

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-26

PROCEDURAL HISTORY

On April 8, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the Parent's attorney (Complainant) of a student (Student) attending the Fife School District (District). The Complainant 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 April 9, 2019, 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 April 25, 2019, OSPI received the District's response to the complaint and forwarded it to the Complainant on April 29, 2019. OSPI invited the Complainant to reply with any information he had that was inconsistent with the District's information.

On May 10, 2019, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on the same day.

On May 15, 2019, OSPI received additional information from the District. OSPI forwarded the additional information to the Complainant on the same day.

On May 2, 2019, the OSPI complaint investigator conducted interviews with the District principal, assistant principal, the special education director, the general education teacher, the special education, and the paraeducator.

On May 13, 2019, the OSPI complaint investigator interviewed the Parent by phone.

OSPI considered all of the information provided by the Parent, Complainant, and the District as part of its investigation. It also considered the information received during the site visit/interviews.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on April 9, 2018. 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 period.

ISSUES

1. Did the District implement the Student's transfer individualized education program (IEP), including the accommodation to provide the Student with explicit instruction in social skills?
2. Did the District follow the required procedures at the April 25, 2018 IEP meeting in determining whether the Student required the services of a one-to-one paraeducator?

3. Did the District review and revise, as necessary, the Student's IEP to address the Parent's safety concerns and the Student's school refusal?

LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met that legal standard. OSPI reviews the documentation received from a complainant and district to determine whether there is sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

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

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105(3)(a).

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents: (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child;

(2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in state and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

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).

Consideration of Special Factors: 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; consider the language needs of the student; in the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's needs, that instruction in or the use of Braille is not appropriate for the student; consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs including opportunities for direct instruction in the student's mode of language and communication; and, whether the student needs assistive technology devices and services. 34 CFR §300.324; WAC 392-172A-03110(2).

Positive Behavioral Interventions: Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior. WAC 392-172A-01142.

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. In conducting its review of a

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

Definition of Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. A need for special education is not limited strictly to academics; it also may include physical education, transition services, behavioral progress, and the acquisition of appropriate social and/or organizational skills. 34 CFR §300.39; WAC 392-172A-01175.

Related Services: Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 CFR §300.34(a); WAC 392-172A-01155(1).

FINDINGS OF FACT

Background

1. During the 2016-2017 school year, the Student was a 5-year-old who first attended school in another state and was found eligible to receive special education services under the category of developmental delay.
2. On October 8, 2016, a neuropsychological evaluation was conducted. The results showed the Student's early milestones were within normal limits, but she began to have "meltdowns" at approximately age one and half. The Student was noted to demonstrate kicking, biting, and scratching.
3. On November 8, 2016, the previous school district met to review the results of an evaluation of the Student. Based on the previous neuropsychological evaluation results and Parent

concerns, the district determined the Student was eligible for special education under the category of developmental delay and required specially designed instruction. According to the documentation, the Parent chose to keep the Student in a private preschool and declined special education services from the district.

4. On May 22, 2017, another neuropsychological evaluation was conducted. The Student demonstrated difficulties in the following areas: adaptive and executive functioning; verbal and nonverbal social skills; limited reciprocity; difficulty initiating and sustaining peer interactions; poor perspective taking; self-regulation deficits; sensory differences; rigid behaviors and thinking; and stereotyped behaviors. The Student was diagnosed with autism spectrum disorder, attention-deficit hyperactive disorder (ADHD), and pica.¹

2017-2018 School Year

5. On February 6, 2018, the previous district in another state conducted an annual review of the Student's individualized education program (IEP). The new IEP noted that the Student was "able to arrive at school, hang up her coat, remove items from her backpack, etc..." She wanted to be liked but would have hurt feelings when others did not like or share her ideas. The IEP stated, "At times, she has difficulty sharing with others and can be seen as bossy." The IEP also stated:

[Student] is able to express her feelings of upset very well when she is at home. Those feelings often manifest themselves as yelling, screaming, hitting, kicking, and running away. When she is upset at school, [Student] does not verbalize or demonstrate it. Rather, she holds her feelings in and then "explodes" at home. She has eloped in the past and now wears a Project Lifesaver bracelet. [Student] is beginning to open up and share her feelings in her Social Skills group each afternoon.

The IEP stated, "[Student's] delays in the areas of behavior and social/emotional impact her ability to participate in general education without support. Special education staff will provide behavior modification assistance directed toward helping her modify and regulate her behavior by developing specific age appropriate behaviors." However, the IEP also stated that her behavior did not impede her learning or the learning of others to the extent the Student required a behavioral intervention plan but her pica behavior did require "supervision for safety."

The IEP provided for annual goals and accompanying benchmarks/short term objectives in the areas of safety awareness, coping skills, and appropriate behavior (See Appendix A). In addition, the following accommodations were provided to the Student:

Advance appropriately toward annual goals:

- Explicit instruction in social skills
- Sensory Breaks
- Safe/quiet spot to go when needed
- Access to calming tools/strategies
- Behavior Data Collection Sheet

¹ Pica is an eating disorder that involves eating items that are not food.

Be involved in and progress in the general curriculum

- Visual classroom schedule
- Warning of transitions
- Opportunity to practice behaviors again
- Supervision for safety, especially playground or at recess
- Supervision on field trips
- Lifesaver Watch: Activate by calling 911 if [Student] is missing, tell dispatcher she is part of Project Lifesaver. Frequency XXX.XXX²

The IEP provided specially designed instruction in the area of social/behavior in the special education setting for 30 minutes, five times a week.

6. According to the complaint, the Parent met with the District special education teacher on or around February 22, 2018, and the Parent requested an IEP meeting. The complaint stated the District indicated that once they became familiar with the Student, they would have an IEP meeting.
7. During March 2018, the Parent had residency issues which required her to switch districts. While living in another district, the Parent requested a choice transfer waiver to attend the District, which was approved on April 6, 2018, according to the complaint.
8. On March 5, 2018, the Student began attending school in the District. According to the District, the special education teacher took the following steps to "support a smooth transition for the Student:"
 - A tour of the school
 - One-to-one meeting with the general education teacher before starting school
 - Additional adult 1:1 supervision for the first two weeks due to concerns about possible elopement
 - Staff planning and scheduling with the paraeducators
 - Meeting with school counselor
 - Ongoing monitoring of the Student's progress and safety needs

According to the Complainant's reply, the Parent was unaware of the additional 1:1 support being provided and to what extent, if any, it was actually provided.

9. On March 12, 2018, after receiving the Student's records from the previous school district, the District provided prior written notice to the Parent, stating that the District "verified and accepted" the records. The notice stated that the Student was eligible under the category of developmental delay in the areas of adaptive behavior and social/emotional behavior. The notice also stated the following, in part:

While [Student's] evaluation recommended SDI (specially designed instruction) in adaptive behavior (safety) and social/emotional (social skills, emotional regulation) and her IEP addresses safety, social skills, and emotional regulation, these goals are clumped together, and the matrix only includes "social/behavioral." An IEP revision will be needed to separate out the two areas.

² This frequency tracks the individual student

10. In the District's response to the complaint, the District provided a description, written by the special education teacher and dated March 2018, of the specially designed instruction for social skills training that was provided to the Student. The instruction was as follows:
- Positive Behavioral Interventions and Supports (PBIS) Tier 1 (school-wide expectations and rules)
 - PBIS Tier 2 (specific check-in, check-out behavior chart)
 - Kelso's Choices (problem-solving curriculum)
 - Zones of Regulation (curriculum for self-regulation and emotional control including calm down strategies and calm down corner)
 - Conscious Discipline (curriculum to cultivate emotional intelligence through self-regulation program integrating social/emotional learning and discipline)
11. The District also conducted daily behavior charting of the following behaviors: 1) responding respectfully to the teacher, taking turns with peers, and accepting others' ideas; 2) refraining from blurting out, refraining from screaming in class and asking for what she needs with respectful words; and, 3) listening to teacher directions the first time and transitioning from one activity to another with one reminder. The data from March 19, 2018 to April 18, 2018 indicated the Student was consistently displaying appropriate behavior, except on two occasions. District staff reported two incidents in which the Student displayed significant behavior: one was when the bow on her shoe fell off and the other time was when there was a substitute paraeducator in the classroom.
12. From April 2 to April 6, 2018, the District was on spring break.
13. On April 9, 2018, the one-year time limit began for the complaint.
14. On April 16, 2018, the Parent was informed by the District that the choice transfer for the Student to attend in the District for the 2018-2019 school year was not approved.
15. In mid-April 2018, according to the complaint, the Parent again requested an IEP meeting because the Student was complaining of being "assaulted on almost a daily basis," mostly during recess time.³ The Parent reported the Student stated that when she went to the recess monitors for help, she was either "rebuffed or told Kelso's choice." The Parent stated the Student was not being provided explicit instruction on social skills.
16. Between March 5 and April 17, 2018, the documentation indicated that the Student's general education teacher (teacher 1) and the Parent exchanged numerous messages through mobile messaging, mostly about health issues and eating. There was one message from the Parent that stated the Student was having a "rough morning" because the Student had a substitute.

³ The Complainant provided no documentation that the Parent reported the alleged assaults to the District in writing. District Policy # 3207 states: "At any time, a student or their parent/guardian may submit a formal complaint regarding harassment, intimidation and bullying using the district form. Formal complaints are submitted to the principal." According to the District, the reporting procedure is in the student handbook and on the District's website.

17. On April 17, 2018, the Student did not attend school. The complaint alleged the Student refused to go to school.
18. On April 18, 2018, the complaint alleged the Student also became upset over an incident when teacher 1 forgot to text the Parent, which impeded the Student's trust with the teacher. As a result, the Student began to refuse to go to school from April 19 to May 8, 2018.
19. The District provided documentation, dated April 18, 2018, of the special education progress towards the Student's three annual goals. The progress reports showed that the Student had met two of the three short term objectives or benchmarks under the annual goal of safety awareness, achieved 80% of goal to learn to express her feelings and demonstrate appropriate social skills, and meeting the goal of 95% on the daily rating sheet.⁴
20. On April 18, 2018, according to the District, the Student began wearing a "Gizmowatch" that the Parent provided the Student.⁵ The Parent stated the purpose of the watch was to track the Student's location. According to the Parent, the Student has a history of elopement at home but there was no documentation of elopement at school. The District's response stated, "The Gizmo was informally allowed through the end of the Student's school year." However, the District attempted to monitor the Student's use of the gizmowatch as a communication device and encouraged the Student to use the school phone in place of the gizmowatch to call the Parent if needed.
21. On April 19, 2018, the Parent emailed the District superintendent and copied the school's principal. The Parent expressed concerns about the Student feeling anxious or unsafe on a number of occasions, including the following:
 - The Student was being "assaulted on the playground" and staff addressed it by asking the Student "what are you going to do about it?," "pick a Kelso's choice," or nothing at all.
 - Another student allegedly "hit" the Student and the teacher "justified the assault" by telling the Student "...he's not used to being around kids yet."
 - Student was denied going to the nurse "several times" including when she hit her head.
 - Another student pulled her hood.
 - Despite being in "hysterics," staff sent the Student to music class instead of having the Parent pick her up from school.
 - The general education teacher did not send a text message to the Parent to pick up the Student even though the teacher told the Student she would.
22. On April 20, 2018, according to the District, the Parent and District discussed the Student's anxiety and school refusal by phone. The principal agreed to mark the Student's absences as excused absences until an IEP meeting could be held.

⁴ See Appendix B.

⁵ The Gizmowatch allows the Student to communicate directly with the Parent, either by voice or text messages and tracks the Student's location.

23. From March 6 to April 24, 2018, the Student attended school, either full day or part day, 22 out of a possible 32 days of instruction.
24. On April 25, 2018, the District held a meeting to review and revise the Student's IEP. The amended IEP changed the specially designed instruction from social emotional/behavioral to adaptive behavior and social emotional/behavioral. The frequency of service increased from 30 minutes, five times a week to 30 minutes, five times a week for both areas. According to the District, at the end of the meeting, the District proposed a "re-entry" meeting on May 1, 2018 with the Parent to address the Student's school refusal. The District proposed the following behavior interventions and supports:
- Change the general education classroom;
 - Have a paraeducator meet the Student upon arrival at the parent pickup location;
 - Have the same paraeducator from the previous teacher provide support at recess, for supervision, instruction, and reflection by use of a recess rating charter completed by the Student;
 - Thirty minutes of weekly counselor support in a general education girls' social skills group; and,
 - Change the behavior data tracking sheet to provide more information to the Parent and give the Parent an opportunity to provide feedback.

The two-page amendment to the IEP did not change the determination that the Student's behavior did not negatively impact her learning or the learning of others and the accommodations were unchanged.

25. At the IEP meeting, the complaint alleged that the principal asked the Student what she needed to return to school. The complaint stated, "[Student] replied that she would come to school if she had an aide."
26. Regarding the review of the April 2018 IEP, the District in its response to the complaint stated: Yes, the District reviewed the IEP, adjusted the data collection tool for positive behaviors, and offered to reconvene a follow-up IEP meeting to discuss the Parent's concerns about safety and school refusal in preparation for a change to a new teacher's classroom. Additional ongoing adjustments to support the Student were made throughout the remaining weeks of school without formal IEP revision. Formal IEP revision was not required for these adjustments.
27. On April 29, 2018, the Parent emailed the principal regarding the May 1 meeting and stated: I'm requesting permission to audio record this meeting as [father] will not be present and would like to be kept abreast of what takes place with our daughter's education, as he will be staying home with [Student]. I know you said you didn't allow us to audio record the meeting when we requested, because you like prior knowledge so you can be prepared to also record. So since this an extension of that meeting, this is my giving you notice.

On the same day, the principal replied by email to the Parent. The email stated: We will not accommodate your request for tape recording the meeting. However, we would be willing to Face Time or phone conference with your husband if that would work. Another option is we can take notes during the meeting and project them on the screen so everyone in the room sees the same messages. We could then print them and send them home with

you. We find this method to be effective during meetings. Please let me know how you would like for me to proceed so I can have the proper equipment ready.

On the same day, the Parent replied to the principal, stating:

[Father] will be unable to participate via phone or FaceTime, as he will be with [Student]. If that is what we are going to do, he may as well just attend the meeting with her as well. She will be able to hear what is being said. I'm not sure why our request to audio record is being denied. It's actually the best option. It safeguards both parties, then anything that is said is on record, and we can go back and listen and not have to try to remember what exactly was said, we have it verbatim. So, I guess we will just bring [Student] to the meeting as well, however, as with the last one, it's not going to go smoothly.

28. According to the prior written notice, dated April 30, 2018, from the April 25, 2018 IEP meeting, the District proposed changing the service matrix to include adaptive and social emotional/behavioral and increasing the amount of specially designed instruction to 60 minutes a day. The notice also stated that the Parent requested a "certified teacher to teach [Student] at their home due to school avoidance behaviors" and a "1:1 assistant all day at school." In addition, the Parent requested to record the IEP meeting. The District refused the request for a teacher at home and the 1:1 assistant at school because "there is no data to support the need for a certified teacher to teach [Student] or a 1:1 assistant all day at school." The District also refused to permit the Parent to record the IEP, but "reminded the parents that they could take notes instead." The complaint alleged the Parent did not receive the prior written notice, which the District disputes. There was no contemporaneous documentation that the notice was provided to the Parent, and there was also no documentation that the Parent raised the issue at the time.

29. Regarding the Parent's request for a one-to-one assistant, the complaint stated the Student had a registered behavior technician (RBT) in the previous school district in another state that was funded by private insurance. The Student's transfer IEP from the previous state did not provide a one-to-one assistant. The Parent requested a one-to-one behavior assistant and offered to fund the service through private insurance. The complaint alleged that the principal unilaterally declined the Parent's offer to provide the one-on-one assistant. In an interview with the school principal, the school principal did not recall the discussion at the April 2018 IEP meeting.

30. On May 1, 2018, the principal emailed the Parent, stating:

[Student] is welcome at the meeting. We have the projector and computer set up so we can all see the notes at the same time and make any correctives needed during the meeting. Our goal is to develop a system of supports for [Student] as she enters her new classroom so she will have a successful school experience. We look forward to our meeting today.

On the same day prior to the meeting, the Parent emailed the principal and stated, "A projector isn't necessary. I'll be writing my notes. Thank you."

31. Regarding the May 2018 meeting, the complaint stated:

...Prior to the reentry meeting, the Principal told [Parent] something to the effect of, "other [District employees] did not need to be involved in the re-entry meeting." To the extent

that a re-entry meeting was held without [Parent], it is because the District did not provide appropriate notice of the meeting to [Parent]. Notably, the District did not produce a single email or letter indicating that [Parent] received notice of re-entry meeting for her daughter.

32. On May 1, 2018, the District held the re-entry meeting, but the Parent did not attend. According to the District, the following re-entry plan was discussed with staff:

- Check-in, Check-out
- Playground plan (skills instruction and contact person)
- General education girls' group with counselor
- End of the day routine
- Communication plan

The principal later called the Parent about the meeting, and according to the Parent, she believed the phone call was the re-entry meeting.

33. Also on May 1, 2018, the Parent provided the District with a letter, dated April 18, 2018 from the Student's physician, stating the following:

...[Student] is diagnosed with autism spectrum disorder, traumatic brain injury, ADHD (attention deficit-hyperactive disorder), and anxiety. As a direct result of [Student's] medical conditions, she struggles with hyperactivity, impulsivity, fearfulness, and reading social cues. These difficulties directly impact her functioning in the academic setting. [Student's] mother and I have discussed that I do not believe that her IEP from [previous state] is sufficient to provide [Student] a free and appropriate education commensurate with her learning potential, and that it should be re-evaluated as soon as possible. This re-evaluation should include both repeat academic testing, a functional behavioral analysis of any identified problematics, a behavior intervention plan if one is needed, and, of course, any specially-designed educational curriculum deemed appropriate.

34. On the same day, the Parent signed a letter to revoke consent for the District to have access to the Student's "medical, dental, psychological, psychiatric records without our permission first in writing."

35. The District responded to the physician's recommendations in a prior written notice, dated May 1, 2018. The notice stated, in part:

On May 1, 2018, the district received a written request for a reevaluation, a functional behavioral assessment (FBA) and a behavior intervention plan (BIP) via parent from [Student's] physician. During the conference call that same day with both parents, [Student's] case manager/special education teacher, the principal, the school counselor, and the school psychologist, the district declined to initiate a reevaluation at this time.

The reason the district declined to initiate a reevaluation at this time is twofold:

- 1) [Student] had an amendment reevaluation less than a year ago, and the district believes the data in that evaluation is current and valid. In fact, she has had four evaluations in a 2-year span: a May 2016 private neuropsychological evaluation, a November 2016 public education evaluation, a May 2017 private neuropsychological evaluation, and an August 2017 amendment evaluation to consider the most recent neuropsychological.
- 2) [The Student] has met her behavior goals approximately 95% of the time as demonstrated by her behavior tracking sheets. This does NOT support the need for a

reevaluation, an IEP revision, or an FBA; rather, it supports [Student] is in her least restrictive environment and is accessing free and appropriate public education.

Multidisciplinary teams and IEP teams consider all outside recommendations but do not need to implement every recommendation. To this, [Parent] responded she would like [Student's] physician to attend a meeting as an advocate, which is her right as a parent.

No changes were made to the IEP during this meeting. However, the following components of [Student's] IEP were discussed, and [Parent] is considering whether or not she will request the following changes:

- 1) [Student's] IEP accommodations include sensory 'breaks,' but a schedule is not specified. [Parent] is considering asking for specific times to be put in the IEP.
- 2) A 4/25/18 IEP revision meeting added 30 minutes, 2x a week of explicit social skills instruction with the school counselor and during the last recess with an educational assistant. [Parent] does not know if she wants this instruction to take place during [Student's] recess.

In both situations, [Parent] is responsible for reporting her decision back to school staff. [Student] has been in attendance 17 of 32 days enrolled. She has been assigned a new classroom and is scheduled to come meet that classroom teacher on 5/2/18 at 3:45.

36. On May 2, 2018, the Parent and Student met the new general education teacher (teacher 2) and on May 4, 2018, the Parent and Student met with the assistant principal to talk about the Student returning to school.

37. On May 8, 2018, the Parent signed consent for the District to release the following information to Seattle Hospital:

- Developmental evaluation
- Verbal exchange of information
- Laboratory reports
- Education records
- "Individualized Education Plan"

The Parent's consent permitted Seattle Hospital to release "specific records as requested by parent/patient" and a "verbal exchange of information" with the District.

38. According to the District, on May 14, 2018, the District received the Parent's written consent to talk with the Student's physician. After receiving an email from the Student's physician, the assistant principal and the physician discussed the Student in a phone call. According to the District, the physician stated the Student's behaviors were a manifestation of autism. The District invited the physician to observe the Student at school but there was no follow up communication or observation after the phone call. In the Complainant's reply, the physician indicated that traumatic brain injury, attention deficit-hyperactive disorder, and anxiety would have been included in the discussion with the District. The physician also reported that the District did not invite the physician to observe the Student at school.

39. According to the documentation, on numerous occasions, the Student came to school and became anxious when the Parent would attempt to leave, which prompted the Parent to take

the Student home. The District attempted to implement a plan during May and June to address the Student's separation anxiety when the Parent dropped the Student off at school. Before the plan, the Parent would take the Student directly to the classroom. The original plan was for the designated paraeducator to wait for the Student at the front entry of the school and escort the Student to class without the Parent. The District stated this plan was unsuccessful because the Parent and the Student sought out the assistant principal. The complaint stated that the paraeducator who was assigned to meet the Student was not always available and was assisting other students. The District disputed this and stated the paraeducator was consistently available to escort the Student to the classroom, but the Student was sometimes late getting to school.

The plan was later modified to have the Parent and the Student first check in with the assistant principal. The plan with the assistant principal and how it evolved was described by the District as follows:

...On several occasions, the Parent(s) would arrive, ask for the Assistant Principal, and escort the Student to the classroom, which was not the plan, and the Student would experience difficulties separating from the Parent(s) with or without the Assistant Principal's help. On numerous occasions, the Assistant Principal encouraged the Parent(s) to separate from the Student in the lobby, rather than in the classroom, but the Parent(s) insisted on escorting the Student to the classroom and separating there. At times the strategy was not effective, and the Parents took the Student home, and generally it was somewhat disruptive to the general education classroom. Because of the Parents' persistent request upon arrival, from 5/9/18 the morning check-in was done by the Assistant Principal. The Assistant Principal would be summoned (by Parent request) to meet the Student and Parent(s) in the lobby or outside the classroom, then would speak with the Student with Parent(s) present, then they would enter the classroom arriving up to 10-30 minutes after the tardy bell, depending on the Student's readiness to participate. On at least one occasion, the Assistant Principal was unavailable to do this check-in, and the Parent took the Student back home, even though this was not the team's plan.

40. According to the Complainant's reply, the Parent was not informed of the plan to use a paraeducator, because it was an "informal" plan. The Parent tried to separate from the Student in the lobby but "it did not work." The assistant principal appeared to facilitate a successful transition. Lastly, the complaint alleged that the assistant principal encouraged the Parent to take the Student home when separation from the Parent was difficult. The assistant principal disputed the Parent's statement (see interview below).
41. The District provided documentation, dated April 18, 2018, of the special education progress report towards the Student's three annual goals. The progress reports showed that the Student had met two of the three short term objectives or benchmarks under the annual goal of safety awareness, achieved 90% and 85% towards the short term objectives under the goal to learn to express her feelings and demonstrate appropriate social skills, and met the goal of 95% on the daily rating sheet.⁶ The District also provided a "daily check-in, check-out" data summary from May 9 to June 14, 2018, in which the Student earned points for "caring for

⁶ See Appendix B.

others, caring for her actions, and caring for her learning." The Student exceeded the goal of 80% each day.

42. On April 8, 2019, this complaint was received by OSPI.
43. From April 9, 2018, the date the timeline for the complaint to begin, to June 18, 2018, when the Parent withdrew the Student from the District, the Student "attended some or all of 23 of 48 possible days of school," eleven of those attendance were after the Student was changed to teacher 2's classroom.
44. On June 18, 2018, the Parent withdrew the Student from the District.
45. On June 21, 2018, the 2017-2018 school year ended in the District.

Interviews

Parent Interview

46. In an interview with the Parent, the Parent was asked about the purpose of the "Gizmowatch." The Parent stated she had given the Student the Gizmowatch because the Student had a history of elopement from home. The purpose of the watch was to track the Student in case of elopement. When asked if the Student had any incidents of elopement at school, the Parent replied she had not. Regarding the communication part of the watch, the Parent stated it was not used except on one occasion when a staff member permitted the Student to call the Parent. The Student used the phone in the school's office when she needed to call the Parent.

The Parent also stated that she had requested a one-to-one assistant at the April 25, 2018 IEP meeting. She had informed the District that the previous school district permitted a private registered behavior technician (RBT) to provide the one-to-one behavior services to the Student at school. The Parent paid for the services through their own insurance. According to the Parent, the IEP from the previous school district provided no one-to-one services because the Parent switched providers and the Parent was going to move soon. When the Parent requested a one-to-one assistant and offered to pay for it, the principal denied the request to permit the privately funded RBT to work with the Student at school.

The Parent also addressed when the Student arrived at school. The Parent stated there was never a discussion about a "plan." She stated she would take the Student to the classroom "like any other parent would."⁷ The paraeducator sometimes helped out, but when she was not around, the Parent and the Student would seek out the assistant principal at which point the Student would sometimes separate from the Parent and other times the separation occurred in the classroom.

⁷ According to the District, the school's normal procedures for parents to drop off their children was at a designated location along the school's driveway.

Principal Interview

47. In an interview with the school principal, the principal stated she had fourteen years' experience as the principal. The principal observed the Student's classroom and formally evaluated the Students' teachers twice. She also did classroom walkthroughs at least once a week and had observed the Student. She reported no concerns about the Student's IEP being implemented appropriately.
48. The principal attended the April 2018 IEP meeting. When asked about the discussion of the Parent's request for a one-to-one paraeducator, the principal was unable to recall the discussion.

Assistant Principal Interview

49. In an interview with the assistant principal, the assistant principal stated she had six years' experience in that role. The investigator asked how the school ensured that the Student's IEP was implemented with fidelity. The assistant principal stated that she reviewed IEPs, conducted formal and informal observations of staff, and did walk-throughs of the classroom. Teachers also kept data to review progress towards annual goals. Regarding teacher 2's classroom, the assistant principal reported no concerns regarding the implementation of the Student's IEP.

The assistant principal stated that the Parent had been briefed on each plan to have the Parent drop off the Student at school. The Parent did not always follow the plan. When asked in the interview whether the assistant principal suggested that the Parent take the Student home when the Student experienced anxiety over separating with her mother, the assistant principal stated she did not suggest at any time that the Parent take the Student home. She stated the Parent taking the Student home would have been counterproductive with trying to keep the Student at school and would reinforce the negative behavior. The assistant principal also noted that the school had considerable experience dealing with separation anxiety, including situations more complicated than the present case.

Special Education Teacher Interview

50. In an interview with the special education teacher, the teacher stated that she had been a certified special education teacher for three years but had taught in preschool and first grade for 24 years. The teacher reported that she was informed of her responsibilities under the Student's IEP and had access to the Student's IEP. The teacher was formally evaluated twice and met with the principal regularly. The teacher also supervised the classroom paraeducator. The teacher reported that the District provided explicit instruction in social skills, both within the classroom and outside the classroom, such as recess. The District used the Kelso's Choice curriculum to help the Student problem solve social situations and staff would prompt the Student to use the method by saying "Kelso's Choice." Regarding the Student, the teacher stated that when the Student first attended school in the District, the Student's target behaviors were talking out loud and the incidents involving the Student's shoe and a substitute teacher. After the alleged miscommunication with the general education teacher in April 2018,

the Student began showing difficulty with separating from the Parent when arriving at school. Otherwise, no significant behavior was noted. When asked if a functional behavioral assessment or behavioral intervention plan was warranted, the teacher stated the Student "did not need it." According to the teacher's observations of the Student, once the Student separated from the Parent, the Student's behavior was generally fine and did not show any significant anxiety or other inappropriate behavior for a six-year old student.

Teacher 1 Interview

51. According to teacher 1, she worked with the Student from the time the Student began attending school in March 2018 to when the Student was moved to a different classroom in May 2018. The teacher reported that the special education teacher met with her in March 2018 to show her the Student's IEP and gave suggestions. The teacher stated she had access to the Student's IEP. Regarding the Student, the teacher stated the Student was "totally capable" but could have some "idiosyncrasies" which were "unremarkable." Regarding instruction, the teacher stated the Student received "explicit instruction" with a one-to-one paraeducator. Other behavior supports and strategies included class meetings, talking with the Student about behavior strategies, a "calming corner," a "safe place to hide," and breathing strategies. The teacher noted that other staff reported that the Student was "anxious" when there was a substitute teacher. When asked about the Gizmowatch, teacher 1 stated there was no discussion about the use of the phone, but to stop the Student from crying, the Student would text her Parent.

Teacher 2 Interview

52. According to Teacher 2, the Student was placed in her classroom in May 2018. The teacher received a highlighted copy of the Student's IEP. Academically, teacher 2 stated the Student easily completed tasks and read well. Behaviorally, teacher 2 described the Student as "anxious" when attempting to separate from her Parent when brought to school. There was a procedure for separating the Student and the Parent that was effective if the assistant principal was available to assist the Parent and Student. The teacher also stated the Student received explicit instruction "how to talk through frustration without screaming and telling everyone to shut up." Teacher 2 stated that the behavioral supports and strategies had not been implemented long enough to determine they were going to be successful in her classroom. When asked why the Student did not need a one-to-one paraeducator throughout the school day, teacher 2 replied that the time the paraeducator in her classroom was working with the Student, particularly when there was a conflict, was appropriate. Any more time with the paraeducator would have been "overly restrictive."

Paraeducator

53. In an interview with the paraeducator, the paraeducator stated her role was to greet the Student in the morning, get her settled in, assist the Student during recess, discuss problems after recess with the Student, and check in with the Student at the end of the day. The paraeducator described the Student as anxious at times and the most difficult time was when

the Parent took the Student to the classroom. The paraeducator stated the Student was sometimes difficult to teach because the Student would say she knew already what to do. Regarding the Student being dropped off, the paraeducator stated the Student "would be OK" after the Parent left the school.

CONCLUSIONS

Issue 1 – Implementing Explicit Instruction: The complaint alleged that the District failed to implement the accommodation of providing explicit instruction in social skills. The complaint stated when the Student was in conflict with others, she was either ignored, simply told "Kelso's choice," or asked "what are you going to do about it?" The complaint alleged the Student was not provided the explicit instruction she needed in managing her interactions with her classmates.

A district must provide all services in a student's individualized education program (IEP), consistent with the student's needs as described in that IEP. Each district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, or any other service provider who is responsible for its implementation. Here, the District "accepted" the Student's previous IEP from another state, which included explicit instruction in social skills as an accommodation. However, believing explicit instruction in social skills was better described as a specially designed instruction, the District notified the Parent of impending change to the Student's IEP. There was no dispute about the change in the IEP that provided specially designed instruction in the areas of adaptive behavior and social/emotional/behavioral for 30 minutes, five times a week in each area. In response to the allegation that no explicit instruction in social skills was provided, those staff who worked with the Student stated they were informed of their responsibilities according to the Student's IEP, including the requirement to provide explicit instruction in social skills. The District provided documentation that it implemented Kelso's Choice, which was a social skills curriculum used in conjunction with prompting the Student with "Kelso's Choice" during recess to consider alternative ways to resolve the dispute. The District also stated that explicit instruction in social skills occurred both inside and outside of the classroom, such as at recess. Instruction was also based on other curriculums used to instruct the Student in self-regulation and prosocial skills, including "Zones of Regulation" and "Skillstreaming the Elementary School Child." The special education progress reports indicate that the explicit instruction was effective because the Student was meeting her annual goals. The complaint also alleged the Student was assaulted at recess but there was no documentation, such as reports filed by the Parent with the District, to verify this allegation. While the Parent may have preferred a different kind of explicit instruction, there was sufficient documentation to substantiate that explicit instruction in social skills in the Student's February and April 2018 IEPs was implemented. No violation is found.

Issue 2 – One-to-One Paraeducator: The complaint alleged that the District failed to properly consider the Parent's request for a designated one-to-one paraeducator by predetermining the decision to deny the Parent's request. The Parent requested a one-to-one paraeducator and offered to pay for the paraeducator through her own insurance, but the principal unilaterally declined the Parent's offer. A district must ensure that parents have the opportunity to participate in developing, reviewing, and revising the IEP for their child. However, a district has discretion

regarding a decision about the implementation of private services that are not part of a student's IEP.

Here, according to the Parent, the previous school district in another state permitted the Parent's private RBT to work with the Student one-on-one at school, although the RBT services were not made a part of the Student's IEP.⁸ The Parent requested a similar arrangement with the District at the April 2018 IEP meeting. The documentation did not indicate that the Parent was requesting the private services be included in the IEP, which is a significant difference than if services are on the IEP. Had the Parent requested the services to be on the IEP or that the District provide services, unlike the arrangement in the previous school district, the Student's IEP team, which included the Parent, would have been responsible for making this decision. In this case, the school principal unilaterally declined the Parent's proposal to allow the private provider in the classroom. Since the proposal regarded services was not to include services on the Student's IEP, the District had discretion to deny the one-to-one paraeducator or RBT services.

However, this distinction between IEP and private services was complicated by the fact that this request occurred at an IEP meeting and the decision to deny private services was made at an IEP meeting; further, the District provided prior written notice, dated April 30, 2018, which could give the impression that it was an IEP issue. Nevertheless, the District's prior written notice stated there was no data to support the need for a one-to-one paraeducator or RBT all day at school regardless of whether the service was an IEP service or a private service. There was also insufficient documentation to verify that there were safety issues that required the IEP team to address concerns. Despite some of the difficulties the Student experienced at school, the decision to deny to a request for a one-to-one paraeducator all day was made in light of the child's abilities and needs and supported by child-specific data. No violation is found.

Issue 3 – Reviewing and Revising the IEP: The complaint alleged that the District failed to review and revise the Student's IEP to address school refusal and safety concerns. The IEP is the centerpiece of the education delivery system for children with disabilities. It is the written document memorializing the collaborative effort between parents and school districts to describe the student's individual needs and documents the services and placement designed to meet those unique needs. A district must ensure that an IEP will be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student's learning, among other factors.

Here, the District reviewed and revised the IEP in April 2018. According to the documentation, the IEP team reviewed and revised the service matrix in the Student's IEP. The IEP provided for specially

⁸ No prior written notice from the previous school district regarding the decision was included in the documentation.

designed instruction in the areas of adaptive behavior and social emotional/behavioral, each for 30 minutes per day, five times a week.

The documentation showed that the Student exhibited signs of separation anxiety and generalized anxiety, particularly after teacher 1 forgot to text or call the Parent in April 2018. The Student increasingly missed more school because of school refusal behaviors based on the Student's anxiety generated by the miscommunication and other incidents. The District provided different behavioral strategies, supports, and interventions to address the Student's anxiety. These included increasing the specially designed instruction to 60 minutes per day, use of the Kelso's Choice curriculum, a plan for dropping off the Student at school, changing the general education classroom, meeting with the counselor for a girls social group, a playground plan, and a communication plan that documented the Student's perception of recess, among others.

The February 2018 IEP from the previous state and accepted by the District did not indicate that the Student's behavior impeded the Student's learning or the learning of others, which was contrary to the behavior described in the IEP, and the annual goals that addressed the Student's behavioral needs. When first attending school, the documentation appeared to view the Student's behavior as unremarkable once the Parent left her at school, while at the same time, the District provided a number of behavioral strategies, interventions, and supports to address her needs. However, even after the Student's absences had significantly increased, the District did not amend the Student's April 2018 IEP to recognize that behavior was a special factor, although there were indications that the District recognized the Student's school avoidance was impeding her learning. It was important for the IEP team to recognize behavior as a special factor, if appropriate, since it leads to the consideration of positive behavior interventions and supports, a functional behavioral assessment (FBA), and behavioral intervention plan (BIP). In this case, despite the Student's IEP not recognizing behavior as a special factor, which may have been an oversight, the District did implement positive behavioral interventions and supports and considered a FBA and BIP, but determined an FBA and BIP were not needed.

The Student's February IEP also contained annual goals that addressed safety awareness, social skills, and appropriate classroom behavior. Since there was no documentation of a problem with school avoidance at the time it was developed, the Student's annual goals did not address a goal for the Student to come to school. When the IEP team reviewed and revised the Student's IEP in April 2018, the IEP failed to address school avoidance in the annual goals or accommodations and other supports. Although the District implemented a number of behavior strategies, interventions, and supports to address school avoidance and existing annual goals, school avoidance was noticeably missing in the Student's IEP. The IEP team should have addressed the Student's behavioral needs related to school avoidance by documenting in the IEP the positive behavioral interventions and strategies being implemented or by adding an annual goal related to attending school. The IEP must reflect the Student's unique needs and the manner in which the District is meeting them.

At the April 2018 meeting, the IEP team discussed a "plan" to address the difficulty of the Student and the Parent separating upon arrival to school. The plan met with limited success, due in part to the Parent's participation—or at times lack of participation—in the plan. The Parent stated she

was “unaware” of the plan despite the District’s emphasis on it. The plan was subsequently modified based on the Parent’s and Student’s relationship with the assistant principal. This plan was not mentioned in the Student’s April 2018 IEP. Both the Parent and the District recognized this was a crucial time for the Student because it meant whether the Student would stay at school or go home with the Parent. While the Parent may have had better insight into the Student’s fears and anxiety that prompted the separation anxiety and school refusal, the District had considerable experience in addressing separation anxiety and a broader perspective in which to gauge the Student’s behavior compared to other similar-aged students. The Parent failed to recognize or acknowledge that once the Student separated from the Parent, the Student was highly capable and much like other students her age in the classroom. As a way to potentially address these issues, the District should have considered parent counseling and training as related services to be part of the plan to make the transition from home to school more successful. Based on the failure to address the Student’s school avoidance behavior in the IEP, a procedural violation is found.

While not in the IEP, it was clear that the District recognized the school avoidance problems and provided positive behavioral interventions and strategies to address the Student’s anxiety and school avoidance. The documentation showed the Student either met or made substantial progress towards her IEP goals, although school attendance was not one of them. The lack of progress in attending school was likely because the District had limited ways in which to intervene at home and guide the interactions between the Parent and Student at school. Although a procedural violation is found, there was no denial of FAPE. As a result of no denial of FAPE and the Student enrolling in another district, no student-specific corrective action will be ordered.

May 1, 2018 Meeting

The complaint also raised the issue that the District failed to provide the Parent with an opportunity to attend the May 1, 2018 meeting, including notifying the Parent of the meeting. The District described the meeting as a re-entry meeting, not an IEP meeting. There was some conflicting documentation about whether the meeting was an IEP meeting, but there was insufficient documentation to support that the meeting was an IEP meeting. The emails between the Parent and District before the meeting showed the Parent was aware of the meeting by asking to record the meeting and there was no reference to an IEP meeting. Although the Parent was clearly informed of the meeting, the Parent declined to attend. No violation is found related to the May 1, 2018 meeting.

CORRECTIVE ACTIONS

By or before **September 6, 2019, September 13, 2019,** and **October 11, 2019,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By **September 27, 2019**, the District, in collaboration with Puget Sound Educational Service District, must provide training on the issues identified in this complaint to all special education staff and administrators identified in the complaint. The training must include, at minimum:

- Documenting the IEP when behavior impedes the learning of the student or others;
- Addressing behavioral needs in the IEP; and,
- Considering parent counseling and training when required.

By or before **September 6, 2019**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **September 13, 2019**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by September 18, 2019 and additional dates for review, if needed.

By **September 27, 2019**, the District will conduct the training regarding the topics raised in this complaint decision.

By **October 11, 2019**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

RECOMMENDATION

Although the IEP transfer procedure was not an issue in the complaint, OSPI recommends the District review the out-of-state IEP transfer procedures, according to WAC 392-172A-03105, which requires a district to provide comparable services in consultation with the parent until the district conducts a new evaluation, if required, and develop a new IEP, if appropriate.

Dated this ____ day of June, 2019

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.)