

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-64

PROCEDURAL HISTORY

On June 15, 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 Monroe School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On June 18, 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 July 12, 2018, OSPI granted the District an extension of time until July 17, 2018, to submit its response to this complaint.

On July 13, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on July 16, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On July 31, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on August 6, 2018.

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

OVERVIEW

During the 2017-2018 school year, the Student attended a District elementary school and was eligible to receive special education services under the category of autism. The Student's January 2018 individualized education program (IEP) provided annual goals in a number of areas, including behavior. The District also collected data regarding the Student's aggressive and self-injurious behaviors. Among the other special education services the Student received, the IEP provided for four hours of interventionist services by a board certified behavior analyst (BCBA), a behavioral intervention plan, a safety plan, a deep pressure/proprioception protocol, a one-to-one paraeducator, and daily progress monitoring. The interventionist services included supervising, consulting, training staff, demonstrating competencies, and taking data.

The Parent alleged that the District failed to provide appropriate services to address the Student's aggressive and self-injurious behavior, did not implement the interventionist services as required by the IEP, and did not use acceptable applied behavioral analysis (ABA) procedures, including taking appropriate progress monitoring data and conducting its analysis of the data. The District denied the allegations.

ISSUES

1. Did the District follow procedures in addressing the Student's self-injurious behavior in her individualized education program (IEP)?
2. Did the District follow procedures for measuring the Student's progress towards the annual goals in the IEP?

LEGAL STANDARDS

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's individualized education program (IEP), the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, the IEP Team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

IEP Must State Amount of Services: An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student. An IEP must also include a statement of the program modifications or supports for school personnel that will be provided to enable the student: to advance appropriately toward attaining the annual IEP goals; to be involved and progress in the general curriculum in accordance with present levels of educational performance and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children in the above activities. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d).

Supplementary Aids and Services: Supplementary aids and services means aids, services, and other supports that are provided in general education classes or other education-related settings to enable students eligible for special education to be educated with nondisabled students to the maximum extent appropriate in accordance with the student's least restrictive environment. 34 CFR §300.42; WAC 392-172A-01185. A student's IEP must include a statement of the supplementary aids and services to be provided to the student or on behalf of the student. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d).

IEP Implementation: A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

Progress Reports: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

FINDINGS OF FACT

2016-2017 School Year

1. During the 2016-2017 school, the Student attended a District elementary school and was eligible to receive special education and related services under the category of autism.
2. On December 12, 2016, the Student's evaluation group, that included the Parent, reviewed the results of the Student's reevaluation. The results stated that the Student's delayed cognitive skills significantly impact her verbal and nonverbal skills, causing delays in her reading, writing, and math skills. The evaluation report stated that the Student also had fine motor delays and used verbalizations, gestures, word approximations, one to five word utterances and a picture exchange communication system (PECS) to communicate. Behaviorally, the report stated that the Student had "expressed behavior of frustration and sadness during the school day", specifically screaming, but had made significant improvement in lessening the amount. At times, the Student would run across the room and hit her head on the wall or floor. Other behavior included scratching her forehead, getting out of her chair, crying, and hitting others and herself. The evaluation group recommended that the Student receive services in the areas of adaptive, behavior, social/emotional, and academics.
3. On January 19, 2017, the Student's individualized education program (IEP) team, which included the Parent, met to develop a new IEP for the Student. The January 2017 IEP provided for annual goals, along with benchmarks or short term objectives, in the following areas: receptive language; expressive language; pragmatic language; handwriting; scissor skills; adaptive behavior; social/emotional behavior; behavior; and academics. The IEP stated that the District would use "classroom data" to measure progress and report progress each semester. Specifically, the progress towards the Student's behavior goals would be measured by "classroom data" and would be reported in December, March, June, and the IEP review.

The IEP provided for the following special education and related services in the structured learning center:¹

- Academics – 120 minutes/5 times weekly
- Social/Emotional – 60 minutes/5 times weekly
- Adaptive – 80 minutes/5 times weekly
- Occupational therapy – 20 minutes/2 times weekly
- Speech/Language – 20 minutes/2 times weekly
- Behavior – 80 minutes/5 times weekly

The IEP also provided for 1:1 paraeducator support throughout the Student's school week (360 minutes five times a week). Additionally, the IEP provided for the following accommodations/modifications and supports for school personnel:

- Safety plan attached to IEP
- Use of picture symbols
- Use of visual aids
- Discrete trial training method
- Picture schedule with break times and work times
- Augmentative and alternative communication (e.g., PECS)
- Two staff supports when transitioning in and out of the classroom, three staff support for recess safety
- Adult proximity with small and whole group instruction for reinforcement of target behaviors
- Allow student to move to another part of room to regain control
- Establish reinforcers for student selections
- Give verbal cues to monitor behavior
- Offer tangible reinforcers for appropriate behavior
- Give short, concise directions
- Use drill and repetition
- Support with toileting
- Prompts to remind her to grasp her pencil with tripod grasp and prompt "smart fingers" or "pincher fingers"
- Access/Use of proprioception protocol as needed
- Access/Use of large ball to roll on her while lying on the floor as needed

The IEP also stated that supports for school staff included "direct support" and BCBA training, support to staff, collaborating with outside BCBA, coaching, observation, documentation review, including forty hours of completing training modules and demonstrating competencies for a registered behavior technician (RBT).²

¹ The District website stated, "Our Structured Learning Center (SLC) is an educational program for students who require life skills support or multiple disabilities support. Structured Learning Centers are offered at the elementary, middle, and high school levels. Qualifying students may also participate in the general education programs for academic, social, adaptive, and emotional skill development to the extent determined by their Individualized Education Program (IEP). These students participate in alternative curriculum developed to address their specific educational and functional needs."

² A RBT is a person who has completed the 40-hour training requirement in applied behavior analysis (ABA) and practices under the supervision of a board certified behavior analyst (BCBA). BCBA is a graduate-level certification in applied behavior analysis (ABA).

4. The Student's January 2017 safety plan stated the following:
- For playground, we have 3 staff supporting her and monitoring her safety while on the equipment. Script to "Stay on the bark."
 - When she is demonstrating unsafe behavior on the playground equipment (i.e., attempting to jump off where she is not supposed to and when she is climbing or using equipment improperly), staff guide her off the equipment to the ground.
 - When the bell rings, we set a timer and let her know when the timer goes off, it's time to line up (and show her a picture symbol of lining up). On occasion, [Student] will exhibit behavior (i.e., scream, cry, drop to the ground, throw bark, flail on the bark).
 - If [Student] exhibits unsafe behavior or appears that she will exhibit unsafe behavior, staff will support and guide her body to the ground. In addition, we will ask her if she needs or wants "squishees" and implement the proprioceptive input (i.e., decompression protocol).
 - When transitioning in and out of the classroom (i.e., to and from the specialist, recess, lunchroom), two staff will support her in the transition to monitor her while in transition.
 - [Student] has exhibited behavior (i.e., scream, cry, drop to the sidewalk, tile floors, etc., flail on those surfaces, on occasion, she will intentionally bang her head on the surface, other times, that will occur when she drops to the surface).
 - If [Student] exhibits unsafe behavior or appears that she will exhibit unsafe behavior, staff will support and guide her body to the ground. Staff use their arms or calves to support her head and try to keep it from contacting the hard surface. In addition, we will ask her if she needs or want "squishes" and implement the proprioceptive input (i.e., decompression protocol).
 - In the classroom, there are times when [Student] will exhibit unsafe behaviors (i.e., scream, cry, run around the room and drop to the floor, and hit her head on the floor, or run to a wall and bang her head on the wall, flail on the floor, and hit her head on the floor or furniture that is in the area). While we have seen significant decrease in these behavior, they still do occur. When they occur, two staff run in attempts to block her. Staff put their arms out to support her to the ground. Staff put an arm and use their body to block the wall as well. When she is flailing on the ground, we get a large pillow and say "pillow when mad" and she will usually get on the pillow. Other times, on rare occasions, she won't get on the pillow or enroute to get the pillow, staff use their arms or calves to support her head and try to keep it from contacting the hard surface. In addition, we will ask her if she needs or wants "squishees" and implement the proprioceptive input (i.e., decompression protocol).
5. On January 20, 2017, the District provided the Parent with prior written notice. The notice stated the following was discussed and agreed to at the January 19 IEP meeting:
- Implement the Safety Plan (attached to the IEP)
 - Continue the use of proprioception protocol (attached to the IEP)³
 - Trialing of AAC (Alternative and Augmentative Communication)
 - Implement goals in qualifying areas, continue with services and placement as it is at this time, continue to implement the accommodations, and continue to provide the 1:1 support for [Student] throughout his day

³ The Deep Pressure/Proprioception Protocol stated, "This gives inputs to joints and muscles and will help child have a better sense of where his body is in space. It is also deep pressure that tends to be calming and help the brain to organize itself to perform tasks."

The Timeline for this Complaint Begins on June 16, 2017

6. On July 17, 2017, the Parent emailed the special education teacher, requesting an IEP meeting for the Student's private behavior therapist to meet and talk with the District's board certified behavior analyst (BCBA). Later, the District and the Parent exchanged phone calls and scheduled an IEP meeting for September 7, 2017.

2017-2018 School Year

7. During the 2017-2018 school, the Student continued to attend a District elementary school and be eligible for special education services.
8. On September 5, 2017, the District's 2017-2018 school year began.
9. According to the District, the school day for the Student's elementary school was 8:55 a.m. to 3:25 p.m. on Monday through Thursday. The school day for Fridays was 8:55 a.m. to 2:55 p.m. The school day was divided into four periods. Throughout the 2017-2018 school year, the Parent pulled the Student out of school at approximately 1:00-1:30 p.m. on Monday through Thursday to attend private therapy.
10. On September 7, 2017, the Student's IEP team met to discuss the Parent's proposal that the Student's private RBT work with the Student at school on a daily basis. According to the prior written notice provided to the Parent on September 11, 2017, the District denied the Parent's request. The notice stated:

The option of a private RBT was rejected at this time. However, other options including the collaboration with a district BCBA and modifications to the behavior plan⁴ that can occur within the context of an IEP meeting would be discussed. An IEP meeting will be scheduled to discuss appropriate service delivery options...The option of a private behavior therapist was rejected at this time as the district has responsibility for implementing all services designated on a student's IEP.

The District and the Parent scheduled a follow-up meeting on September 21, 2017.

11. On September 21, 2017, the District held an IEP meeting to discuss the Parent's proposal for the private RBT to work with the Student at school. The prior written notice provided to the Parent on the same day stated that the District again denied the Parent's request because the District was responsible for implementing all the services on the Student's IEP. In addition, the District proposed an "assessment revision in the area of behavior to determine the level of behavioral supports, inform a Functional Behavioral Assessment (FBA), and determine strategies to be implemented on the behavior intervention plan (BIP)."
12. On September 25, 2017, the Parent gave consent for the District to conduct a FBA.

⁴ The Student's January 2017 IEP did not include a behavioral intervention plan (BIP). It is possible the notice is referencing the Student's January 2017 safety plan.

13. During September 2017, the Student missed two full days and eleven partial days of instruction.
14. On October 15, 2017, the Parent emailed the District BCBA and requested data taken by the District BCBA during the week of September 25, 2017. On October 16, 2017, the District BCBA responded, "...As my observations will be used with other data, to inform the FBA, I am happy to share a summary of my data at our evaluation results meeting. As a general rule, however, I do not share raw data." A meeting to discuss the results of the Student's FBA was scheduled for November 9, 2017.
15. During October 2017, the Student missed four full days and sixteen partial days of instruction.
16. On November 9, 2017, the Student's IEP team, including the Parent, met to review the results of her FBA and develop a BIP. Based on assessment and observation data, the FBA identified targeted self-injurious behavior, including hitting self, hitting head, head banging, scratching self, and pinching self. After reviewing the FBA, the IEP team began to review the Student's proposed BIP, but according to the District, the Parent left the meeting before the review was completed. The documentation does not indicate whether the District completed the BIP at the November 9 meeting.
17. The District's prior written notice, dated November 9, 2017, stated the Parent requested that the Student's private RBT provide services to the Student while she was at school. The notice stated that the District refused the Parent's proposal because "the district has responsibility for implementing all services designated on a student's IEP."
18. Following the IEP meeting on November 9, 2017, the Student did not return to school until December 11, 2017, a total of seventeen school days.
19. On November 17, 2017, the Parent's attorney wrote a letter to the District director of student services and stated that the Student "has not been progressing in emotional and behavioral regulation and communication skills, despite being assigned to a classroom with extensive para support and two adult one-on-one aides assigned to her safety." The letter cited that thirty-five incidents have occurred in which the Student had banged or hit her head "to date." The letter requested the following:
 - "A Registered Behavior Technician (RBT) who has received forty hours of training by professional licensed as a BCBA with the State of Washington with expertise in the methodology of ABA and behavior intervention techniques. This training should include training in implementation of an appropriate Behavior Intervention Plan;
 - Eight hours of consultation/management per month by the BCBA to be used in observations, monitoring, and supervising the 1:1 aide and staff working with the Student, not including transportation;"
 - Four hours per month consultation between the Parent's BCBA, not including transportation, managing the Parents' home ABA program and the school's BCBA to assure coordination of behavioral programs across settings to promote reinforcement and generalization of skills;
 - Monthly fidelity checks to be conducted by the same BCBA; and,
 - The above elements to be incorporated in an IEP for [Student]."

The letter also requested a meeting no later than ten calendar days after the date of the letter to discuss amending the Student's IEP.

20. On November 23-24, 2017, the District was on break.
21. The November 2017 billing statement for the District BCBA stated that six hours of "BCBA support" were provided. According to the District's response to this complaint, the BCBA provided support to the staff who worked with the Student.
22. During November 2017, the Student missed fourteen full days and three partial days of instruction.
23. On December 7, 2017, in response to the letter from the Parent's attorney, the District conducted an IEP meeting to review the Student's IEP and address the Parent's requests. At the meeting, the IEP team agreed to amend the Student's January 2017 IEP. The prior written notice, dated December 14, 2017, stated the District discussed and agreed to the following, which were reflected in the amended January 2017 IEP:
 - Include data provided as an insert for behavior present levels
 - The District BCBA would communicate with the home provider to ensure consistency
 - Include redirect back to task promptly and that when things are removed, have tangible options that are additional to choose from.
 - Use of a timer, visual schedule with use of a first-then-visual-schedule application (pending approval from technology department) or use of something comparable, and first/then (in relation to additional teaching strategies to support with teaching positive behaviors)
 - Modify both occupational therapy goals by removing use of tangible and/or edible reinforcers "prior to."
 - Add to supports for school personnel: "BSBA support and supervision (i.e., supervise staff demonstrating competencies and sign off, 4 hours weekly (including training, support to staff, collaborating with outside BCBA, coaching, observations, document reviews)."
 - Add to supplemental aids and services: "BCBA support services, provided and monitored by the District BCBA four hours weekly from December 7, 2017 to January 19, 2018."

The amended January 2017 IEP also included updated annual goals, with benchmarks or short-term objectives, in the following areas: receptive language; expressive language; pragmatic language; handwriting; scissor skills; adaptive behavior; social/emotional behavior; and academic. In the area of behavior, the goals would be determined at the next IEP meeting on January 16, 2018.

24. The District stated in its response to the complaint that BCBA interventionist services began, along with training for staff, after the December 7, 2017 IEP meeting. The billing statement from the BCBA stated that eleven hours of "BCBA support" were provided during December 2017.
25. During December 2017, the Student missed five full days and three partial days of instruction.
26. On December 18, 2017 to January 1, 2018, the District was on winter break.

27. On January 16, 2018, the District convened the IEP team to develop the Student’s annual IEP. The January 2018 IEP included the following behavior goals:

- By January 15, 2019, when given tasks to complete independently, [Student] will complete the tasks improving behavior from being able to complete one independent task followed by a preferred item/activity to completing three different tasks to a preferred item/activity for three consecutive data days as measured by classroom data.
- By January 15, 2019, when give a non-preferred task, item, or activity, [Student] will use conventional means to communicate her needs and wants (e.g., ask for more time with preferred item/activity, state she is not ready, ask for a specific item she prefers, state she wants something different) improving behavior from 20% of the 80% of the time for three consecutive data days as measured by classroom data.

The January 2018 IEP stated that the District would report progress towards the annual goals each semester and progress would be measured by classroom data. The IEP also provided that data would be collected in the areas of property destruction, aggression, self-injurious behavior-hitting head, self-injurious behavior-other, physical elopement, and task elopement. In addition, data collection included an antecedent-behavior-consequence (ABC) analysis for each incident. The IEP provided for the following special education and related services:

Services	Frequency	Location
Academics	120 minutes/5 times weekly	Special education
Social/Emotional	60 minutes/5 times weekly	Special education
Adaptive	80 minutes/5 times weekly	Special education
Behavior	80 minutes/5 times weekly	Special education
Speech/Language	20 minutes/2 times weekly	Special education
Occupational therapy	20 minutes/2 times weekly	Special education

The IEP provided for the following supplementary aids and services:

Services	Frequency	Location
Interventionist (BCBA)	1 hour/4 times weekly	Special education
Direct student support (1:1 paraeducator)	360 minutes/5 times weekly	Special education

The IEP provided for the same accommodations as in the January 16, 2017 IEP, including the previous safety plan, and included training for classified staff (complete forty hours of modules and demonstrate competencies related to BCBA support and supervision, including supervise staff, demonstrating competencies, signing off, support to staff, collaborating with outside BCBA, coaching, and observation.) Additionally, the January 2018 IEP included a BIP. The BIP’s target behaviors were the following self-injurious behaviors: hitting self; hitting head; head banging; scratching self; and pinching self.

28. In her complaint, the Parent alleged that the IEP required the Student to receive four hours a week of direct interventionist service by the District BCBA and four hours a week of “staff support and supervision” by the District BCBA. According to the District, the interventionist services were not intended to be direct service, only staff supports.

29. On January 17, 2018, the District provided the Parent with prior written notice. The notice stated that the District agreed to the following:

- Parents will take the IEP and BIP home to further review. In the event they have any questions about either document, they will contact [director of special services], [special education teacher], [school principal], or [District BCBA].
- Check to see if we have current mutual exchange forms for the district SLP (speech/language pathologist) and district OT (occupational therapist) to communicate with private SLP and OT or get the forms to parents to begin this conversation.
- [District BCBA] and [Student's] private BCBA will begin communicating to discuss/finalizing data sheets sometime this week (January 17-19, 2018). A mutual exchange form has been signed. Additionally, we will try the data sheet that was proposed by [Student's] BCBA to determine if it's working.
- Moving forward with data regarding self-injurious behaviors, we will be including attempts of SIB on our daily data sheet. We are also going to include "throwing items"/"aggression" on the daily SIB data sheet.
- Parent would like to see some type of progress updates regarding SIB and SIB attempts.
- [Special education teacher] will look for additional opportunities for [Student] to be around typically developing peers (from a social aspect/peer modeling).
- Once a program is added to an AAC device for [Student] to use for a visual schedule, staff will have control (e.g., keep it in their possession).
- Agreed to start including the number of minutes [Student] chose with regards to sitting on the toilet on the communication daily log.
- Reflect in the PWN (prior written notice) that the matrix in the IEP reflects full days, but at this time [Student] is leaving at around 1:30 most days.
- We agreed to keep the Safety Plan in the IEP. As significant as they are, [special education teacher] will update the Safety Plan and send it home for parent review and then upload into the system.

The notice also stated the following:

While the IEP team did not directly address the certified RBT request at the January 16, 2018 meeting, this request was addressed at the December 7, 2017 meeting when the school team in collaboration with parents and their counsel agreed to the training requirements for para educators assigned to work with [Student]. It was agreed that training for classified staff would include completion of 40 hours of modules and demonstrate competencies related to RBT training.

30. On January 24, 2018, the Parent emailed the director of student services. The Parent provided some suggested clarifications to the January 2018 IEP. The Parent also requested that the District provide the Parent with "any and all data" collected by school staff. On the same day, the director responded and agreed to comply with the Parent's requests.

31. On January 29, 2018, the District added the following to the IEP:

- In the future, [Student's] parent would like to discuss removing all electronic devices (except for her AAC device) because they feel (from email January 24, 2018) "becomes overly stimulated and potential SIB can occur."
- Parents request that documents be provided 2-3 days prior to any and all meetings.
- Per parent request, parents will receive a copy of behavior data collected by paras/RBT's/BCBA(D)s at school, daily/on the day they were collected.

32. The January 2018 billing statement for the District BCBA stated that twenty-five hours of "BCBA support" were provided.⁵
33. During January 2018, the Student missed four full days and seventeen partial days of instruction.
34. On February 2, 2018, the District provided the semester progress monitoring report for the Student's annual goals.
35. On February 9, 2018, the Parent emailed the school principal, expressing concern about the Student's toileting behavior. The Parent requested a meeting to review the school's toileting procedures with the Student. Meanwhile, the Parent kept the Student home. On February 22, 2018, the Parent met with the principal, the District BCBA, the special education teacher, and the two paraeducators about toileting and the issue at school was resolved. No changes to the toileting procedures were made. The Student returned to school on March 5, 2018.
36. During February 2018, the Student missed fourteen full days and two partial days of instruction.
37. The February 2018 billing statement stated that the BCBA provided ten and a half hours of "BCBA support." The March 2018 billing statement stated that the BCBA provided twenty and a half hours of "BCBA support."⁶
38. During March 2018, the Student missed seven full days and seven partial days of instruction.
39. On April 2-6, 2018, the District was out on Spring Break.
40. During April 2018, the Student missed three full days and seven partial days of instruction.
41. The April 2018 the billing statement stated the BCBA provided thirteen hours of "BCBA support." The May 2018 billing statement stated the BCBA provided 20.5 hours of "BCBA support."
42. During May 2018, the Student missed one full day and twenty partial days of instruction.
43. On June 4, 2018, the Parent wrote a letter to the director of student services, requesting an independent educational evaluation (IEE) in the following areas: educational (for reading, writing, spelling, and math); social skill assessment; and psychological assessment (cognitive, behavior, attentional).

⁵ Hours included consultation, IEP goal writing, an IEP meeting, paraeducator training, and "collaboration phone call" with the private BCBA.

⁶ The time included a "collaboration phone call" with the private BCBA.

44. On June 10, 2018, the District provided the semester progress monitoring report on the Student's annual goals.
45. On June 12, 2018, the director of student services responded to the Parent's IEE request. The director stated that the District agreed with the Parent's request for an IEE.
46. On June 13, 2018, the District held an IEP meeting to review the Student's progress. According to both the District and the Parent, the District did not include two elevated data points in its data analysis regarding the frequency of the Student's aggressive behavior. The District's explanation to the Parent was that because of a lack of sufficient data points due to attendance, the two elevated data points significantly skewed the data enough to warrant their exclusion. The Parent disputed the exclusion of the data points in the analysis and also the manner in which the data was taken.
47. On June 14, 2018, the Student's special education teacher completed the forty-hour RBT training.
48. On June 15, 2018, the Parent filed the complaint.
49. The June 1-14, 2018 billing statement stated that the BCBA provided ten and a half hours of "BCBA support."⁷
50. From June 1-15, 2018, the Student missed three full days and seven partial days of instruction.
51. On June 19, 2018, the 2017-2018 school year ended.
52. According to the District's response, the Student missed an equivalent of 107.75 days of instruction during the 2017-2018 school year. The total included fifty-eight full days and other days that the Student arrived late to school or left school early to attend therapy.

Regarding the Student's absences, the Parent stated in her reply:

While the number of days our child was absent seemed staggering, these are due to her disabilities. The majority of these days were from the beginning of the school year when Monroe School District was unable to provide proper behavioral services and rejected our offer to allow our daughter's outside providers into her classroom for support and staff instruction at our expense...

53. The District provided documentation of daily data collection regarding the Student's incidents of property destruction, aggression, SIB-head hits, SIB-other, physical elopement, and task elopement. The District also provided an ABC analysis of each incident. Other daily data collecting included the following:
 - Transition prompting
 - Toileting
 - Telling time
 - Sight words
 - Addition
 - Independent work
 - Protest
 - Waiting
 - Peer interaction

⁷ The time included a "collaboration phone call" with the private BCBA.

54. The Student's behavior data collected by the District from January 19, 2018 to May 30, 2018 showed the following totals:

- Three head hitting occurrences
- Twenty-five occurrences of SIB-other
- Thirty-three occurrences of aggression
- Twenty-four occurrences of property destruction
- Ten occurrences of task elopement
- Zero occurrences of physical elopement

55. According to the District, the paraeducators who worked with the Student received training from the District BCBA in data collection as part of their overall behavior training during the 2017-2018 school year.

CONCLUSIONS

Behavior Support for Self-Injurious Behaviors – The Parent alleged that the District failed to provide appropriate ABA services to the Student, including not providing four hours a week of direct service by the BCBA and four hours a week of staff support.

An IEP is required to identify the behavior supports, strategies, and interventions, including a BIP when necessary, to meet the behavioral needs of a student and any supports needed by staff. Once an IEP is developed, the district is required to implement the IEP as written. Here, the Student's IEP provided annual goals to address the Student's behavioral needs to communicate her needs and complete tasks and provide specially designed instruction. The IEP also provided for interventionist services by a BCBA four hours a week that included coordinating services, consultation, and training with staff. In addition, the IEP addressed her behavior involving property destruction, aggression, SIB-hitting head, SIB-other, physical elopement, and task elopement with the following: accommodations; a BIP; a safety plan; a deep pressure/proprioception protocol; a one-to-one paraeducator; and daily data collection that included ABC analysis. The Student's special education teacher completed a forty-hour ABA course and the paraeducators were trained in behavior interventions and data collection. Based on the services provided and extensive data collection, there was sufficient documentation that the District provided services that were consistent with the needs and abilities of the Student, and addressed her self-injurious behaviors.

Regarding the interventionist services, the District stated that interventionist services stated in the Student's IEPs were not intended to be a direct service. The interventionist services were supervising, consulting, and training with staff regarding the Student's behaviors. The January 2018 IEP stated that the "direct support" was provided by the paraeducators and supervised by the special education teacher. The Parent stated that the IEP provided for four hours of direct interventionist services to the Student in addition to four hours a week of supervising, consulting, and training to staff. Based on the documentation, there was no indication that there was a previous dispute regarding interventionist hours. There is no documentation that the Parent raised the issue at any IEP meeting and her attorney did not raise the issue in the November 2017

letter to the District. Based on the IEP and other documentation in this complaint, the interventionist services were intended to be staff supports, not direct services to the Student.

The complaint also stated that the District failed to implement the four hours a week of supervising, consulting, and training with staff by the BCBA in the January 2018 IEP. In its response to this complaint, the District stated that the services were implemented as required, and included the BCBA's billing statements, which provide concrete documentation of implementation. The documentation in this complaint also shows that the Student's numerous absences complicated the delivery of interventionist services, as some of the supervision, coaching, demonstrating competencies, and data collection could not be implemented without the Student present.

The District has substantiated that it followed procedures for addressing the Student's self-injurious behaviors.

Measuring Student's Progress – The Parent alleged that the District failed to properly collect and analyze progress monitoring data to determine if the Student was making progress regarding self-injurious behaviors. The complaint cited twenty-six discrepancies between the data. IEPs must include a statement, indicating how the student's progress toward the annual goals will be measured.

Here, the Student's January 2018 IEP stated that the progress towards the annual goals would be measured by classroom data. In addition, the IEP provided for collecting data on other behavior, including self-injurious behavior that was not addressed in the annual goals. The documentation in this complaint shows that the District collected data regarding the Student's behaviors. The Parent's allegation centers on the District's method of collecting data regarding the Student's aggressive and self-injurious behavior. The Parent provided an example of a discrepancy with the data: the ABC form stated that the Student was "kicking storage containers and shelves." The District coded the behavior as one incident of property destruction. The Parent disputed the manner in which the District coded the incident and argued that there were two incidents, one kicking containers and one kicking shelves, the implication being that the progress would appear to look better if the behavior were coded as one incident. Although the District BCBA and the private provider were to collaborate about such matters as the data collection and should continue to do so, the IEP or any other documentation did not clarify how the data would be coded. While the Parent may have had a preferred method of coding, the District was not necessarily required to use it, as long as the District's method was consistent and could use it to measure the Student's progress. Based on the District's method of collecting data, there was no violation.

The Parent also disputed the District's analysis of the data. In presenting the data to the Parent in June 2018, the District's analysis of the data did not include two high frequency behavior data points. The Parent argued that by excluding the data, the data did not reflect the Student's true progress, or lack thereof. The District acknowledged to the Parent that their analysis excluded the two data points because the two data points skewed the overall data based on the limited number of data points caused by the Student's absences. There was no attempt to hide the data from the

Parent. While the Parent again may have preferred using all the data points, the District had discretion with how to analyze the data.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None

DISTRICT SPECIFIC:

None

Dated this ____ day of August, 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.)