

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-83**

### **PROCEDURAL HISTORY**

On September 13, 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 Sedro-Woolley 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 September 14, 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 October 5, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on October 8, 2018. OSPI invited the Parent to reply with any information he had that was inconsistent with the District's information.

On October 22, 2018, the Parent requested and OSPI granted an extension of time until October 30, 2018, to submit his reply to the District's response to this complaint.

On October 29, 2018, OSPI interviewed the Parent regarding his reply to the complaint.

On October 31, 2018, OSPI received the Parent's written reply to the complaint and forwarded it to the District on the same day.

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

### **ISSUES**

1. Did the District follow procedures for implementing the Student's individualized education program (IEP), including providing accommodations in the general education setting?
2. Did the District follow procedures for developing the Student's behavioral intervention plan (BIP)?
3. Did the District follow procedures for responding to the Parent's requests for IEP meetings to address the Student's progress and changes the Parent wanted to make to the Student's educational program?

### **LEGAL STANDARDS**

Individualized Education Program (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. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-

03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

Program Accommodations & Modifications: An IEP must include a statement of the program modifications that will be provided to enable the student to: advance appropriately toward attaining his or her annual IEP goals; be educated and participate with other students, including nondisabled students in educational activities; and participate, if appropriate, in general education classroom, extracurricular, and nonacademic activities. 34 CFR §300.320(4); WAC 392-172A-03090(1)(d). Accommodations: (a) do not fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; (b) provide equal access to learning and equal opportunity to demonstrate what is learned; and (c) grading and credit is the same as typical students. Modifications: (a) do fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; (b) provide a student with meaningful and productive learning experiences based on individual needs and abilities; and (c) grading and credit are different.

IEP Development for a Student with Behavioral Needs: In developing, reviewing, and revising each student's 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).

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

An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4). The IDEA does not specify who is qualified to conduct an FBA, for example there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

Consent for Reevaluation: A district is required to obtain informed parental consent before conducting any assessments as part of a reevaluation of a student eligible for special education services. 34 CFR §300.300(c); WAC 392-172A-03000(3). Consent means that the parent: has been fully informed of all information relevant to the activity for which consent is sought in his or her native language, or other mode of communication; understands and agrees in writing to the activity for which consent is sought, and the consent describes the activity and lists any records which will be released and to whom; and understands that the granting of consent is voluntary and may be revoked at any time. 34 CFR §300.9; WAC 392-172A-01040(1). A district is required to obtain consent when conducting a functional behavioral assessment (FBA). *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4).

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

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

## FINDINGS OF FACT

This decision references events that occurred prior to the investigation time period, which began on September 14, 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.<sup>1</sup>

### **Background Facts**

1. During the 2016-2017 school year, the Student attended a District elementary school and was eligible for special education services under the category development delay.
2. On October 5, 2016, the Student's evaluation group met for his triennial reevaluation. The group determined that the Student continued to be eligible for special education, but changed the Student's eligibility category to other health impairment based on the Student's diagnosis of attention deficit hyperactivity disorder (ADHD), which impacted "his ability to attend class and focus during instructional and work times." The evaluation group recommended that the Student receive specially designed instruction in math calculation, basic reading skills, reading comprehension, reading fluency, social/emotional, and written expression.
3. Also on October 5, 2016, the Student's individualized education program (IEP) team, including the Parent, met and developed the Student's annual IEP. The October 2016 IEP included annual goals and specially designed instruction in the areas of social/emotional, math calculation, basic reading skills, reading comprehension, reading fluency, and written expression. The IEP also included the following accommodations and modifications in the general and special education setting, which were provided daily and as needed on reading, math, and writing assignments and tests:
  - Alternate response options (on writing and math assignments, oral response)
  - Extended time district, classroom test, quiz
  - Support: Separate setting for tests and quizzes, separate setting in special education setting, translated test directions
  - Behavior plan/contract
  - Provide desktop list of tasks
  - Alter format of materials for reading (highlight, type, spacing, color-code)
  - Limited multiple choice on reading tests
  - Read class materials orally (math assignments and tests)
  - Utilize oral responses to assignments/tests (writing assignments)
  - Modify/repeat/model directions (all tests)
  - Preferential seating (daily)

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<sup>1</sup> Additionally, in the Parent's complaint, he also raised concerns regarding his other children who have 504 plans. In its opening letter, OSPI notified the Parent that it does not have authority through the special education citizen complaint process to investigate allegations related to 504s. The Parent clarified that he included this information to show his belief that the culture in the District is not addressing the needs of students with disabilities. This decision does not address those issues or comment on the culture in the District.

- Individualized/small group instruction (daily)
  - Study outlines/guides/graphic organizers (reading and writing)
4. On December 2, 2016 and January 20, 2017, the Student's IEP was amended to make changes to the setting and minutes of specially designed instruction.<sup>2</sup> The January 2017 amended IEP provided the following specially designed instruction in the *special education setting*:
- Basic Reading Skills: 30 minutes, 1 time per week
  - Reading Comprehension: 30 minutes, 1 times per week
  - Reading Fluency: 30 minutes, 4 times per week
  - Social/Emotional: 30 minutes, 1 time per week
  - Written Expression: 30 minutes, 1 times per week
  - Math Calculation: 30 minutes, 1 times per week

### **2017-2018 School Year**

5. The District's 2017-2018 school year started on September 5, 2017.
6. On September 6, 2017, the Parent emailed the Student's special education teacher (special education teacher 1)<sup>3</sup> to introduce himself and request that the Student be reevaluated. The Parent asked for weekly progress reports with work samples to be sent home and asked for information on the plan to support the Student. The Parent also attached several pages of tips and strategies related to ADHD, language delay, auditory processing disorder, working memory recall, anxiety disorder, and post-traumatic stress disorder (PTSD) that he'd previously sent to the general education teacher. Special education teacher 1 responded to the Parent's email and stated that she had forwarded the information to the school psychologist who handles evaluations, that they were in the process of creating the resource room schedule, and that weekly progress reports would be "coming soon."
7. According to the Parent, when he sent the document with tips and strategies, he wanted these items to be added to the Student's IEP.
8. On September 8, 2017, the District provided the Parent with a prior written notice that stated that the Student had "returned to [the elementary school] at the beginning of the 2017/2018 school year...[and would] continue to receive special education services in the [District]." The notice stated that the Student's current (October 2016, amended in January 2017) IEP would

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<sup>2</sup> The documentation provided by the District indicates that the January 2017 amendment was necessary because the Student was being homeschooled during the latter part of the 2016-2017 school year, and that the Parent agreed to amend the IEP without a meeting in both instances. It is unclear where the Student received his specially designed instruction during this period; however, this is outside the one-year timeline for special education citizen complaints and will not be investigated.

<sup>3</sup> According to the District's response to this complaint, special education teacher 1 left the position two weeks into the school year. She was replaced by another teacher (board approved out of endorsement teacher) who held the position until the end of November when a second special education teacher (special education teacher 2) began teaching and working with the Student.

be implemented. The notice stated that the Parent requested "weekly progress reports with work examples" be sent home.

9. The documentation in this complaint indicates that the Student was scheduled to receive his specially designed instruction in the resource room and would spend the rest of his time in a general education setting.

### **Complaint Timeline Began on September 14, 2017**

10. On September 25, 2017, the District invited the Parent to an IEP meeting scheduled on October 3, 2017. According to the contact attempt report, the Parent indicated he would attend.
11. According to the District's documentation, the Student's general education teacher emailed the Parent with updates about the Student's behavior, adjustment to being back at school, and progress on September 27, 28, and 29, 2017.
12. On October 3, 2017, the Student's IEP team, including the Parent, met to develop the Student's annual IEP. The IEP noted that the Student had "great ideas that he is able to communicate well" and that his behaviors can "impede his learning in the general education environment" as he "struggles with waiting his turn in the classroom and following directions." The IEP included updated annual goals in the following areas and provided the following specially designed instruction in the *special education setting*:
  - Basic Reading Skills: 30 minutes, 4 times per week
  - Reading Comprehension: 30 minutes, 4 times per week
  - Reading Fluency: 30 minutes, 4 times per week
  - Social/Emotional: 30 minutes, 1 time per week
  - Written Expression: 30 minutes, 4 times per week
  - Math Calculation: 30 minutes, 4 times per week

The IEP also included the following accommodations and modifications in the general and special education setting, which were provided daily and as needed on reading, math, and writing assignments and tests:

- Alternate response options (on writing and math assignments, oral response)
- Extended time district, classroom test, quiz
- Support: Separate setting for tests and quizzes, text to speech, translated test directions
- Provide desktop list of tasks
- Alter format of materials for reading (highlight, type, spacing, color-code)
- Limited multiple choice on reading tests
- Read class materials orally (math assignments and tests)
- Utilize oral responses to assignments/tests (writing assignments)
- Modify/repeat/model directions (all tests)
- Preferential seating (daily)
- Individualized/small group instruction (daily)
- Study outlines/guides/graphic organizers (reading and writing)

The IEP stated that the Student would spend 86.59% of his time in the general education setting.

13. The general education teacher emailed the Parent with updates about the Student's behavior, social/emotional skills, progress, trying assistive technologies (e.g., speech to text), and that the Student was working well in one-on-one situations on October 4, 5, 6, 9, 11, 13, 16, 17, 19, 23, 24, and 31, 2017. Some of the emails the District provided were updates from other teachers who asked the general education teacher to forward the emails to the Parent.
14. On October 11, 2017, the Parent responded to one of the general education teacher's emails with feedback about the Student's reading and shared that the Student was "feeling good about school and I think this has a lot to do with you building a relationship with him. So thank you." The general education teacher replied that he was "glad to hear it. He's a fun kid!"
15. On October 19, 2017, the library and technology teacher (library teacher) emailed the general education teacher and stated that she made a "positive call home...for EXCELLENT behavior during tech" regarding the Student and that she moved the Student near her and "changed the 'I can't's' to 'that's difficult' and told him how he wins points with me for simply TRYING the new technique, even when going slow like a turtle."
16. The general education teacher emailed the Parent with updates about the Student's progress and behavior on November 1, 2, 6, 7, 13, 16, 17, and 27, 2017.
17. On November 21, 2017, the Parent emailed the general education teacher that the Student had "been regressing the past week/week and a half at home" and stated that he was sure this would show at school. The general education teacher responded and thanked the Parent for the information. The general education teacher also forwarded the email to the special education classroom paraeducator (paraeducator) and the principal.
18. The general education teacher emailed the Parent with updates about the Student's progress, behavior, following directions, and redirections needed on December 1, 6, 8, 11, 12, 13, 14, and 15, 2017.
19. On December 14, 2017, the Parent emailed the Student's special education teacher (special education teacher 2) and thanked her for chatting with him. The Parent attached the tips and strategies sheet that he had previously provided the general education teacher and stated the he would like the following:
  - To see daily/weekly work, including writing on computers, printed off;
  - To see graphic organizers;
  - To see what support in the classroom looks like and strategies for each lesson;
  - For the Student to use assistive technology;
  - To develop a behavioral intervention plan (BIP);
  - More rewards for positive behavior; and,
  - Fewer reprimands of the Student in front of peers.

The Parent stated that he did not see "any evidence of [the Student] working on his writing" and stated he was "afraid that [the Student] isn't learning real strategies and tools to make

school easier for years to come.”<sup>4</sup> The Parent also stated that “it was suggested [the Student] not take the state test” and that he (the Parent) was “not on board with this because I’m not sure if this will affect the type of support.”

Special education teacher 2 responded, thanked the Parent for his feedback, and provided responses to each of the Parent’s points and asked several clarifying questions. For example, special education teacher 2 asked if the Parent would like to access a web application that would show pictures of student work and graphic organizers, and asked if the Parent had access to Google Documents to see the Student’s writing. Special education teacher 2 said she would bring up assistive technology at the next meeting, that she would discuss a BIP with the school psychologist to get that process started, that they were already increasing rewards but would discuss rewards and reprimands during the next meeting, and finally that she would support the Parent’s decision about state testing.<sup>5</sup>

20. On December 15, 2017, special education teacher 2 forwarded the Parent’s December 14 email to the school psychologist.
21. Also on December 15, 2017, the Parent emailed the general education teacher and the library teacher and asked that they make sure the Student was bringing books home at his level to read. The library teacher replied and stated that she would note the Students level on “his cards” and make sure that “he is checking out at his level.”
22. On December 15, 2017, the District provided the Parent with progress reporting on the Student’s October 2017 IEP annual goals. The progress reporting indicated that the Student was making sufficient progress on his math, reading, and written expression goals, and that he was demonstrating emerging skills on his social/emotional goal.
23. On December 18, 2017, special education teacher 2 forwarded the Parent’s December 14 email to the District’s associate director of special education (director).
24. Also on December 18, 2017, the Student’s school team met to ensure that all staff were on the same page regarding the Student’s music, physical education, library/technology, general education, and resource room classes. After the meeting, special education teacher 2 emailed the Parent listing the following topics of discussion and questions:
  - Weekly Progress Reports: What would the Parent like to see in addition to the general education teacher’s nearly daily reports?
  - Only homework was nightly reading.

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<sup>4</sup> In a conversation with the Parent, he clarified to OSPI that he was primarily concerned with the Student’s progress, his writing, and work in his general education class. The Parent stated that he did not have concerns about the Student’s special education class.

<sup>5</sup> It is unclear if the special education teacher was referencing a meeting of the Student’s school team or scheduling an IEP meeting.



- The school psychologist was starting the process for a functional behavioral assessment (FBA) to start creating a BIP. The focus would be on compliance and positive mindset, if the Parent agreed.
  - Behavior and view of peers.
  - Positive relationships with staff.
  - Additional support in the resource room and general education classroom.
  - Accommodations: Social and emotional support provide across the day and settings, small group instruction, cuing to stay on task, positive reinforcements.
25. On December 20, 2017, the Parent emailed special education teacher 2 with a response to their December 14 email conversation. The Parent stated that he wanted unfinished work and samples of the Student's work sent home, in order to reinforce instruction at home. The Parent also provided more information about the Student's behaviors and suggested that a "more private approach" to discipline should be taken. The Parent stated that he wanted the school to use "graphic organizers, thinking maps, outlines, visual representations, [and] a variety of comprehension strategies for reading and writing," with the Student. The Parent suggested that the Student needed more support from a one-on-one paraeducator.
26. On December 21, 2017, special education teacher 2 forwarded the Parent's December 20 email to the principal and director, and stated that she emailed the Parent to let him know that they would need to have an IEP meeting after winter break to discuss his request for a one-on-one.
27. The District was on break December 21, 2017 through January 3, 2018.
28. The general education teacher emailed the Parent with updates about the Student's progress, specific assignments and quizzes, and behaviors on January 8, 10, 16, 17, 19, 22, 24, 25, 26, 29, and 30, 2018.
29. On or around January 9, 2018, special education teacher 2 sent the Parent a meeting notice that a meeting was scheduled on January 18, 2018, to discuss the Student's instructional needs and a BIP.
30. Also on January 9, 2018, the District documented in a prior written notice that the Student's team would need to meet to evaluate the Student's educational needs and develop a BIP. The prior written notice stated that this was in response to the Parent's request for one-on-one support for the Student. The notice stated that the school team had also discussed teaching strategies, a structured homework plan for the Student, reviewing the BIP after it "has been implemented for 8 weeks," increasing special education minutes, and assistive technology. The team rejected increasing the Student's special education minutes and rejected one-on-one support for the Student "at this time [because] he is safe at school, and gaining educational growth."
31. On January 11, 2018, the District contacted the Parent via phone to notify him that at the meeting scheduled on January 18, the team would discuss the Student's FBA.

32. On January 18, 2018, special education teacher 2 emailed the school psychologist, library teacher, director, principal, and general education teacher the agenda for the meeting with the Parent. The agenda included: "1. Celebrations; 2. FBA/BIP; 3. Consequences in front of peers; and, 4. One on one request."
33. On January 18, 2018, the Student's IEP team, including the Parent, met to discuss the results of the Student's FBA.<sup>6</sup> The FBA noted the Student's strengths and the behaviors that the FBA tracked, which included:
- "Verbal degradation to a teacher (ranging from 0-10 times daily over a three week period)";
  - "Verbal degradations to a peer (ranging from 0-5 times daily over a three week period)";
  - "Moved to a separate learning environment (ranging from 0-1 times daily over a three week period)"; and,
  - "Noises (ranging from 0-7 times daily over a three week period)".

The FBA provided antecedent, behavior, consequence (ABC) data for observed behaviors, but stated that the behaviors were inconsistent in frequency and that there was no discernable pattern. The FBA identified the following target behaviors and for each, discussed prior interventions, setting information, and made recommendations to the IEP team: (1) "[Student] raises his voice, makes refusal statements and/or makes disruptive noises, and/or engages in an unsanctioned behavior" and (2) "[Student] will make derogatory statements to peers or teachers."

34. According to the Parent, at this point, the District presented the FBA as completed and the Parent disagreed because he stated the District had not taken any data for the FBA.
35. Later on January 18, 2018, the District emailed the Parent that a meeting had been scheduled for January 24 to develop the Student's BIP.
36. On January 19, 2018, special education teacher 2 emailed the Parent and attached the prior written notice, documenting the decisions made during the January 18 meeting. The notice stated that the Student "exhibited high rates of disruptive behaviors that are interfering with his educational progress" and that the team would complete the FBA and develop an "effective Positive Behavior Support Plan." Special education teacher 2 also invited the Parent to start using an online application that was a "private portfolio between parents and teachers to post work their child is working on and videos of them completing work. It is only used for celebrations, not struggles."<sup>7</sup>
37. Also on January 19, 2018, the Parent emailed the general education teacher and stated that the Student had a new binder to help him with organization and behavior, the notebook also contained a section with graphic organizers that the Parent provided and wanted the Student

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<sup>6</sup> According to the District, the Parent did not provide written consent for the FBA; however, he did provide verbal permission to create an FBA and BIP.

<sup>7</sup> The documentation provided in this complaint does not indicate whether the Parent began using this platform.

to use. The Parent asked that the Student's current or unfinished work be added to the notebook so the Parent could check daily.

38. On January 22, 2018, the Parent and special education teacher 2 emailed regarding the Student's written "homework plan" and why the Student needed written instructions when there were extra assignments.
39. On January 24, 2018, the Student's IEP team met and began developing a BIP for the Student. The BIP incorporated the results of and recommendations from the FBA and listed the following replacement behaviors to teach the Student:
  - "In order to comply with teacher requests by engaging in expected task behavior and remaining on task until completion [the Student will]...communicate his interests and needs with a calm and kind voice; follow school rules by keeping hands and feet to self; [Student] will use kind words when talking to others."
  - "Instead of displaying verbally aggressive behavior, [the Student] will make appropriate statements to others, and show interest in wanting to play with others appropriately."

For each set of replacement behaviors, the BIP listed setting event strategies, antecedent strategies, teaching strategies, consequence strategies, a reinforcement plan, response, plan, de-escalation plan, crisis and recovery plan, and listed data collection procedures and responsible persons.

According to the District's response, the Parent did not agree with the FBA or the BIP and felt that more precise data was needed. According to the Parent, he disagreed because at this point, he felt the District had not yet collected any data and had only relied on teacher anecdotes. The team agreed to collect more data and the District stated that it was "standard practice to collect data on BIPs and review/revise a regular time intervals." The District stated in its response that the team decided to "implement the BIP as written as a 'draft' and then return with data to improve the BIP" and that this may have "caused confusion as it appeared that there was no BIP in effect as it was not 'finished' even though the BIP was being implemented as written immediately," although still in "draft" form.

40. On January 30, 2018, in response to the general education teacher's daily email update, the Parent asked if he could come into the classroom during technology (tech) time since the Student was having some difficulty staying motivated. The general education teacher let the Parent know that he was always welcome and stated that tech was on Tuesdays and Thursdays.
41. On February 1, 2018, the library teacher emailed special education teacher 2, the general education teacher, and the principal regarding her plan for the Student in tech class. The library teacher stated that she gave the Student a "tech menu" that included what all the students would be doing in class that day and then other items the Student could choose to do in his need and skill level areas. The library teacher stated that she felt the day had been very successful for the Student.
42. On February 2, 2018, the school psychologist emailed the Parent a draft copy of the FBA and stated that the team was continuing to work on the BIP.

43. On February 5, 2018, the paraeducator emailed special education teacher 2 and the general education teacher and stated that she had to send the Student back to class that day because he was not able to be in his reading group with other students. She stated that the Student was making noises and putting his hands in another student's face. The paraeducator listed the interventions and redirections she tried with the Student.
44. The general education teacher emailed the Parent with updates about the Student's progress, specific assignments and quizzes, new strategies and suggestions for practicing skills, hand raising and blurting out, and behaviors in class and outside of class on February 5, 6, 12, 13, 14, 15, 21, 22, 23, and 26, 2018.
45. On February 6, 2018, the Parent emailed the principal with several concerns, including:
  - A bullying situation mentioned by the principal, but that was not brought up in the recent meeting about the FBA and BIP;
  - The school being reactive instead of proactive;
  - The Student showing signs of regression, stating he hates school, refusing to go to school;
  - The Student's lack of progress in writing, reading, and math;
  - Phonics drills and making word searches being busy work and not teaching the Student anything; and,
  - The school environment being "toxic" for the Student.

The Parent stated that he felt the Student might need a different placement and asked the principal to help him look into that option to see if it would help the Student "academically and behaviorally." The principal forwarded the Parent's email to the director and pointed out the request for a change of placement. The principal stated that she asked special education teacher 2 to set up an IEP meeting to address the Parent's concerns and the safety plan the principal was putting together.

46. The Parent stated in his reply that the District did not respond further to his request regarding placement.
47. Later on February 6, 2018, the principal and director emailed regarding a draft safety plan. The director stated that he thought the safety plan should be incorporated into the Student's BIP because the "consequence strategies in the BIP and setting strategies...fit your additions."
48. On February 7, 2018, one of the paraeducators (paraeducator 2) emailed special education teacher 2 and stated that they needed further documentation to show the Student needed support. Paraeducator 2 created a sheet to collect data that could be used across school settings.
49. According to the District's documentation, on or around February 12, 2018, the Parent indicated he did not feel the school psychologist was qualified and that he wanted a board certified behavior analyst (BCBA) to conduct the FBA.
50. Also on February 12, 2018, special education teacher 2 emailed the school psychologist, director, and principal regarding the BIP meeting with the Parent on January 24. Special

education teacher 2 stated that the Parent had suggestions and questions that she felt the team needed to address and discuss further, and stated that she had started collecting data on occurrences of “unkind words or phrases at staff, unkind words or phrases at peers, when he [the Student] is asked to go to an alternative learning area (and comment as to why), [and] task refusal.” Special education teacher 2 stated they could use this data for the FBA and proposed that they “use the data I have collected thus far next week to guide the FBA and determine a target behavior for the BIP. If we need further data compiled before moving forward, I am open to that as well.” Special education teacher 2 also stated that currently, the school team was “using a script across campus settings to give [the Student] alternative positive language towards tasks and peers...I read him a social story each morning on using kind words and identify what we say and do not say to others.” The teacher stated she would continue using these strategies until further notice.

51. On February 13, 2018, the Parent emailed the school psychologist and asked for a copy of the data taken during the FBA observations. Later on February 13, 2018, the Parent made a public records request for the Student’s FBA data because he stated that he had not received a response from the school psychologist to his previous requests for the data.
52. According to the Parent, around this time, special education teacher 2 told the Parent that no data had been taken yet.
53. On February 15, 2018, the director emailed the Parent regarding the Parent’s request for the FBA data. The director stated that he wanted to talk to the Parent about how to proceed and asked if the Parent was available for a phone call. The Parent stated that he was going out of town, would rather meet in person, and would be back the following week.
54. On February 20, 2018, the Student’s IEP team met again to review the Student’s current progress toward his target behaviors and to update the Student’s draft BIP. The prior written notice, dated February 21, stated that some of the Student’s behaviors had decreased and that “the District has seen growth in [S]tudent’s positive behavior but agrees with the parent that we should plan for all settings and future support.” The notice stated that the team agreed with the Parent that the “reason for target behavior should not be assumed and data is needed to decide the best way to support” the Student. The notice also stated that the team would “collect data for two weeks and re-meet with parent to consider additions to the FBA or BIP.”<sup>8</sup>
55. On February 21, 2018, special education teacher 2 emailed the Parent the prior written notice from the team’s meeting on February 20. Special education teacher 2 noted in her email that this prior written notice did not record any decisions made by the team, but instead serves as “documentation about what we discussed” and a “summary of the meeting to make sure we are all on the same page.”

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<sup>8</sup> In its response, the District provided copies of the behavior charts, data sheets, and the director and school psychologist’s observation notes during the process of creating and finalizing the Student’s FBA and BIP. According to the Parent, he had not previously been provided some of these documents, such as the school psychologist’s observation notes.

56. Also on February 21, 2018, the Parent emailed special education teacher 2 regarding the BIP meeting. The Parent stated that he disagreed with statements the director made about "physical aggression" and "power/control over girls." Special education teacher 2 responded and stated that there had been only one incident of physical aggression and that while she did not think this was a concern, she wanted to document if there were any incidents. The teacher stated that her understanding of what the director said regarding power/control was different than the Parent's, and she recommended that the Parent discuss this with the director directly.
57. According to the District's documentation, between February 28 and March 2, 2018, the Student refused to participate in class while there was a substitute teacher. There was an incident when the substitute teacher used one of his behavior strategies ("take a break card") improperly as a punishment instead of an opportunity for the Student to take a break. Emails from special education teacher 2 indicated that she continued to use the Student's behavior strategies in working with him.
58. Based on the District's documentation, around this time, the director conducted observations of the Student to collect data to inform the development of the BIP. According to the Parent, he felt it was problematic that the director observed the Student when a substitute teacher was teaching because the substitute teacher had challenges working with the Student.
59. The general education teacher emailed the Parent with updates about the Student's progress, behavior, and potential rewards to work toward on March 5, 6, 9, 12, 13, 14, 19, and 20, 2018.
60. On March 5, 2018, the director emailed the school psychologist, principal, general education teacher, and special education teacher 2 that on March 6, he would observe the Student for the fourth hour-long observation. The director included some of the things he had noticed during his previous observations, including that the:
- Student did not get picked on by staff or other students;
  - Student had at least two good friends in class;
  - Student accepted correction, followed directions in general and special education classrooms;
  - General and special education teachers both stated expectations for behavior to the group/class before beginning instruction;
  - Other students complimented the Student during a class meeting;
  - Substitute teachers did not appear to know what the Student's behavior interventions were or what to do when the Student exhibited refusal behaviors;
  - Student played on his computer in substitute's classroom;
  - Student poked and made fun of other students and was politely asked to stop;
  - Student would join or initiate distracting behaviors at a higher rate with substitute teachers;
  - Student engaged in pushing at recess, but girls responded by chasing Student and laughing;
  - There was another student in the class with similar behaviors who is corrected more often than the Student;
  - Student responded to "take a break" prompts;
  - No use of choice menu, positive reinforcement activities, positive reinforcement items;
  - Student played and interacted appropriately with another student;
  - Two instances of praise for positive behavior by a substitute paraeducator;

- Student interacted appropriately with the director twice.

The director summarized his findings so far, made some recommendations specifically regarding substitute teachers and tracking positive behavior and positive reinforcement, and asked if his observations were in line with what other staff was seeing. Special education teacher 2 responded and stated that the next meeting was scheduled for March 20, 2018, that a choice menu is used with the library teacher, and that she agreed with the director's observations. The teacher stated that her data was now showing more noises than disrespectful comments, and that she would work on creating a "sub plan."

61. On March 7-9, 2018, the Parent and the general education teacher exchanged emails regarding creating a behavior reward chart for the Student. One concern the Parent raised was not taking away recess and specialist time as a consequence and waiting until the FBA/BIP were completed to implement the chart. The Parent stated that if the chart was used for "monitoring self and self awareness" he was all for using it.
62. On March 13, 2018, the general education teacher emailed the Parent and stated that he would start implementing the behavior chart (which he attached to the email) the next day.
63. Also on March 13, 2018, the library teacher emailed her substitute teacher with lesson plans and noted that there was a modified behavior plan and menu of choices for the Student.
64. On March 20, 2018, the Student's IEP team met to review and update the Student's draft BIP. According to the prior written notice, dated March 20, the team had collected additional data over the three-week period since the last meeting. This data included: "frequency of noises, degradation to teachers and peers, and separated from the learning environment. Also, four observations over an hour period for ABC data."
65. On March 21, 2018, the Parent emailed special education teacher 2 and the general education teacher regarding the meeting on March 20. The Parent thanked them for their work and stated that he felt they needed to pay attention to frequency so they can teach replacement behaviors. The Parent also stated that every adult in the school needed to be trained on the BIP. The Parent also stated that they had not identified a function of the behavior and suggested that it could be attention seeking or escapism.
66. Also on March 21, 2018, special education teacher 2 forwarded the Parent's email to the school psychologist, director, and principal who all agreed that the Student's behavior was to provide him escape/avoidance or to seek peer/adult attention.

Special education teacher 2 then responded to the Parent's email and stated that the team agreed that the function of the Student's behavior was attention or escape. The teacher stated that the data would be added to the FBA and that the team would need to meet again to review the new revised BIP. Special education teacher 2 stated that all the adults that worked with the Student would be trained on the BIP. The Parent replied and stressed that he felt the

function of the behaviors could not be grouped together because they would have different replacement behaviors and plans.

67. On March 27, 2018, the District provided the Parent with progress reporting on the Student's October 2017 IEP annual goals. The progress reporting indicated that the Student was making sufficient progress on his social/emotional, one math calculation, reading, and writing goals. The progress reporting indicated that the Student mastered his other math calculation goal.
68. On March 30, 2018, special education teacher 2 emailed the Parent a draft of the FBA and BIP to review prior to the next meeting, scheduled for April 12, 2018.
69. Also on March 30, 2018, special education teacher 2 emailed the general education teacher with concerns regarding the substitute teacher in the general education teacher's room not being a good fit with the Student. She asked if this substitute could be used as a last resort.
70. The District was on break April 2-6, 2018.
71. On April 10, 2018, the Student's school team had an internal meeting to ensure that the team was on the same page before meeting with the Parent on April 12 to discuss the draft of the BIP.
72. On April 12, 2018, the Student's school team met with the Parent and finalized the Student's BIP. According to the District's response, the team had been implementing the BIP in draft form since late January 2018, but that on April 12, 2018, the BIP was considered "final."
73. On April 13, 2018, special education teacher 2 emailed the Parent a copy of the finalized BIP.
74. On April 17 and 18, 2018, the Parent and the general education teacher exchanged emails regarding a writing assignment. The Parent expressed concern that the Student was not able to write "simple coherent sentences (hand and pencil) along with the computer program support. He struggled so much just writing a sentence last night" and voiced concern that the Student did not understand the order of a persuasive essay/speech. The Parent also emailed a sample outline that the Student could try using to fill in for his speech. The general education teacher responded that he would have the paraeducator work one-on-one with the Student.
75. On April 23 and 24, 2018, special education teacher 2 and the Parent exchanged emails about using a new "homework list with graphic organizers" that were laminated and could be used with a white board marker.
76. On May 10, 2018, the Parent and the special education teacher agreed to meet without the rest of the IEP team and amended the Student's October 2017 IEP. The amended IEP added several accommodations and modifications designed to prepare the Student to transition into the next grade level. The amended IEP did not change the setting or minutes of specially designed instruction the Student was receiving.



77. Also on May 10, 2018, special education teacher 2 emailed the principal and director regarding the Parent's question about how the special education teacher was tracking the accommodations provided in the general education classroom. Special education teacher 2 stated that she explained student accommodations and went over the IEP at a glance document with the general education teachers at the beginning of the year.

The director responded that special education teacher 2 should be helping the general education teacher provide or create accommodations, and check in on how those accommodations are working. Special education teacher 2 stated that the Parent wanted to know if she had "evidence or samples of academic accommodations in IEP's...he wants evidence that specific graphic organizers are used on every writing assignment." Special education teacher 2 stated that she doesn't work in the general education classroom with the Student on writing and that she had made "organizers and laminated them to be re-used as needed and given them to the teachers. It is up to them to use them...with the core curriculum." Special education teacher 2 stated that she believed the general education teachers were aware of accommodations and felt supported and that she saw accommodations in every classroom for students. The special education teacher stated that the Parent "wants evidence that I check up on teachers, not just supporting them to know accommodations. I feel that is above my position as their colleague and a trust issue between parent and teacher."

The principal responded that asking teachers to provide evidence was inappropriate and that it would be considered an evaluation of the teacher (and that there were union implications). The director also responded and stated that the Parent could discuss with the principal for further explanation. The director also stated that it was the special education teacher's role to set up a system with a general education teacher, check in, and rework if necessary, but not to request evidence for every time an accommodation was used.

78. On May 16, 2018, the library teacher proposed giving the Student one of the end of year awards based on his growth in her class that year. She stated that the Student had "truly grown from constant outbursts to working hard and no longer needing his menu on a daily basis."

79. On May 16, 2018, the Parent and special education teacher 2 exchanged several emails, which are summarized, in relevant part, as follows:

- The Parent emailed special education teacher 2 and asked why the Student had to sit in the corner in the lunchroom.
- Special education teacher 2 emailed and stated that she did her formal observation per the Student's BIP that day during lunch. The teacher observed that the Student attempted to sit next to or talk to another student that the Student was not supposed to talk to. The Student was offered choices and a choice break. The teacher stated that she would follow up with the paraeducators to ensure the BIP script was being used.
- The Parent replied and asked what the Student's options for lunch time were.
- The special education teacher responded that the Student was given choices about where to sit and that he was "table hopping per his own choice." The teacher also stated that she wanted a new plan for the Student for lunch because she "observed a student [the Student] who

wanted social interaction and didn't know how or where to get it and shut down." She stated that she thought the best option would be for the Student to eat with the next grade because he knows other students from the math group and his brother will be there.

80. On May 17, 2018, special education teacher 2 emailed the Parent and stated that the Student had a good day and a good lunchtime, and that the Student agreed to sit with students from the next grade as an alternative. The special education teacher also stated that she spoke with the lunch paraeducators about her observation.
81. Also on May 17, 2018, the Parent emailed special education teacher 2 and asked if he could "begin volunteering in class as [the Student's] personal aid." The special education teacher 2 forwarded the email to the principal, director, and general education teacher and asked for input because she did not feel that the Student needed an aid. The director responded and stated that the Parent could observe, but not act as a paraeducator. The principal replied and stated that the Parent could volunteer in the general education teacher's classroom and that she felt this was a "great opportunity to have [the Parent] see firsthand the good work we are doing with [the Student], and how much [the Student] has grown as a result."
82. In his reply, the Parent stated that he volunteered for approximately a week and a half at the end of the school year. The Parent stated that during this time, he did not see any of the Student's accommodations being implemented by the general education teacher, or a substitute teacher. The Parent provided an example of an assignment to write a fairy tale where a story map or graphic organizer should have been used, but was not used by the general education teacher. The Parent also felt there was not a pattern to the day, that the teacher sat behind the desk too much, that the lessons were not standards based, that work the students were doing was busy work, that the Student was set up to fail when he was called on to answer a math problem he was not in the room for, and that no rubrics were used for the fairy tale lesson, among other concerns and critiques.
83. On June 12, 2018, the District provided the Parent with progress reporting on the Student's October 2017 IEP annual goals. The progress reporting indicated that the Student was making sufficient progress on his social/emotional, one math calculation, reading, and writing goals. The progress reporting indicated that the Student mastered his other math calculation goal and was beginning to work on the next steps related to both his math goals.
84. In its response, the District also provided documentation that showed the Student's progress in the area of reading fluency as an example of the Student's growth from October 2017 through May 2018. The District's response stated that the Student moved from a "Level A (equivalent to Kindergarten Level) to Level I (equivalent to 2<sup>nd</sup> grade)."
85. In its response, the District included documentation that the Student's accommodations and modifications were implemented throughout the school year. This documentation included:
  - Work samples of writing and assessments done with a scribe and emails documenting use (alternate response accommodation);
  - Emails documenting use of reading class materials orally accommodation (math assignment, tests);

- Emails documenting extended time and works samples;
- Work samples created using speech to text and emails documenting use;
- Emails and intervention records documenting use of a separate setting when needed (separate setting for tests and quizzes accommodation);
- Examples of the Student's menu of choices used in technology class and the Student's homework plans and charts (desktop list of tasks);
- Emails documenting the Student's use of his technology menu of choices;
- Emails documenting Student having the option to provide an oral response (utilize oral responses to assignments/tests);
- Emails documenting use of preferential seating;
- Emails documenting when individualized or small group instruction was used;
- Examples of different graphic organizers used and emails documenting use; and,
- Examples of other accommodations (break cards, social stories, script for responding to arguments).

86. According to the Parent's reply, several of the examples provided by the District of work done with a scribe/alternative response accommodation (e.g., 11/16/17 work and 5/24/18 opinion assessment) were not done in the classroom, but instead were done with the Parent at home and in preparation for assessments. The Parent stated in his reply, that he had never seen any of the graphic organizers provided as examples in the District's response. The Parent also stated that he disagreed with how the speech to text accommodation was used, and that any work created with speech to text should have been rewritten by the Student after using the assistive technology to get his ideas out on paper.

87. The District's school year ended on June 15, 2018.

88. According to the Parent, the Student is no longer enrolled and attending school in the District.

## **CONCLUSIONS**

**Issue 1: IEP Implementation** – In his complaint, the Parent alleged that the District failed to provide the Student with accommodations in the general education setting. The Parent stated that the fact that the Student did not make adequate progress in his general education class was evidence of the failure to implement the Student's IEP. 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. When a district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement a student's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a student with a disability and those required by the IEP.

During the 2017-2018 school year, the Student's October 2016 (amended in January 2017) and October 2017 IEPs were in place. The IEPs provided the Student with several accommodations and modifications and specially designed instruction in the areas of reading (basic skills, comprehension, fluency), written expression, math, and social/emotional in the special education

setting. Several times throughout the school year, the Parent expressed concern that he did not see any evidence the Student was working on specific skills, making progress, or being provided accommodations in the general education classroom (e.g., December 14 email states no evidence working on his writing; February 6 email states concerns related to lack of progress and signs of regression). The Parent also stated that during times he volunteered at school, he did not see any of the Student's accommodations being implemented, and that some of the evidence the District provided in this complaint, he had never seen before (despite multiple email requests), or was work that the Student did at home with the Parent.

Throughout the school year, the Student's general education teacher sent home frequent (near daily) updates about the Student's day. These updates also often included information about strategies the teacher was trying, assistive technology (speech to text accommodation), the use of accommodations, and updates from other teachers. The District also provided additional email documentation of the Student's teachers discussing when certain accommodations were used, and provided example work created using accommodations and samples of accommodations (e.g., alternate response, read materials orally, extended time, speech to text, separate setting, list of tasks, oral responses, preferential seating, small group and individual instruction, graphic organizers). Additionally, the District began providing additional accommodations that were not listed in the Student's IEP, such as the use of break cards.<sup>9</sup>

The District's documentation also shows that District staff were generally responsive to the Parent's emailed concerns and suggestions (see below, issue no. 3) and that staff working with the Student were aware of his accommodations. Staff had internal discussions to ensure that the Student's accommodations and supports were being provided across the day and settings (see December 18 internal meeting). Finally, the District provided documentation related to the Student's progress throughout the school year on his special education goals and his progress and growth in the area of social/emotional and behavior.

While the Parent does provide examples of when accommodations were likely not provided, these occasions were infrequent (e.g., when there was a substitute teacher or in relation to several specific assignments) and represent a minor discrepancy between the services provided and the IEP. It is clear that the Parent cares about the Student and wants him to have the best education possible. OSPI also notes that some of the Parent's disagreement appears to be more a difference of opinion with regard to the teaching style in the general education classroom and the way specific lessons were taught. Any non-implementation of the accommodations represent a minor discrepancy from the Student's IEP and it is not a material failure to not implement a student's IEP 100% of the time – although OSPI reminds the District that it should always strive to substantially implement a student's educational program.

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<sup>9</sup> Many of the additional accommodations the District provided were related to behavior and were ultimately incorporated into the Student's BIP.

Based on the documentation, OSPI finds that the District substantiated that it implemented the Student's IEP, and specifically that it provided the Student with the accommodations listed in his IEP in the general education setting a majority of the time.

**Issue 2: BIP Development** – The Parent alleged that the District failed to follow procedures for creating a behavioral intervention plan (BIP) and did not utilize data. In developing a student's IEP, the team must consider the use of positive behavioral interventions and other strategies to address student behavior. This may include proactively conducting a functional behavioral assessment (FBA) and developing a BIP, and if a BIP is needed for the student, then the IEP team must include the BIP in the student's IEP. An FBA is an evaluation that focuses on identifying the function or purpose of student's behavior. Typically, the process involves looking at a range of student-specific factors (e.g., social, affective, environmental) and the FBA process is frequently used to determine what services, strategies, and modification a BIP should include. A district must obtain written consent to conduct an FBA and complete the assessment within thirty-five school days after receiving consent. The IDEA and implementing regulations do not specify who is qualified to conduct an FBA or require that an FBA be conducted by a board-certified behavior analyst (BCBA). A BIP, at minimum, should describe: the pattern of behavior that impedes a student's learning or the learning of others; conditions or circumstances that contribute to the pattern of behavior being addressed; the positive interventions and supports to reduce the pattern of behavior and increase desired prosocial behaviors; and, the skills that will be taught and monitored as alternatives.

On December 14 and 20, 2017, the Parent requested that the Student's IEP team develop a BIP for the Student and suggested that the Student needed additional support through a one-on-one paraeducator. The District responded that it would start the process of conducting an FBA focused on compliance and positive mindset and develop a BIP, and the District communicated to the Parent that the Student's IEP team would need to meet after winter break to discuss. On January 18 and January 24, 2018, the Student's IEP team met to discuss the draft FBA report and begin developing a BIP. At that time, the Parent felt that more precise data was needed and the team agreed to collect more data. According to the District, it was standard practice to continue collecting data on BIPs and review/revise at regular time intervals.

FBA: Based on the documentation in this complaint, it is unclear exactly when the District began the FBA because the District did not obtain written consent from the Parent. The Parent did state that at the meeting on January 18, 2018 the District indicated the FBA was complete, but that the Parent disagreed with the proposed FBA and the team agreed to collect additional data. On February 7 and 12, 2018, there are references in the documentation to data collection and that the data would be used to "guide the FBA and determine a target behavior for the BIP." According to the Parent, after he made a request for the data on February 13, 2018, the special education teacher told him no data had been collected. This is contradicted by the documentation that shows data were already being collected. Ultimately, the District provided documentation of the FBA's supporting data and the FBA contained all necessary elements, including recommendations for the BIP. OSPI notes that while a district may develop a BIP without conducting an FBA, an FBA is a type of evaluation and is used to provide recommendations to develop the BIP; thus, if the

district chooses to do an FBA, it should complete the FBA before developing the BIP. Ultimately, because the District did not obtain written consent from the Parent and because it is not clear that the District completed the FBA within the requisite 35 school days, the District is in violation. Because the Student is no longer enrolled in the District, there are no Student specific corrective actions. The District will develop written guidance on the FBA process.

BIP: According to the District, the team implemented the BIP as written on January 24 as a "draft" BIP, while continuing to collect data. This caused confusion because it appeared that there was no BIP in effect as it was marked "not finished" even though the BIP was being implemented in draft form. The Parent confirms that he was confused by this process. OSPI notes that there may have been additional confusion because the documentation indicates that the team continued to update and develop *both* the FBA and the BIP, while implementing a draft version of the BIP.

Throughout the process, the Parent had many suggestions for the team and the documentation indicates that the District was receptive to the Parent's suggestions. The District continued to gather data on the Student's behaviors and develop potential strategies (see e.g., principal's draft safety plan, behavior charts, data collection sheets, director and psychologist observations) and the Student's IEP team met on February 20, March 20, and April 12, 2018 to review the data, and revise and refine the BIP. According to the District, on April 12, the BIP was considered final. On May 17, 2018, as part of the BIP, the special education teacher observed the Student at lunch and continued to make adjustments to behavior strategies based on observations of the Student (e.g., the special education teacher determined that the Student may need a new plan for where to sit at lunch).

On review, the draft and final BIP contain all the required elements, including: a description the pattern of behaviors, conditions and circumstances, positive interventions, supports to reduce behaviors, desired prosocial behaviors, and skills to be taught and monitored. OSPI notes that, as the District recognizes, because the team continued to collect data and develop the BIP while implementing the draft BIP, there was confusion regarding whether or not behavior interventions were actually being implemented. Regardless, it was not improper for the District to implement a draft BIP and try out/monitor behavior strategies while continuing to refine the plan. OSPI strongly recommends that the District review its policies and procedures around conducting FBAs and developing BIPs; and if faced with a similar situation, encourages the District to clearly communicate with a family the plan for implementing a draft behavior plan.

OSPI finds that the District followed the procedures and properly developed the Student's BIP.

**Issue 3: Requests for IEP Meetings** – The Parent alleged that the District failed to respond to his requests for information about the Student's services and changes that the Parent wanted the IEP team to make. When a parent or district believes that a required component of a student's IEP should change in order to ensure the provisions of a free appropriate public education (FAPE) to a student, the district must convene an IEP meeting. The district must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. If the district believes no change is necessary to ensure the provision of FAPE, the district may refuse to hold an IEP meeting and must provide the parent written notice explaining the refusal.

IEP Meetings: According to the documentation in this complaint, during the 2017-2018 school year, the Student's IEP team met on October 3, 2017 to develop the Student's annual IEP and on May 10, 2018 to amend the IEP.<sup>10</sup> The team also met on January 18, January 24, February 20, March 20, and April 12, 2018 to discuss the Student's FBA and develop the Student's BIP. There is no indication in the documentation that there was any conflict around scheduling any of these meetings and the documentation shows that the Parent attended and participated in all meetings. Based on the documentation in this complaint, OSPI finds that the District followed procedures and properly scheduled all of the listed IEP meetings.

Evaluation & Placement Requests: In September 2017, the Parent requested that the Student be reevaluated. Special education teacher 1 responded and stated that she would forward the Parent's request to the school psychologist; there is no documentation that further follow up was done. On February 6, 2018, the Parent, in an email, requested the principal's help in looking at different placement options for the Student. The principal indicated that special education teacher 2 would reach out to set up an IEP meeting. The Parent stated that he did not receive any further response regarding his placement request. There is no indication in the documentation that a reevaluation or placement was discussed at the IEP meetings listed above. Both the request for a reevaluation and the request to discuss the Student's placement should have triggered an IEP meeting. Therefore, the District did not properly respond to all requests for IEP meetings and will be required to develop guidance regarding when a district should schedule IEP meetings.

Changes to Educational Program: Throughout the school year, the Parent often communicated with the Student's general education and special education teachers with questions, suggestions, and things he would like to see as part of the Student's education (e.g., provided tips for working with students with ADHD and other disorders, asked to see work samples/graphic organizers/strategies for each lesson, suggested strategies for behavior, needed a one-on-one paraeducator). The Parent stated in his reply that he intended his emails as requests to discuss the suggestions at an IEP meeting and that he wanted the strategies he listed added to the Student's IEP. The Parent also stated that even when accommodations were listed on the agenda for the above listed IEP meetings, there was not enough time to discuss anything except the FBA and BIP.

The documentation indicates that District staff were responsive to the Parent's emails, considered, and often implemented the Parent's suggestions. In response to some emails, staff thanked the Parent and seemed receptive to his suggestions (e.g., use of organization binder, increase use of positive behavior supports, and providing written homework plans when requested). District staff frequently updated the Parent on the Student's progress and offered to set up access to web applications and Google Documents so the Parent could view the Student's writing and other work. There is no evidence that the Parent accessed these options. Staff also stated that they would and did discuss many of the Parent's requests in internal staffing meetings (e.g., meeting

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<sup>10</sup> On May 10, 2018, the Parent and the special education teacher met and amended the Student's IEP, they both agreed to meet without the rest of the IEP team.

on December 18 where they discussed progress reporting, homework, starting the FBA, behavior, positive relationships, support, and accommodations).

In some cases, the District responded that they would discuss the Parent's concerns at an IEP meeting (see e.g., December 21 response to Parent's December 20 email). The documentation indicates that the District addressed *some* of the Parent's concerns at the IEP meetings described above; for example, the documentation indicates that the District planned to address the Parent's December 2017 request for a one-on-one paraeducator at the meeting scheduled in January 2018 and that while the District rejected the paraeducator request, it addressed this concern by beginning an FBA and developing a BIP. However, based on the documentation, it does not appear that *all* the Parent's concerns and requests for the use of specific strategies were resolved at the listed IEP meetings, given that the Parent continued to make requests and that some of the requested accommodations were not added to the Student's IEP until May 2018.

It is clear that the school and District staff were diligent in responding to the Parent's concerns and suggestions. OSPI also notes that a district is not required to schedule an IEP meeting every time a parent makes a suggestion or requests a specific strategy be used. However, given that the Parent made the same or similar requests throughout the year, and because there is no indication that other aspects of the Student's program were addressed at the FBA/BIP meetings, the District should have scheduled a separate IEP meeting prior to the May 2018 meeting to address the Parent's concerns. Because the Student is no longer enrolled in the District, there are no Student specific corrective actions. The District will address this in the required guidance.

### **CORRECTIVE ACTION**

By or before **December 7, 2018** and **February 1, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

By or before **November 30, 2018**, the District will develop written guidance on the procedures for conducting functional behavioral assessments (FBAs) and for responding to a parent's request for an IEP meeting, including best practices for helping IEP teams respond to a parent's concerns. The guidance will be provided to the principal and all certificated special education staff, including educational staff associates (ESA) at the school identified in this complaint. ESAs include school psychologists, physical therapists, speech language pathologists, school counselors, and other service providers. The guidance will include examples.

By **December 7, 2018**, the District will submit a draft of the written guidance to OSPI. OSPI will approve the guidance or provide comments by December 21, 2018 and provide additional dates for review, if needed.



By or before **January 25, 2019**, the District will provide the written guidance to the above listed individuals and ensure that the staff have an opportunity to review the guidance and ask questions. By **February 1, 2019**, the District will provide OSPI with documentation that the staff has reviewed the written guidance. The documentation will include an official human resources roster of the required staff, so OSPI can cross-reference the list with the actual recipients.

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

### **RECOMMENDATIONS**

In its response, the District indicated that in future, District training will include information regarding leaving documents in draft form versus defining when a BIP is completed and scheduled for review/revision. OSPI strongly recommends that the District review its policies and procedures on conducting FBAs and developing BIPs, and include the proposed in future staff training.

OSPI also notes that implementation concerns did arise more frequently in this complaint when there was a substitute teacher, and that staff took steps to address this concern. OSPI recommends that the District review its procedures and provide future training for communicating with substitute teachers about students with IEPs.

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