 2, 2018, and that nothing had been scheduled. The Parent also stated that the Student’s safety plan was not being followed because the Student “has been able to many times slip off campus and come home for whatever the reason.” The Parent stated that “no one cares to figure out where [the Student] is” and that “the adults in the whole school have given up on [the Student.]” The Parent also listed concerns regarding the Student’s language arts teacher, case manager, and math class.

80. Also on March 24, 2018, the program specialist forwarded the email to the regional supervisor and stated that she had discussed the Student with assistant principal 3 and planned to follow up with the Parent on Monday, March 26, 2018.

81. On March 27, 2018, the Parent, language arts teacher, and case manager exchanged several emails, as summarized:

- The language arts teacher emailed the Parent and stated that because the Student had attended less than five days of class, the path for her to pass that quarter was “very narrow.”
- The Parent responded to the language arts teacher and repeated allegations that the language arts teacher had said the Student should be in a special education English class, that he said the Student was not intelligent, that the teacher had called the Student derogatory names in front of other students, and that the teacher refused to provide the Student with any of the accommodations listed on her IEP, including extra time for assignments which the Parent interpreted as the Student having until the end of the year to complete assignments.
- The language arts teacher sent a draft email response to the case manager, before sending it to the Parent, and stated that during the IEP meeting, he asked questions about the Student’s ability in an attempt to ascertain which class would be the best fit for her, not make statements about her intelligence. The teacher also denied calling the Student an “IEP kid.” Finally, the teacher stated that it was difficult to provide the Student with her

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<sup>11</sup> According to the District’s response, the language arts teacher denies that he ever called the Student derogatory names or “talked down to her.”

accommodations when she is not in class and stated, "I've been more than accommodating. She need(ed) and needs to attend class and/or come in so I can assist her."

- The case manager responded to the language arts teacher and advised him to remind the Parent that the case manager had spoken with the teacher and the Parent "numerous times" to have the Student work in the case manager's classroom in order to pass the class. The case manager also stated that she had "offered her pass/fail option...tried to encourage her to do some work in order to show what she knows...[the Student] has refused every time." The case manager also confirmed that she remember the language arts teacher asking questions "to look towards solutions and nothing more" at the IEP meeting. Finally, the case manager acknowledged that the teacher was "unable to work any part of [the Student's] IEP when she is not at school or in your classroom. Her IEP is not a free pass to do nothing. And currently, nothing is what you have from her."

82. On March 28, 2018, the Parent and the program specialist spoke on the phone. According to the District's response, the Parent "only briefly mentioned her concerns about accommodations and primarily focused on non-special education issues such as changing certain classes the Student did not like and receiving an attendance report." According to the District, the Parent did raise a concern about the Student's grade in math, which the Parent wanted to be modified pursuant to her IEP. The program specialist discussed with the Parent that the Student had "missed 30 days of class at that point in the semester and only turned in one assignment;" thus, there was "nothing to which the teacher could apply modified grading." The program specialist advised the Parent that "focus should be placed on getting the Student to attend school so that she could access the grade modification accommodations."

83. Also on March 28, 2018, the program specialist emailed assistant principal 1 and the Student's case manager, and stated that she had just had a phone conversation with the Parent. The program specialist asked if they were available to meet with her the following day to discuss.

84. On March 30, 2018, the case manager and the Parent exchanged emails regarding changing the Student's schedule so that she would be in different classes after spring break. The case manager stated that she told the Student "that at any time she can be in [the case manager's] room" and that she was working on the following plan for the Student:

- Change from language arts teacher's class to a different teacher;
- Change from orchestra to art;
- Modified grading for math; and,
- An absence list to be sent home.

Later in the day, the case manager emailed the Parent that the Student had left the school campus again without permission.

85. In March 2018, the Student was absent or late the following periods:

- March 1-2: Absent 1-6
- March 5: Absent 3 and 4
- March 6: Absent 1-6

- March 7: Late 1
- March 8-12: Absent 1-6
- March 15: Absent 4 and 5
- March 16: Absent 1-5
- March 19-21: Absent 1-6
- March 22: Absent 2, 3, 5, and 6
- March 23: Absent 1, 3, 4 and 5
- March 26-29: Absent 1-6
- March 30: Absent 2, 3, 5, and 6

86. On April 2, 2018, the program specialist emailed the Parent and offered to have follow-up meeting to address additional concerns.

87. On April 4, 2018, the Student’s schedule changed as follows:

Period	Class
	Advisory/Homeroom
1	Life Skills (Special Education)
2	Visual Arts (General Education)
3	General Science (General Education)
4	U.S. History (General Education)
5	Math (General Education)
6	Language Arts (General Education)

88. Also on April 4, 2018, the case manager emailed the Student’s math teacher about the Student, and they discussed, via email, that the Parent requested modified grading but that the Student had only turned in one assignment and had thirty absences. The case manager then emailed the program specialist regarding the issue and the program specialist responded that they “lead with her attendance, and work on getting her here so that she can have access to her modified grade.”

89. Later on April 4, 2018, the Student’s case manager and Parent exchanged several emails, which are summarized as follows:

- The case manager let the Parent know that the Student was late that morning. The case manager also stated that she was concerned about the Student’s math grade because the Student only had “1 assignment...turned in. She has 30 absences in this class. The end of the quarter is Friday.” The case manager stated that her focus was to keep the Student in school.
- The Parent responded that the morning was a challenge, but that the Student “is wanting to go to school.” The Parent also stated that the Student’s “problem in math is being suspended at half days for 2 weeks. She is trying to catch up but can’t. It’s not her fault.” The Parent also stated that the Student loved her history class and that the Parent was still waiting on the Student’s attendance record.
- The case manager responded and stated, “the issue stems from her not being in class and not doing the work despite the best efforts of all staff, including me to get her to attend and

participate.” The case manager also stated that the attendance specialist would send the Parent the Student’s attendance record.

90. On April 5, 2018, the case manager and Parent exchanged several more emails, as follows:

- The case manager asked if the Student left school.
- The Parent stated that the Student came home and told her that she had tried to go to her calm down area, but that the door was locked.
- The case manager stated that the door was not locked.
- The Parent stated, “I figured. I know better. [The Student] is playing a game and putting us against each other.”
- The case manager responded and stated that the Student did quite well that day regarding academics, but that she got angry and left when the case manager asked her to “go back to her computer and stop the gossip.”
- The Parent asked if the Student could work with a counselor or if she could have a tutor, similar to her math tutor, for communication and anger so that the Student does not lose general education class time.

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

92. On April 16, 2018, the Parent emailed the program specialist and stated that she had asked at the last IEP meeting that all the Student’s assignments be put online so that the Parent could access them. The Parent stated that “this has yet to be done and now she is failing her classes.” The Parent stated that she had also asked for weekly progress reports and that she now feared that the Student would not be able to go to the high school she wanted. The Parent stated that this “will not be fair since all year has be [sic] a constant fight to get her IEP followed.”

93. On April 18, 2018, the program specialist emailed the case manager and asked if she was available the following day to check in regarding the Student. The program specialist stated that she “spoke with [the Parent] tonight regarding [the Student’s] grades and work, as well as Study Hall options and material management.” The program specialist stated that she would like to discuss “student need and program alignment.” The case manager responded and stated that she was available to talk, and that for reference regarding the Student:

I have worked with her quite a bit. She refuses to go to class. She makes excuses each time we switch her class and her excuses always revolve around either the teacher or a peer. I think we have changed her schedule at least 5 times this year to accommodate her. The limited # of classes offered puts her in a place where there is no more classes to choose from unless she wants to finish the year with me. I would be happy to have her in my classes. I did offer [the Parent] for her to be in my classes...any one of them. She refused that option. I did offer [the Parent] to have [the Student] pull up all the Schoology work and I would print anything she needed and then could help modify. [The Student] refuses to do this. I have [the Student] a check sheet for each class to be signed (at [the Parent’s] request) and she refuses to use it. I do allow her, at any time, to come into my room and do classwork. She will come in but be on her phone (which she refuses to put away or give up). More often than not [the Student] will refuse to go to class. I have offered to have an IA be in the room, walk her there...and she will run away. I asked [the Parent] to come in and meet a few weeks ago, and asked if her Counselor would join use

to help solve any issues that she may have at school. [The Parent] did not respond. Her grades reflect the work she has done...which is none. If you have further suggestions, we can discuss today. Apologies for my tone; I am a little frustrated that [the Parent] calls downtown as though we have done nothing here.

94. In April 2018, the Student was absent or late the following periods:

- April 2: Absent 1-6
- April 3: Absent 2, 5, and 6
- April 4: Absent 1, 5, and 6
- April 5: Absent 3 and 5
- April 6: Absent 1-6
- April 16: Absent 5 and 6
- April 17: Absent 1-6
- April 18: Late 1, absent 5
- April 19-20: Absent 1-6
- April 23: Absent 5
- April 24: Absent 2-6
- April 25: Late 1
- April 26: Absent 1, 3 and 5
- April 27: Absent 2, 4 and 6
- April 30: Absent 1, 3, and 5

95. On May 2, 2018, the Student's IEP team, including the Parent, met to discuss a change of placement for the Student and further amended the Student's May 2017 IEP. The May 2018 amendment IEP increased the amount of the Student's specially designed instruction from 250 minutes to 265 minutes per week and stated that the Student would receive the following from May 2-24, 2018 in a special education setting:

- Social/behavior: 30 minutes, 4 times per week
- Study/organizational skills: 25 minutes, 4 times per week
- Social/behavior: 45 minutes, 1 time per week

The team also discussed the Student's current placement in SEL and whether she could benefit from "Access" services. The team decided that "the Access program can provide the support [the Student] needs in self-regulation and peer interactions, as well as Study/Organizational Skills support." The team decided that the program placement change would take place for high school and that the Student would remain in her current program for the remainder of the school year.

96. On May 9, 2018, the case manager emailed the Parent and stated that currently, the Student did not have a grade in her language arts class and that the teacher could "put her on a pass/fail but she has to be in class and complete this last unit." The case manager also stated that she was working on a plan for grades with the Student's math teacher, but that the problem continued to be that the Student refused to go to class. The Parent responded that she had discussed this with the Student and that the Student's private counselor was working with her on these issues.

97. On May 10, 2018, the case manager emailed the Parent about the Student's continued attendance issues.

98. On May 16, 2018, the Student's IEP team, including the Parent, the Student, and a representative from a charter school, met to develop the Student's annual IEP. The May 2018 IEP stated that the Student's behavior "impeded her learning" and that her attendance was an issue. The IEP noted that so far "supports to address this behavior have been one on one interventions with Administrators and staff, reduced schedule, modified work and work load, taking breaks as needed and as of this year counseling outside school." The Student was placed in the SEL program and "is currently taking the life skills class. She has the rest of her classes in general education." The May 2018 IEP included a goal in social/behavior and a goal in study/organizational skills, and provided for the following specially designed instruction in a special education setting:

- Social/behavior: 165 minutes per week
- Study/organizational skills: 100 minutes per week

The IEP also provided for the following accommodations:

- Access to calculator
- Access to directions in verbal and written form
- Access to Notes when note taking is required
- Allow student to doodle during class
- Break larger assignments into smaller parts
- Extra Time
- Extra time for assignments/no loss of credit until close of grading window
- Frequent positive reinforcement of appropriate behavior
- Inform student prior to transitions and/or change in routine
- Modification: Breaks
- Modification: Separate Setting
- Modified Grading
- Pass at Level 2
- Preferential seating
- Student-selected break available
- Behavior plan/contract

99. According to the District's prior written notice, addressing the May 16 meeting, the Student would attend a charter school in an "Access" placement next school year for high school.<sup>12</sup>

100. In mid-May 2018, the Student's case manager transferred to a different school in the District. According to the District's response, the case manager remained the Student's case manager through the development of her May 2018 IEP.

101. On May 21, 2018, the Parent emailed assistant principal 1, assistant principal 3, and the principal, stating that the Student would no longer be attending advisory or first period. The

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<sup>12</sup> According to the District's documentation, the Student plans to attend an independently operated charter school during the 2018-2019 school year.

Parent stated that this was because the case manager was no longer at the school, the first period class was “only IAs,” and that another student was “continuing to go off on [the Student] and no one is doing anything about it.” The Parent stated that starting May 22, 2018, the Student would come to school at the beginning of second period.

102. On May 22, 2018, the Student’s former case manager responded to the Parent’s email from May 21, and stated that she spoke with assistant principal 1 about the Student’s schedule. Assistant principal 1 agreed that having the Student “begin school at the beginning of second period for the remainder of the year” was a good plan and that the Student would not be marked absent for her advisory and first period. The case manager also stated that the Parent should remind the Student that it is important to go to class and that she should “go to class, participate, do the work...it is good practice for HS and will help with feeling better about herself. She has already raised her grades and this can continue with her participation in the process.”

103. On May 23, 2018, the Parent emailed assistant principal 1, the principal, and assistant principal 2 about an incident in which other students “ripped [the Student’s] hat off her head and ran into the boys bathroom” and “not a single adult did anything.” The Parent stated that the Student “was assaulted again at this school and no one did anything” and that “every time her hat has been ripped off her head it has been a teacher or student assaulting her.” The Parent then stated that she was considering filing charges with the police and going to the media.

104. On May 24, 2018, the principal responded to the Parent’s email and stated that the other student involved in the May 23 incident had been disciplined. The Parent responded, thanked the principal, but also stated that “the teachers standing around is a problem. The fact that I have to raise a stink to get anything done is a problem.”

105. On May 25, 2018, the principal emailed the Parent that the Student left campus during lunch with three other students, but that they later returned. The Parent responded that the Student “is taking it hard with [the case manager] not being there.”

106. In May 2018, the Student was absent or late the following periods:

- May 3: Late 3
- May 4: Absent 5 and 6
- May 7: Late 1
- May 8: Absent 6
- May 9: Late 1, absent 4 and 5
- May 10: Absent 5
- May 11: Absent 4
- May 14: Absent 1, 3, and 5
- May 15: Absent 2, 4, and 6
- May 16: Absent 4
- May 17: Absent 3 and 5
- May 18: Absent 2, 4, and 6



- May 21: Late 2 and 3, absent 4, 5, and 6
- May 23-29: Absent 2-6 (per shortened school day period 1 not marked absent)

107. On May 29, 2018, the Parent filed this citizen complaint.

## CONCLUSIONS

**Issue 1: IEP Implementation (Accommodations)** – The Parent alleged that the District failed to implement the Student’s individualized education program (IEP) during June 2017 and during the 2017-2018 school year, specifically that the Student was not provided the accommodations required by her IEP. A student’s initial IEP must be implemented as soon as possible after it is developed; and, at the beginning of each school year, a district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. The district must ensure that it provides all services, including modifications and accommodations, consistent with the student’s needs as described in the IEP.

### IEP Accommodations: June 2017

The Student’s initial IEP was developed and implemented in May 2017. On May 30, 2017, the Student’s case manager emailed all of the Student’s teachers a copy of the Student’s IEP goals and accommodations. The Student’s IEP included an accommodation for “modified grading.” The Parent’s interpretation of modified grading was that if the Student completed half of an assignment, the assignment would be graded as if it had been completed. According to the District’s documentation, modified grading meant that the Student would receive a “pass” or “fail” for each class instead of a letter grade. In June 2017, the Parent contacted the District several times and stated that the Student’s language arts teacher was refusing to provide the Student with modified grading. Each time, the Student’s case manager followed up with the Student’s teachers to ensure that the Student’s accommodations were being implemented and the Student subsequently received a pass grade in her language arts class. While there may have been confusion regarding what the Student was entitled to under her accommodations, OSPI finds that the District did provide the Student with her IEP accommodations in June 2017.

### IEP Accommodations: 2017-2018 School Year

Throughout the 2017-2018 school year, the Parent continued to raise concerns that the Student was not receiving the accommodations in her IEP and October 2017 safety plan, which allowed the Student to use “break cards” to indicate to her teachers when she needed a break (in a designated de-escalation or “calm down” area) and to text the Parent or listen to music to calm down when taking a break. The Parent frequently alleged that the Student was being prevented from accessing her “calm down area.” The documentation in this complaint indicates that the Student’s case manager reminded the Student and the Parent throughout the year that the Student had a designated room available to go to when she needed to calm down. At various points throughout the year, the Student’s case manager provided the Student’s teachers with the Student’s IEP, safety plan, and communicated with teachers directly about providing specific accommodations. In response to many of the Parent’s emails, the case manager responded that

the Student always has access to her calm down area, but often refused to use the designated area or attempted to use the opportunity to take breaks inappropriately (e.g., wandering the hallways or distracting other students).

The documentation also indicates that the Parent communicated directly with the Student's teachers regarding the Student's extra time and modified grading accommodations. The documentation shows that the Student's teachers attempted to be very flexible and work with the Student to allow her to complete assignments (e.g., the Student's case manager offered to allow the Student to work in her classroom and to work with the Student to help her get caught up in her other classes). The documentation indicates that throughout the year, the Student's teachers expressed concern that the Student was so far behind due to absences that making up the work would be challenging even with accommodations; for example, at the end of March, the District's program specialist informed the Parent that because the Student had missed thirty days of class and had only turned in one assignment in math, there were no assignments to which the teacher could apply modified grading. There is also evidence in the complaint that indicates that the Parent's understanding of the extra time accommodation was different than the District intended (e.g., the Parent believed the Student had until the end of the year to complete assignments versus the IEP's specification that the Student had until the end of the grading period).

According to the District's response, it "made the accommodations available to the Student, but that she was absent from school so frequently that the District had limited opportunities to provide her with accommodations." OSPI agrees that the District made a good faith effort to provide the Student with accommodations when the Student was at school and that the documentation shows that the Student either refused to use her accommodations or attempted to use them in an inappropriate manner. However, there is also evidence that there was a misunderstanding between the Parent and the Student's teachers regarding several of the Student's accommodations, including the modified grading accommodation (discussed above) and the extra time accommodation. Once the District was aware of the confusion, the District should have held an IEP meeting to clarify what accommodations were needed and how they would be implemented. The District's ability to implement the Student's IEP was limited due to the Student's frequent absences, which may have been related to her disability and potential bullying. While the District took inadequate steps to address the Student's attendance (discussed further in issue no. 2 and 3), the District has substantiated that it followed procedures for providing the Student her IEP accommodations during the 2017-2018 school year.

**Issue 2: Shortened School Day** – The Parent alleged that the District improperly shortened the Student's school day in October 2017. School personnel may remove a student eligible for special education for a violation of the code of conduct from her current placement to an appropriate interim alternative education setting, other alternative, or suspension, for not more than ten school days. After a student has been removed from her current placement for ten school days in the same school year, and the removal is a change of placement, during any subsequent days of removals, the student must continue to receive educational services that provide a free appropriate public education (FAPE). Within ten school days of any decision to change the

placement of a student eligible for special education, the district, parent, and relevant members of the student's IEP team must review all of the information and determine if the conduct in questions was caused by, or had a direct and substantial relationship to the student's disability or if the conduct was the direct result of the district's failure to implement the IEP.

#### October 2017 Shortened School Day

Here, the Student exhibited a clear pattern of behavior: the Student frequently refused to attend school or left class and walked home.<sup>13</sup> Based on the documentation in this complaint, the Student appears to have been removed for disciplinary reasons when in late September 2017, assistant principal 1 and the case manager decided to shorten the Student's school day in order to ensure greater safety for the Student, greater safety for other members of the school community, and to incentivize the Student to attend school. On October 3, 2017, assistant principal 1 notified the Parent that the Student's school day had been shortened and that the Student would attend school first through third period on Monday, Tuesday, Thursday, and Friday, and through second period on Wednesdays. The Student received her specially designed instruction in first period life skills, and thus was scheduled to continue receiving specially designed instruction, per her IEP, under the shortened school day schedule. As of October 3, 2017, there was no plan to return the Student to a full day schedule.

On October 5 and 18, 2017, the Parent, Student, assistant principal, and case manager met and discussed the Student returning to a full day schedule. On October 5, the group developed a safety plan for the Student that required her to attend school for two weeks under the shortened school day schedule and show that she could meet all school expectations before she could return to a full day of class. The plan required the Parent to escort the Student back to the school building each time she left class and walked home. The documentation indicates that there was confusion regarding the plan and the Parent believed that the plan had been changed so that she was required to walk the Student to every class. The Parent stated that she could not walk the Student to every class due to her health. Further, while the Student's attendance shows that she had excused absences on October 10, 11, 12, and 16 due to illness, there is evidence in the emails that on some of those days, the Parent (not the Student) was sick and thus not able to bring the Student to school, despite the Student being otherwise able to attend. While the safety plan indicates that the Parent was only being asked to bring the Student back to class if she left and went home, there is no indication that, despite several emails and meetings, this confusion was addressed.

While in some instances a shortened school day may be appropriate, the decision, whether suggested by the school district or the parent, must carefully consider the impact of a shortened school day and the decision to change a student's schedule should not be unilateral. Here, OSPI finds that the decision to shorten the Student's school day was a unilateral decision made by the District that was disciplinary in nature, was made without Parent input and consideration of the Student's unique needs, and was in violation of the IDEA. The District should have scheduled a

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<sup>13</sup> It appears from the documentation in this complaint that the Student and the Parent lived across the street from the Student's school.

manifestation determination meeting within ten school days of October 9, 2017 at the latest,<sup>14</sup> to determine if the Student's behavior was a manifestation of her disability and discussed whether the Student was in need of a functional behavioral assessment (FBA), and/or a behavioral intervention plan (BIP). While the shortened school day schedule itself would not have impacted the Student's access to her specially designed instruction, the continued confusion over the plan to earn back a full day schedule resulted in the Student not attending school from October 10-30, 2017 (fourteen days). The District admitted it improperly shortened the Student's school day and proposed compensatory services and training, which OSPI accepts with the below modifications.

#### May-June 2018 Shortened School Day

Throughout the 2017-2018 school year, the Student continued to frequently not attend school or elected to leave class and walk home. In mid-May 2018, the Student's case manager transferred to a different school in the District, which resulted in the Parent informing the District on May 21, 2018 that starting on May 22, the Student would no longer attend advisory or first period. The assistant principal agreed that the Student could start at the beginning of second period for the remainder of the year and that the Student would not be marked absent for advisory and first period. The Student's IEP team did not meet to discuss the Parent's decision or consider that shortening the Student school day would result in her receiving no specially designed instruction for the remainder of the school year. The District admits and OSPI agrees that the decision to shorten the Student's school day in May and June 2018 was improper and in violation of the IDEA as it resulted in a complete denial of the Student's free appropriate public education (FAPE). The District proposed compensatory services and training, which OSPI accepts with the below modifications.

#### School Refusal Behavior

Additionally, the District is reminded that Washington general law requires the District to convene an IEP team meeting when a student has three unexcused absences in a month, and include a behavior specialist or mental health specialist in the meeting where appropriate, to consider the reasons for the absences. Further, when school refusal is causally related to a student's disability, the school refusal behavior may trigger a need for a FBA or other assessments to consider additional or different supports for the student.

Here, the Student's refusal to attend school resulted in the Student missing numerous class periods during the school year, impeded her ability to access her specially designed instruction in the areas of social/behavior and study/organizational skills, and impeded her ability to make progress in the general education curriculum. It is unclear how closely related the Student's refusal to attend school was to her disability or the alleged bullying (discussed further below in issue no. 3). While the District held meetings with the Parent on October 5 and 18, 2017, these

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<sup>14</sup> The Student was suspended five days in September and effectively suspended from periods four through six starting on October 2, 2017. By October 9, 2017, the Student had been removed for more than ten school days, and the removals constitute a pattern.

were not IEP team meetings because only the Parent, Student, assistant principal, and case manager attended.<sup>15</sup> Nor were the meetings manifestation determination meetings, which likely should have occurred by October 24, 2017 at the latest (within ten school days of October 9, see above). The Student's IEP team did meet on October 26 and 31, but only amended the Student's IEP to include preferential seating as an accommodation. The Student's IEP team did not meet again until May 2 and 16, 2018, despite the fact that the Student rarely attended a full day of school the entire school year. The Student's IEP team, based on the documentation, used: safety plans, shortening the Student's school day, and changing the Student's class schedule to address her attendance issues. However, none of these resulted in the Student having improved attendance. OSPI acknowledges that this is a complicated situation, that there were many potential reasons for the Student's school refusal behavior, and that many of the District's staff members worked hard to address the Student's needs. However, the fact remains that the District ultimately has the responsibility, through the IEP team process, to address a student's behavior which impedes her learning. Given the District's inadequate response to the Student's school refusal behaviors, if the Student returns to school in the District during the 2018-2019 school year, the District will schedule an IEP team meeting with the Parent and invite a behavior specialist (and, if necessary a mental health specialist) to discuss the topics listed in the corrective actions below.

#### Total Compensatory Services

A free appropriate public education (FAPE) consists of instruction that is specially designed to meet the needs of the student with a disability. A student receives a FAPE when she receives, at public expense, an educational program that meets state educational standards and is provided as outlined in the student's IEP. Compensatory education is an equitable remedy that seeks to address the harm a student suffers while denied a FAPE. There is no requirement to provide day-for-day compensation for time missed and does not require that services be awarded directly to the student.

Based on the Student's May 2017 IEP, during the time period between October 10 and 30, 2017, the Student should have received 700 minutes or approximately 12 hours of specially designed instruction (25 minutes a day of social/behavior and 25 minutes a day of study/organizational). And based on the Student's May 2018 IEP, during the time period between May 22 and June 22, 2018, the Student should have received 1,219 minutes or approximately 20 hours of specially designed instruction in social/behavior and study/organizational.

Given that the Student may have been absent for a few days in October 2017, due to illness and considering that services provided in an individualized setting are more intensive, the District will

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<sup>15</sup> An IEP team is composed of: the parent of the student; not less than one regular education teacher of the student; not less than one special education teacher of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

provide the Student with 1/2 the amount of the total thirty-two (32) hours of instruction the Student should have received if the District had not shortened the Student's school day in October 2017 and May-June 2018. The District will provide the Student with sixteen (16) hours of compensatory education in individual instruction sessions to address social/behavior and study/organizational skills. The instruction will occur outside of the District's school day and be provided by a certificated special education teacher.

**Issue 3: Bullying & Harassment** – The Parent alleged that the Student was bullied and that the District failed to address the alleged bullying.<sup>16</sup> Bullying is aggression used within a relationship where the aggressor has more real or perceived power than the target, and the aggression is repeated or has the potential to be repeated. Whether or not the bullying relates to a student's disability or status as receiving special education services, if the bullying prevents the student from receiving meaningful education benefit, it may result in a denial of FAPE under the IDEA. However, confrontations between students that are not characterized by a power imbalance generally do not constitute bullying. As part of an appropriate response to allegations of bullying, a district should convene the IEP team to determine whether the effects of the bullying have caused the student's needs to change such that the student's IEP is no longer providing educational benefit. The bullying of a student with a disability, or a student with a disability who engages in bullying behavior, may trigger the need for a reevaluation to determine if additional supports and services are needed.

Beginning in the 2016-2017 school year (prior to the start of the complaint timeline on May 30, 2017), the documentation in this complaint indicates that the Student was frequently involved in conflict with other students. The Student's initial evaluation indicated that teachers reported that often when the Student is "playing around" other students think the Student is bullying them, and that the teachers thought the Student was trying to make friends, but does not know how. The Student's IEP noted that the Student's behaviors adversely impact her educational progress and she received specially designed instruction in a social/behavioral skills. At an October 31, 2017 IEP meeting, the Student's IEP team developed a safety plan to address the Student's aggressive behavior and pattern of leaving the school campus.

The evidence in this complaint demonstrates that the Student had many incidents of conflict with several different students over the course of the 2016-2017 and 2017-2018 school years. In some instances, the Student was targeted and provoked by other students, and in other incidents, the Student was reported to have instigated the conflict. There is not a clear indication that the conflicts between the Student and other students meets the definition of bullying, where the aggressor has more real or perceived power and where the aggression is repeated. Regardless, based on the documentation provided, the District responded to all of the reported incidents. The District disciplined the Student and other students, met with involved students, attempted to have students engage in mediation, changed class schedules (including changing the Student's classes numerous times), created safety plans, offered to meet with the Parent to discuss the

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<sup>16</sup> The Parent's allegations included concerns of bullying and abuse related to the behavior of specific staff members. OSPI advised the Parent in its opening letter, and reminds the Parent now, that she may address concerns regarding the behavior of specific staff members through the professional practice complaint process.

Student's reentry plans, and offered to have an instructional assistant attend class with the Student. Additionally, while the Parent believed that having the Student engage in mediation is bullying, the District has the authority to use mediation as part of its disciplinary or reentry process for addressing student behavior. Staff were aware of these dynamics and throughout the year, expressed that the District could not continue changing the Student's schedule to accommodate personality conflicts and that the classes in which the Student had conflicts with other students rotated.

While the Student may not have experienced bullying that meets the definition above and that necessitated an IEP meeting to address how potential bullying impacted the Student's access to educational benefit, the Student was involved in many incidents where she reported feeling bullied. The District had a duty to and did respond when the Parent raised allegations or concerns; but given that the Student exhibited a clear pattern of behavior, OSPI finds it concerning that there is no evidence that the Student's IEP team had ongoing discussions about how these behaviors may be related to the Student's disability. Evidence indicates that discussions around the Student's school refusal behavior and other behaviors focused on the Student meeting school expectations in order to earn back access to school. Further, as discussed above in issue no. 2, the District should have considered conducting a functional behavioral assessment (FBA) and/or developing a behavioral intervention plan (BIP) for the Student. The District has substantiated that it responded to essentially all of the instances of alleged bullying or conflict between the Student and other students. But given that these behaviors are likely connected to the Student's school refusal and that is unclear to what degree they are connected to the Student's disability, the District will discuss the bullying behaviors at the IEP team meeting ordered above, if the Student returns to school in the District.

### **CORRECTIVE ACTIONS**

By or before **August 24, 2018, September 21, 2018, October 1, 2018, November 5, 2018, and December 21, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

1. By or before **August 15, 2018**, the District will work with the Parent to develop a schedule for a total of sixteen (16) hours of compensatory services in the areas of social/behavioral and study/organizational skills. Services will occur in a one-on-one setting and be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may be accessed over the summer months. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **December 14, 2018**. The District will provide OSPI with documentation of the schedule for services by or before **August 24, 2018**.

The District must provide OSPI with documentation by **October 1, 2018** and **November 5, 2018**, of the compensatory services provided to the Student. This documentation must

include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student. By or before **December 21, 2018**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with documentation by **December 21, 2018**.

2. If the Student returns to school in the District during the 2018-2019 school year, the District will immediately notify OSPI and the District will schedule an IEP team meeting with the Parent and a behavior specialist (and, if necessary a mental health specialist) within two weeks of the Student's return to the District to discuss the following:
  - How the Student's disability may relate to her school refusal behavior;
  - How the Student's disability may relate to her feeling bullied and/or engaging in bullying behavior toward other students;
  - Whether an FBA or other reevaluation is warranted;
  - Whether a BIP should be developed;
  - Whether additional supports and services are need; and,
  - Develop a plan, including strategies to ensure the Student attends school, and a plan if the Student's school refusal behaviors begin again.

Within one week of the meeting, the District will submit: 1) a copy of the meeting invitation; 2) a copy of the agenda or notes regarding the topics discussed at the meeting; 3) a copy of the Student's IEP if amended; 4) a copy of any safety plans if developed; 5) a copy of any related prior written notices; and, 6) any other related documentation.

**DISTRICT SPECIFIC:**

By **October 31, 2018**, the District will provide training regarding the topics raised in this complaint decision. The training topics should include, at a minimum, the procedures and requirements for amending IEPs; amending IEPs to address allegations of bullying and support students exhibiting school refusal behaviors; special education discipline procedures, including manifestation determinations; and, functional behavioral assessments and behavioral intervention plans. The training will be for the District special education administrators for the central region (program specialists and supervisors) and all special education certificated staff (including the Student's former case manager), the attendance specialist, school counselors and psychologists, the principal, and the assistant principals at the middle school identified in this complaint. The training should include examples/hypotheticals and resources for IEP teams.

By **August 24, 2018**, the District will notify OSPI of the name of the outside trainer, and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.



By **September 21, 2018**, the District will submit a draft of the training materials to OSPI for review. OSPI will approve the materials or provide comments by September 28, 2018 and additional dates for review, if needed.

By **November 5, 2018**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all special education certificated staff, principal, and assistant principal identified by title at the Student's middle school, so OSPI can verify that all required staff participated in the training.

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

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