

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-118

PROCEDURAL HISTORY

On December 24, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent)¹ of a student (Student) attending the Moses Lake 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 December 26, 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 January 22, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on January 23, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On January 29 and 30, 2019, and February 1, 2019, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. On February 6, 7, and 8, 2019, OSPI received the requested information from the District. OSPI forwarded this information to the Parent on February 12 and 13, 2019.

On January 30, February 12, February 13, February 14, and February 20, 2019, the OSPI investigator conducted phone interviews of the Parent.

On February 13, 2019, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. On February 14, 2019, OSPI received the requested information from the District. OSPI forwarded this information to the Parent on February 14, 2019.

On February 13, OSPI received the Parent's reply. OSPI forwarded that reply to the District on February 15, 2019.

On February 14 and 20, 2019, the OSPI investigator conducted a phone interview of the District's 2018-2019 special education director.

On February 19, 2019, OSPI received additional information from the District. OSPI forwarded this information to the Parent on February 20, 2019.

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

¹ The Complainant is the grandmother of the Student. The Student lives with his grandmother, who has been making educational decisions for the Student since he was a young child. See WAC 392-172A-01125.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on December 23, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUES

1. Did the District implement the Student's individualized education programs (IEPs), in effect since December 23, 2017?
2. Did the District follow procedures for responding to any request by the Complainant since December 23, 2017 for the District to conduct a functional behavioral assessment (FBA) and create a behavioral intervention plan (BIP) for the Student?
3. Did the District follow procedures for determining the Student's placement for the 2018-2019 school year, including determining that the Student would attend school for a half-day?
4. Did the District use restraint consistent with the requirements of WAC 392-172A-02110 since December 23, 2017?
5. Did the District follow proper procedures for responding to the Complainant's request that the Student be provided with an augmentative communication (AC) device?

LEGAL STANDARDS

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. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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. "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).

Missed IEP Services: *Letter to Balkman* provides some guidance on when districts are required to make up missed IEP services. 23 IDELR 646 (OSERS 1995), *explicitly reaffirmed by Letter to Copenhaver* (OSERS 2008). *Letter to Balkman* states: in the situation "where the student is absent from school because of the family's or physician's decision that the student not attend school...the general rule is that, if the school district makes IEP services available to the student at the normally scheduled time, the school district is not obligated to make other arrangements to provide services." *Id.* *Letter to Balkman* also states: in the situation "where the student cannot receive the services in his or her IEP due to reasons associated with participation in school-sponsored

activities or the unavailability of needed personnel...the school district generally will be responsible for making alternative arrangements for providing IEP services. *Id.*

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education citizen complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). "There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting. It is common in Washington for such one-to-one services to be calculated at half of the total hours missed." *In re: Mabton School District*, 2018-SE-0036. The award of compensatory education is a form of equitable relief and the IDEA does not require services to be awarded directly to the student. *Park ex rel. Park v. Anaheim Union School District*, 464 F.3d 1025, 46 IDELR 151 (9th Cir. 2006).

Purpose of the IDEA: The IDEA was passed, in part, to: (a) ensure that all students eligible for special education have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (b) ensure that the rights of students eligible for special education and their parents are protected;(c) assist school districts, educational service agencies and federal and state agencies to provide for the education of all students eligible for special education; and (d) assess and ensure the effectiveness of efforts to educate students eligible for special education. WAC 392-172A-01005; *see also* 20 U.S.C. Section 1400(c)(2)(a)-(b) (Before passage of the IDEA, oftentimes, students with disabilities did not receive appropriate education services and were excluded from public school).

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); 34 CFR §300.17; WAC 392-172A-01080. 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.

FAPE and Shortened School Day: Students eligible for special education services should attend school for the same amount of time as students without disabilities, unless the IEP team decides that a shortened school day is necessary to ensure access to FAPE. *See Shoreline School District No. 412*, 55 IDELR 178 (OCR 2010) (Finding that a student with a disability has the right to the same length school day as a nondisabled student).

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

School's Duties Upon Child's Failure to Attend School: If a child required to attend school under RCW 28A.225.010 fails to attend school without valid justification, the public school in which the child is enrolled shall: (a) inform the parent in writing or by telephone whenever the child has failed to attend school after one unexcused absence within any month during the current school year. School officials shall inform the parent of the potential consequences of additional unexcused absences; (b) schedule a conference(s) with the parent and child at a time reasonably convenient for all persons included for the purpose of analyzing the causes of the child's absences after three unexcused absences within any month during the current school year. If a regularly scheduled parent-teacher conference day is to take place within thirty days of the third unexcused absence, then the school district may schedule this conference on that day. If the parent does not attend the scheduled conference, the conference may be conducted with the student and school official. However the parent shall be notified of the steps to be taken to eliminate or reduce the child's absence; and (c) at some point after the second and before the fifth unexcused absence, take data-informed steps to eliminate or reduce the child's absences. In middle and high school, these steps must include application of the Washington assessment of the risks and needs of students (WARNS) or other assessment by a school district's designee under RCW 28A.225.026. For any child with an existing individualized education program (IEP), these steps must include the convening of the child's IEP team, including a behavior specialist or mental health specialist where appropriate, to consider the reasons for the absences. If necessary, and if consent from the parent is given, a functional behavior assessment (FBA) to explore the function of the absence behavior shall be conducted and a detailed behavior plan completed. Time should be allowed for the behavior plan to be initiated and data tracked to determine progress. These steps must include, where appropriate, providing an available approved best practice or research-based intervention, or both, consistent with the WARNS profile or other assessment, if an assessment was applied, adjusting the child's school program or school or course assignment, providing more individualized or remedial instruction, providing appropriate vocational courses or work experience, referring the child to a community truancy board, requiring the child to attend an alternative school or program, or assisting the parent or child to obtain supplementary services that might eliminate or ameliorate the cause or causes for the absence from school. For purposes of this chapter, an "unexcused absence" means that a child: has failed to attend the majority of hours or periods in an average school day or has failed to comply with a more restrictive school district policy and has failed to meet the school district's policy for excused absences; or has failed

to comply with alternative learning experience program attendance requirements as described by the superintendent of public instruction. RCW 28A.225.020.

Excused Absences: Absences due to the following reasons must be excused: (1) Illness, health condition or medical appointment (including, but not limited to, medical, counseling, dental, optometry, pregnancy, and in-patient or out-patient treatment for chemical dependency or mental health) for the student or person for whom the student is legally responsible; (2) Family emergency including, but not limited to, a death or illness in the family; (3) Religious or cultural purpose including observance of a religious or cultural holiday or participation in religious or cultural instruction; (4) Court, judicial proceeding, court-ordered activity, or jury service; (5) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview; (6) State-recognized search and rescue activities consistent with RCW 28A.225.055; (7) Absence directly related to the student's homeless or foster care/dependency status; (8) Absences related to deployment activities of a parent or legal guardian who is an active duty member consistent with RCW 28A.705.010; (9) Absences due to suspensions, expulsions or emergency expulsions imposed pursuant to chapter 392-400 WAC if the student is not receiving educational services and is not enrolled in qualifying "course of study" activities as defined in WAC 392-121-107; (10) Absences due to student safety concerns, including absences related to threats, assaults, or bullying; (11) Absences due to a student's migrant status; and (12) An approved activity that is consistent with district policy and is mutually agreed upon by the principal or designee and a parent, guardian, or emancipated youth. WAC 392-401-020. A school principal or designee has the authority to determine if an absence meets the above criteria for an excused absence. Districts may define additional categories or criteria for excused absences. WAC 392-401-020.

Unexcused Absences: Any absence from school is unexcused unless it meets one of the criteria provided in WAC 392-401-020. WAC 392-401-030.

Parent Participation in IEP Meetings: Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

IDEA specifically provides that parents of children with disabilities have an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to their child. WAC 392-172A-05000(1)(a). Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child. WAC 392-172A-05001(2)(a).

In conducting an evaluation, a group of qualified professionals selected by the school must consider, in part, information provided by the parent. WAC 392-172A-03020(2). Upon completion

of evaluation measures, a group of qualified professionals and the parent of the student determine eligibility and the educational needs of the student. WAC 392-172A-03040. In developing each student's IEP, the IEP team must consider, in part, the concerns of the parents for enhancing the education of their student. WAC 392-172A-03110(1)(b).

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

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. 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).

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.

Functional Behavioral Assessment (FBA): An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a behavioral intervention plan (BIP) that will reduce or

eliminate the misbehavior. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2). The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4). Once the need for a reevaluation is identified, a district must act "without undue delay and within a reasonable period of time;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008). 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).

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. 34 CFR §300.303(a); WAC 392-172A-03015(1). When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015.

Placement: Educational placement decisions must be determined annually, or sooner if appropriate, and be made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. WAC 392-172A-02060(1). The selection of the appropriate placement for each student shall be based upon: the student's IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through WAC 392-172A-02070; the placement option(s) that provide a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services the student needs, based on the student's IEP and LRE requirements. 34 CFR §300.116; WAC 392-172A-02060(2).

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent

appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

Continuum of Alternative Placement Options: Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must: include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement. 34 CFR §300.115; WAC 392-172A-02055. Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. WAC 392-172A-01175.

Parent Participation in Determining Placement: Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child. The school district must use procedures consistent with the procedures described in WAC 392-172A-03100 (1) through (3). 34 CFR §300.501; WAC 392-172A-05001. School members of the team may come to the table "with pre-formed opinions regarding the best course of action for the child as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions." *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016) citing *Nack v. Orange City Sch. Dist.*, 454 F.3d 604, 610 (6th Cir. 2006).

Restraint: Restraint as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to participate in activities safely. WAC 392-172A-01162.

Restraint Conditions: Restraint device shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of restraint as defined by RCW 28A.600.485 is subject to each of the following conditions: a) the restraint must be discontinued as soon as the likelihood of serious harm has dissipated; b) The restraint shall not interfere with the student's breathing; and c) any staff member or other adults using a restraint must be trained and certified by a qualified provider in the use of such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of restraint consistent with RCW 28A.600.485. WAC 392-172A-02110.

Restraint Device: Restraint device as defined in RCW 28A.600.485 means: A device used to assist in controlling a student including, but not limited to, metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, pepper spray, tasers, or batons. This section shall not be construed as encouraging the use of these devices. A restraint device does not include a seat harness used to transport a student safely or other safety devices, including safety belts for wheelchairs, changing tables, booster seats, and other ambulatory or therapeutic devices when used for the purpose intended for the safety of a student. WAC 392-172A-01163.

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.

FINDINGS OF FACT

2017-2018 School Year

1. The District’s 2017-2018 school year began on August 30, 2017. During the 2017-2018 school year, the Student was in the first grade and attended a District elementary school. The Student was eligible for special education services under the category developmentally delayed.
2. At the beginning of the 2017-2018 school year, the Student’s schedule was as follows:
 - 8:25-9:00: Cafeteria
 - 9:00-9:10: Life Skills
 - 9:10-10:05: Life Skills
 - 10:05-10:20: Playground
 - 10:20-10:35: Life Skills
 - 10:35-11:25: General Education Setting
 - 11:25-11:45: Life Skills
 - 11:45-11:50: Life Skills
 - 11:50-12:10: Playground
 - 12:10-12:30: Cafeteria
 - 12:30-1:15: Life Skills
 - 1:15-1:55: General Education Setting
 - 1:55-2:10: Playground
 - 2:10-2:50: Life Skills
 - 2:50-3:30: Life Skills
3. According to the Parent’s complaint:

[Student] was very attached to the teacher assigned to the Life Skills classroom for the 2017-2018 school year. In October of 2017, that teacher went on extended maternity leave. The District left paraeducators in charge of the classroom...[I] expressed concern that [this situation] would have a negative impact on [Student’s] behavior...As [I] feared, [Student’s] behavior escalated and after October 8, 2017, the school called nearly every day and

directed us to come and take [Student] home...We requested an IEP team meeting and at that meeting we asked for a functional behavior assessment (FBA) to examine why [Student's] behavior had escalated and to brainstorm what to do to address it in a positive manner...the special education director was present...he claimed the District was not allowed to conduct an FBA without first collecting several weeks of data—that it would violate federal law for the District to conduct an FBA immediately. As a result, no FBA was conducted before the classroom teacher returned sometime in January 2018. Unfortunately, by that time [Student's] behavior issues had become intractable.

4. According to the District, during the 2017-2018 school year, there were four paraeducators in the Student's life skills classroom.
5. During a phone interview with the OSPI investigator, the Parent stated that, in a conversation with a District staff member on October 16, 2017, she requested that an FBA be completed for the Student.
6. The District's response included some behavior tracking data for the Student. These data tracked how many times on any particular date the Student exhibited one of the following three behaviors: throwing, flopping/laying down, hitting/kicking.² The behavior tracking data indicated that the Student had the following behavior incidents October and November 2017:
 - October 18: one behavior incident
 - October 26, three behavior incidents
 - October 27: three behavior incidents
 - October 30: five behavior incidents
 - October 31: five behavior incidents
 - November 1: two behavior incidents
 - November 6: three behavior incidents
 - November 7: the one behavior incident
 - November 8: two behavior incidents
 - November 13: four behavior incidents
 - November 14: one behavior incident
 - November 17: two behavior incidents
 - November 20: four behavior incidents
 - November 21: four behavior incidents
 - November 22: three behavior incidents
 - November 27: four behavior incidents
 - November 28: four behavior incidents
 - November 29: three behavior incidents
 - November 30: two behavior incidents
7. The District's response contained a "Physical Therapy Student Data" log. This log included the following entries for December of 2017:
 - 12/4/17: [No session, Student absent]

² The behavior tracking data included data in the following months in 2017: October, November, and December. It also included data in the following months in 2018: March and April. There are no data for the months of January and February of 2018.

- 12/11/17: [Student] in room with principal, waiting for dad to come and pick him up due to bad behavior this am, No Rx³
8. The District's response contained a "Therapy Log for Speech and Language Services" (speech log). According to the Student's speech log, two speech sessions were scheduled, but the Student was absent on both of these days (December 7 and 14, 2017).
 9. On December 1, 2017, the Student had two behavior incidents.
 10. On December 12, 2017, the Student's IEP team created a new annual IEP for the Student.⁴ The December 2017 IEP included annual goals in the areas of general motor (standing), fine motor (finger strength and dexterity), adaptive (self-help), cognitive (math readiness, reading readiness, and writing readiness), communication, and gross motor.

The "Present Level of Educational Performance: Communication" section read, in part:

[Student] has been working on increasing functional communication by using an alternative communication (AC) device...However, there have been some limitations encountered with different AC systems. With low-tech [picture exchange communication system] (PECS)⁵ options, [Student] tends to bend the cards. With a high tech application such as Proloquo⁶, [Student] has difficulty with staying on task where he will touch and tap at the screen or has difficulty with the necessary fine motor skills to make an accurate or consistent selection. Recently, [Student] has started trying to use a GoTalk⁷ with greater success as it overcomes some of the limitations that have been encountered with the other AC options tried so far...Recommended goals for [Student] include increasing following directions with concepts from 20% accuracy to 70% accuracy, and request or comment using AC with minimal verbal or visual cues from 20% accuracy to 80% accuracy.

³ According to the District, the use of "Rx" in this context denotes "physical therapy."

⁴ According to the District, no IEP team meeting took place between October 8, 2017 and December 11, 2017.

PECS "is an alternative/augmentative communication system...[It] consists of PECS consists of six phases and begins by teaching an individual to give a single picture of a desired item or action to a 'communicative partner' who immediately honors the exchange as a request. The system goes on to teach discrimination of pictures and how to put them together in sentences. In the more advanced phases, individuals are taught to use modifiers, answer questions and comment. The primary goal of PECS is to teach functional communication." <https://pecsusa.com/pecs/>

⁶ Proloquo2go is a software program for computers and tablets. It is a symbol-based AC device similar in function to that of a GoTalk. <https://www.assistiveware.com/products/proloquo2go>

⁷ "GoTalks are battery powered [AC] devices used by people who cannot communicate well by speaking. Another person records messages – any messages the user will likely need, in any language, dialect or accent. An overlay of pictures (or words or symbols) is created. The pictures help the user remember where to find messages. The overlay is slid into the GoTalk, and then the user can 'talk' simply by pressing on a picture to play a message. This allows users – maybe for the first time – to communicate quickly and easily just by pressing a button." <http://www.spectronics.com.au/product/gotalk-communication-device-series>

The December 2017 IEP provided the Student with the following specially designed instruction in a *special education setting* from January 9, 2018 through January 8, 2019:

- Fine motor—10 minutes once a week (to be provided by a physical therapist (PT))
- Gross motor—20 minutes once a week (to be provided by a PT)
- Communication—30 minutes once a week (to be provided by a speech language pathologist (SLP))
- Adaptive self-help—50 minutes 5 times a week (to be provided by special education staff)
- Cognitive reading readiness—60 minutes 5 times a week (to be provided by special education staff)
- Cognitive math readiness—60 minutes 5 times a week (to be provided by special education staff)
- Cognitive writing readiness—45 minutes 5 times a week (to be provided by special education staff)

The December 2017 IEP provided the Student with the following supplementary aids and services in a *special education setting* from January 9, 2018 through January 8, 2019:

- One-on-one assistance—45 minutes 5 times a week (to be provided by 1:1 support)
- Transportation—45 minutes 5 times a week (to be provided by a bus driver)

The December 2017 IEP provided the Student with several accommodations and modifications.

11. On December 12, 2017, the District issued the Parent a prior written notice. In part, it read, "The school psychologist is reviewing behavior data sheets and looking into doing an FBA."
12. The District was on winter break from December 20, 2017 through January 2, 2018.
13. According to the District, on January 3, 2018, the life skills special education teacher returned from her maternity leave.
14. The Student's "Physical Therapy Student Data" log included the following entries for January 2018:
 - 1/8/18: Having bad behavior...teacher requests no Rx due to behaviors. Consult with teacher re: walling and tall kneel and ½ kneel to stand with A of table and how to try to incorporate these into his day at school, staff will try, but his behavior has gotten to the point that it may not be feasible.
 - 1/15/18: No school.
 - 1/22/18: [Student] absent, staff said he is absent due to teacher being out and he is going to ½ days, morning only due to behaviors and he has started on new meds.
 - 1/29/18: [Student] absent.
15. According to the 2017-2018 special education teacher:

I do not remember telling the PT that she could not serve [Student]. I do remember telling her at times we are having a rough day and I do not know how successful therapy will be. I also remember on at least one occasion the PT mentioning that she was not going to see [Student] that day because he loved going with her and she felt going with her he would think he was being rewarded. She mentioned to [Student] that he would not be able to go

with her that day because of how he was acting. I do remember one time where he displayed the behaviors for her and she had to bring him back early but normally did well in the 1:1 setting. Myself and the [educational staff associate] that was always there to help me did everything we could to get him calmed down for PT, speech, gen ed, recess, and specials (music, PE, library) because we knew he enjoyed those times. We learned that he loved to have his teeth and hair brushed and [we] would brush his teeth or hair as a strategy to keep him calm to get to those locations I listed above.

16. According to the Student's speech log, the Student received two speech therapy sessions in January 2018. Four sessions were scheduled in January 2018, one session was canceled because of a "meeting" and another session was canceled because the Student was either absent or arrived to school late.

The entries for January 2018 stated that two different AC devices were used with the Student: GoTalk device and Proloquo2go.

17. According to the District's "Attendance Detail Report" for the Student, in January of 2018, the Student had 10 excused absences.

18. The record contains an FBA Consent form signed by the Parent, dated January 27, 2018.

19. The Student's 'Physical Therapy Student Data' log included the following entries for February 2018:

- 2/5/18: [Student] absent.
- 2/12/18: Therapy activities to facilitate core strength, balance, coordination, dexterity, and hand use...to handed [fine motor] activities...
- 2/19/18: No school.
- 2/26/18: Schedule conflict, to see [Student] on Wednesday this week.
- 2/28/18: [Student] absent.

20. According to the Student's speech log, the Student received three speech therapy sessions in February 2018. Four sessions were scheduled in February 2018, but on February 8, 2018 the Student's speech log read, "Student Absence—Less Than 24 Hours Notice."

The entries for February 2018 do not mention either the GoTalk device or the Proloquo2go app. However, one of the entries mentions referring to pictures on a screen.

21. According to the District's "Attendance Detail Report" for the Student in February 2018, the Student had 5 excused absences. For one of the Student's absences in February 2018, the Student's "Attendance Detail Report" stated, "No reason given [for Student's absence]."

22. On February 1, 2018, the District issued a prior written notice to the Parent. In part, it read:

The purpose of this prior written notice is to inform you that we are proposing to change [Student's] number of minutes in school. Description of the proposed or refused action: [Student's] services need to be adjusted to reflect his 1/2 day placement for the rest of the 2017-2018 school year...[Student's] behaviors have been increasing at school and his counselor would like him on partial days to hopefully change his behaviors...Any other

factors that are relevant to the action: medication is being adjusted at home to hopefully change [Student's] behavior.

According to the District, the counselor referred to in the prior written notice is the Student's private counselor, who attended the February 1, 2018 IEP meeting; the District's response stated: "According to two IEP team members, there was no school counselor in attendance at the meeting, it was the Parent's private counselor [who was present]."

In a phone interview with the OSPI investigator, the Parent stated that no private counselor attended the February 1, 2018 meeting. The Parent stated that one of her daughters teleconferenced into the meeting. According to the Parent, her daughter was knowledgeable about both the Student and the IDEA.⁸

The District also stated the following in regard to the February 1, 2018 meeting:

Several IEP team members [say] the Parent and the private counselor the [Parent] invited made the suggestion and recommendation for the half-day setting. In speaking with the school psychologist, he also recalls the special education director [from 2017-2018] stating to the Parent that the Student is always welcome to return to full-day when the Parents are ready to bring him for full day. So, the [District did not disagree with] the Parent's request, but the special education director [from 2017-2018] wanted to make sure the Parent knew Student was welcome to come back full time when the Parents were ready to send him full time.

The Parent's reply presented the Parent's recollection of the decision to place the Student on a limited school day:

[Soon after the 2017-2018 special education teacher went on maternity leave in October of 2017,] the school began to call us several times each week about [Student's] behavior. Sometimes we were directly asked to come and take him home. In other calls, the school was asking for 'advice' about how to handle [Student], but it was clear that what they wanted was for us to take him home. We were concerned about what would happen if we didn't pick [Student] up when they called.

We spoke to [one of the Student's private medical providers⁹] about these frequent school removals. [This individual] pointed out that [the Student] was being removed so often was he was not receiving a full day of instruction. She asked whether we felt school staff could successfully manage [Student's] behavior for a full school day and we expressed our opinion that the classroom didn't have enough supports for the staff currently working with [Student] to be able to do that. It is not true that [the Student's private medical provider] recommended that [Student] be placed on a shortened school day. As far as we know, the District never contacted [this individual] to ask her opinion. The District never indicated it wanted to determine if there was a medical reason that prohibited [Student] from attending a full day of school.

⁸ According to the Parent, her daughter was a chemistry professor at a community college—in other words, her daughter was not a private medical provider of any kind.

⁹ The referenced individual was an advanced practice registered nurse.

During an IEP meeting to discuss [Student's] school day, the District's former special education director suggested we should consider institutionalizing [Student]. We were shocked. It seemed as though she was telling us that the only way [Student] would be able to attend school all day was if we put him in an institution. I remember responding that if it came down to that choice, I would keep [Student] home. The District has twisted this to make it appear we wanted, requested or advocated for a limited school day – which we did not. We tried to advocate for adequate supports so that [Student] could attend school all day. We asked over and over and over for a 1:1 Para to help support [Student] so he could stay in school. The District made it clear that [Student] was not going to be able to attend all day. The District wanted to know whether we had a preference about [Student] attending half days in the morning or in the afternoon. Between the two options presented, we picked the afternoon half-day. We were very frustrated that the District had no plan to gradually increase [Student's] day from a half-day to a full-day of school.

In its investigation of this complaint, OSPI asked the District: "Why was the decision made to place the Student in a half-day setting before a functional behavior assessment and behavioral intervention plan was completed [for the Student]?"¹⁰ In response, the District stated: "Per conversation with [the] school psychologist and the [2017-2018 special education] teacher: the decision was per Parent request."

23. On February 1, 2018, the Student's IEP team amended the Student's November 2018 IEP. The Student's February 2018 Amended IEP provided the Student with the following specially designed instruction in a *special education setting* from February 1, 2018 through June 8, 2018:
- Fine motor—10 minutes once a week (to be provided by a physical therapist (PT))
 - Gross motor—20 minutes once a week (to be provided by a PT)
 - Communication—30 minutes once a week (to be provided by an SLP)
 - Adaptive self-help—45 minutes 5 times a week (to be provided by special education staff)
 - Cognitive reading readiness—30 minutes 5 times a week (to be provided by special education staff)
 - Cognitive math readiness—30 minutes 5 times a week (to be provided by special education staff)
 - Cognitive writing readiness—25 minutes 5 times a week (to be provided by special education staff)

The February 2018 Amended IEP provided the Student with the following supplementary aids and services in a *special education setting* from February 1, 2018 through June 8, 2018:

- One-on-one assistance—45 minutes 5 times a week (to be provided by 1:1 support)
- Transportation—45 minutes 5 times a week (to be provided by a bus driver)

The February 2018 Amended IEP provided the Student with the following specially designed instruction in a *special education setting* from August 29, 2018 through January 8, 2019:

- Fine motor—10 minutes once a week (to be provided by a physical therapist (PT))
- Gross motor—20 minutes once a week (to be provided by a PT)
- Communication—30 minutes once a week (to be provided by an SLP)

¹⁰ See *below*—the District completed an FBA and BIP for the Student on March 26, 2018.

- Adaptive self-help—60 minutes 5 times a week (to be provided by special education staff)
- Cognitive reading readiness—60 minutes 5 times a week (to be provided by special education staff)
- Cognitive math readiness—60 minutes 5 times a week (to be provided by special education staff)
- Cognitive writing readiness—45 minutes 5 times a week (to be provided by special education staff)

The February 2018 Amended IEP provided the Student with the following supplementary aids and services in a *special education setting* from August 29, 2018 through January 8, 2019:

- One-on-one assistance—45 minutes 5 times a week (to be provided by 1:1 support)
- Transportation—45 minutes 5 times a week (to be provided by a bus driver)

The accommodations and modifications in the Student’s February 2018 Amended IEP remained the same as those listed in the Student’s December 2017 IEP.

24. Beginning February 1, 2018, the Student’s schedule was as follows:

- | | |
|--|----------------------------|
| • 8:25-9:00: Cafeteria | • 11:25-11:45: Life Skills |
| • 9:00-9:10: Life Skills | • 11:45-11:50: Life Skills |
| • 9:10-10:05: Life Skills | • 11:50-12:10: Playground |
| • 10:05-10:20: Playground | • 12:10-12:30: Cafeteria |
| • 10:20-10:35: Life Skills | • 12:30: Depart for Home |
| • 10:35-11:25: General Education Setting | |

25. The Student’s “Physical Therapy Student Data” log included the following entries for March 2018:

- 3/5/18: Poor behavior today, attempted to work with him in the therapy room, usually he does fairly well 1:1, he was non-compliant, refused to participate.
- 3/12/18: [Student] absent.
- 3/19/18: [One physical therapy session was completed.]
- 3/26/18: [One physical therapy session was completed, including some fine motor exercises.]

26. According to the Student’s speech log, the Student received four speech therapy sessions in March 2018. The entries for March 2018 mention the GoTalk device, as well as working with pictures that appeared on a screen. The March 2018 entries do not reference the Proloquo2go app.

27. According to the District’s “Attendance Detail Report” for the Student, in March of 2018, the Student had 4 excused absences.

28. On March 26, 2018, the Student’s evaluation team completed an FBA of the Student. There are several things to note about the March 2018 FBA:

- The “Summary of Data Collection” portion states that three sources of data informed the March 2018 FBA: 1) “Narratives, notes, observations, and frequency counts;”¹¹ 2) a teacher observation

¹¹ These data sources were not summarized, documented, or quoted in the March 2018 FBA.

dated February 21, 2018 that lasted approximately one half-hour; and 3) the following statement: "For approximately 2 months in the fall [Student] had 58 behaviors that were recorded and behaviors include: kicking, hitting, spitting, throwing things, and flopping down."

- The target behavior identified in the March 2018 FBA was: "physical aggression which includes spitting, hitting, kicking."
- The March 2018 FBA recommended three strategies to help reduce the target behavior: providing Student with sensory objects, praise, preferred activities.

According to the District, a "nationally certified school psychologist conducted [the] FBA and collaborated with the Student's IEP team on the [subsequent] BIP."

During a phone interview, the Parent stated that she told the District that she did not "accept" the March 2018 FBA, in part because she did not think the teacher observation was of a sufficient duration.

29. On March 26, 2018, the Student's IEP team created a BIP for the Student. It included the following strategies to help reduce the target behavior identified in the FBA: providing Student with sensory objects, praise, preferred activities, consistent schedule, rewards (gold fish, book, bin), change Student's activity, go for a walk, and give Student a task to do (clean tables, push in chairs, etc.).
30. The District's response contained the 2017-2018 special education teacher's classroom log. On March 27, 2018, the Student had thirteen behavior incidents. The log shows that, whenever the Student exhibited the target behavior in his March 2018 BIP, the 2017-2018 special education teacher utilized the following strategies found in the Student's March 2018 BIP: providing Student with sensory objects, preferred activity, allowing the Student to go for a walk, and changing the Student's activity.
31. On March 30, 2018, the Student had ten behavior incidents. The special education teacher's log showed that, on March 30, 2018, whenever the Student exhibited the target behavior, the special education teacher utilized the following strategies found in the Student's March 2018 BIP: providing Student with sensory objects, preferred activity, and changing the Student's activity.
32. The Student's "Physical Therapy Student Data" log included the following entries for April 2018:
 - 4/9/18: [Student] absent, teacher said he had horrible spring break with significant behaviors and family is trying something new to try to control the behaviors and needed more time.
 - 4/16/18: [Student] absent.
 - 4/23/18: Teacher states that [Student] went to home school per parent request, team to meet to plan how services will look.
33. According to the Student's speech log, the Student received zero speech therapy sessions in April 2018. Two sessions were scheduled, but that the Student was absent on both days (April 19 and 26, 2018). The April 26, 2018 entry includes the following text: "Homeschooled now."

34. In April of 2018, the Student had 12 excused absences. For four of the Student's absences in April 2018, the Student's "Attendance Detail Report" stated: "No reason given [for Student's absence]."
35. On April 12 and 13, 2018, the Student had three behavior incidents each day. The special education teacher's log showed that, on April 12, the teacher utilized the following strategies: preferred activity, changing the Student's activity. And, on April 13, the teacher utilized the following strategies found in the Student's March 2018 BIP: preferred activity, rewards.
36. On April 16, 2018, the Student had five behavior incidents. The log does not include what, if any, strategies were used.
37. Also on April 16, 2018, the 2017-2018 special education teacher emailed the principal, stating, in part:
- Just [an] FYI we sent [Student] home today for behavior. [Parent] asked me to call her whenever he was hitting, spitting, etc. I called her at 11:45 today because he flipped 2 chairs, came over to the book shelf and tried to clear the shelf, and when I walked over to the bookshelf he hit and tried to bite. I called [Parent] and she asked me if I wanted to send him home. I told her that was up to her I was just letting her know like she had asked. [Parent 2] appeared frustrated to me when he came to get [Student] but I left it up to [Parent] if she wanted [Student] to go home and she decided she would have [Parent 2] come get [Student].
38. On April 19, 2018, the Student had twelve behavior incidents and the teacher used the following strategies found in the Student's March 2018 BIP: praise, preferred activity, and allowing the Student to go for a walk.
39. At some point in mid-to-late April of 2018¹², the Student stopped attending school. The District states that, around this time, the Parent stated that she would be homeschooling the Student. The Parent never completed the required paperwork to homeschool the Student. The Parent stated that she never stated that she would be homeschooling the Student; the Parent stated that any reference she made to homeschooling was misconstrued by the District.
40. The Student's "Physical Therapy Student Data" log included the following entries for May 2018:
- 5/4/18: [No physical therapy session because of administrative challenges related to whether Student was going to be home schooled moving forward.]
 - 5/12/18: [No physical therapy session because of administrative challenges related to whether Student was going to be home schooled moving forward.]
 - 5/21/18: [One physical therapy session was completed.]
41. According to the Student's speech log, the Student received one speech therapy session in May 2018. The entry for May 2018 mentions the use of a picture exchange communication

¹² The District states that the Student's last day of attendance was April 13, 2018. The fact that the 2017-2018 special education teacher's behavior log included data from dates after April 13, 2018 strongly suggests that this is erroneous.

system (PECS). The May 2018 entry does not reference the GoTalk device, the Proloquo2go app, or the use of pictures on a screen.

42. In May of 2018, the Student had 21 excused absences.
43. On May 11, 2018, the District issued the Parent a prior written notice, proposing to provide the Student with "temporary services until an IEP meeting [can be held] in August [or] September of [2018]."

According to the District, as of May 11, 2018, it no longer considered the Student to be a homeschool student, but a student on a "homebound placement."

The May 11, 2018 prior written notice read, in part, "Description of the proposed or refused action: Two home visits with SLP and PT."

According to the 2017-2018 special education teacher, the Student did not receive any specially designed instruction or related services during the time he was identified by the District as being "homeschooled"—mid-April 2018 through May 10, 2018.

44. The Student's "Physical Therapy Student Data" log included the following entries for June 1, 2018: [One physical therapy session was completed, including some fine motor exercises.]
45. According to the Student's speech log, the Student received one speech therapy session in June 2018.

The entry for June 2018 mentions the use of a PECS. The June 2018 entry does not reference the GoTalk device, the Proloquo2go app, or the use of pictures on a screen.

46. According to the 2017-2018 special education teacher, the family went on a camping trip starting on June 1, 2018, which prevented the District from providing the Student with special education services.

In a phone interview with the OSPI investigator, the Parent stated that, to the Parent's recollection, this did sound accurate—in other words, the Parent did believe that they went on a camp trip starting June 1, 2018.

47. The District's final day of school for the 2017-2018 school year was June 8, 2018.
48. According to the 2017-2018 special education teacher, between May 11, 2018 (when the District categorized the Student as being on a "homebound placement") and June 8, 2018 (the last day of school for the 2018-2019 school year), the Student received some physical therapy and speech services, but he did not receive any specially designed instruction during this time.
49. The District's response included a statement from the Student's 2017-2018 special education teacher regarding the provision of paraeducator support to the Student during the 2017-2018 school year. That statement read, in part:

The Student received more 1:1 supports than was in his [two 2017] IEPs...I tried to rotate through the [paraeducators] that worked with him throughout the day so if [a particular paraeducator] was absent my hope was that he would be comfortable with another [paraeducator] so that the other person could step in and fill in for the absent person. Actually I did that with all of my students for that reason.¹³

[The paraeducator services provided to Student] ended up being more than 45 minutes...I sent all of my students to gen ed with a 1:1 aid unless the gen ed teacher said it was not needed. [Student] worked in centers 90% of the time 1:1 because his needs were different than others. Occasionally it would be 1:2 but that would depend on how many student were there that day. The para or myself always had [Student] right next to us though because he needed hand over hand to complete tasks and if not hand over hand very frequent support...he also had an aid on his bus route.

50. In its investigation of this complaint, OSPI asked the District: "What processes were in place to determine, if the Student's needs [changed] before the end of the 2017-2018 school year, that the Student would remain at school longer than half a day?" In response, the District stated:

[The District] does have a policy in place for any student on an IEP that is on a partial day. This memo is sent out to building principals and special education directors yearly. The District expectation for students on a partial day is that a BIP must be in place and the plan reviewed at regular intervals (usually every 30 days) to monitor progress. The IEP team would then decide the direction of the placement (same, more time, less time) based on the data and input from the team.

51. The District's response included a document entitled, "Partial Day Placement." In pertinent part, it read:

Special classes, separate schools, or removal of students with disabilities from the general education environment should occur only when the severity of the disability is such that education in general education settings with the use of supplementary aids and services (i.e., modifications & accommodations) cannot be satisfactorily achieved.

Appropriate placement decisions will be based on various decisions including:

1. Data-based judgments in IEP development;
2. Data-based judgments in determining LRE;
3. The reasonable probability of the placement option(s) assisting the student to attain annual goals and objectives and the quality of services needed; and
4. The consideration of potentially harmful effects on the student or on the quality of services needed.

Partial Day Placement Determination Process:

1. The student must have an FBA/BIP that addresses the need for the partial day with supporting data of prior implementations.

¹³ According to the District's response, the "Parent does not agree with this type of programming." In multiple phone interviews with the Parent, the Parent told OSPI's investigator that, on multiple occasions during the time period under investigation, she told the District that the Student required a designated 1:1 paraeducator—in other words, that the Student required a specific paraeducator to be assigned solely to the Student for the duration of the Student's time at school.

2. Documentation that an increase in special services has been attempted to address the need(s) and a more restrictive setting is considered in the current setting/building.
3. Social/Emotional Behavior must be addressed on the IEP under Present Levels of Performance.
4. The BIP includes a data collection and review plan for an increased time in the school setting.
5. A Special Service Staff and building administrator must be involved in the IEP team meeting to determine a partial day placement.
6. The IEP case manager should email the bus garage and Assistant Director of Special Services with requested pick up and drop off times.
7. Document schedule by an IEP amendment or Prior Written Notice.

52. According to the Parent's reply, one of the Parent's concerns was that, while "augmentative devices may have been used in the [Student's] speech language sessions...this was not carried over to the classroom." During a phone interview with the OSPI investigator on February 12, 2019, the Parent said that she expressed this concern during the 2017-2018 school year; in this interview, the Parent did not provide a specific date (or dates) that she articulated this concern to the District.

53. The District's response included a statement from paraeducator 1, who worked with the Student during the 2017-2018 school year. It read, in part:

While working this year at [Student's school], we have experienced working with the student who needed to be transported off the bus into our care by using a wheelchair. We used the wheelchair in the afternoon to *transport* the student back onto the bus. The wheelchair was parked in our classroom during the day and the student walked to the various places within the building using the student's walker. There were times that we felt it was best to use the wheelchair for safe transportation. One was getting through the crowded halls to a crowded assembly safely.

Another time was for our Jog-a-thon activity outside going around the playground area, which we do each year. We had to have a safe way for the student to participate in both of those activities. While having this student in our care, the student would have times of being destructive and being too unsafe to have the student near others. We followed procedures set up for the student during this time. Because of this behavior, there were times the student was not able to go outside of the classroom for the student's normal scheduled routine.

54. The District's response included a statement from paraeducator 2, who worked with the Student during the 2017-2018 school year. It read, in part:

Wheelchair

The wheelchair that Transportation provided for this student was used to safely transport student from classroom to bus or from bus to the classroom. Back in October, we held our annual Jog a-thon fundraiser for the school. This event all students, staff and parents walk or run around the track to raise money for the school. For the safety of this student and the safety of the student body this student used the wheelchair during this event. On another day, there was an assembly just prior to dismissal and this student needed to get to the buses immediately after assembly, so the student used the wheelchair again for this activity. With the

exception of these two instances, the wheelchair was only used to transport this student to and from the bus.

Student Safety and Behaviors

There were occurrences where this student's behavior was unsafe and prevented him from receiving services like speech or PT. Unsafe behaviors the student displayed were biting, hitting, growling, yelling, pinching, scratching, spitting, refusal to follow directions, throwing objects, throwing food, throwing chairs and breaking objects. When this student displayed these unsafe behaviors we would follow his behavior plan. This student has been assigned a 1:1 paraeducator. The paraeducator and teacher would try to de-escalate the situation and at times when behaviors were extreme we would need to clear the classroom in order to protect the safety of the said student and the other students in the classroom. When the classroom needed to be cleared I would remove the other students to a different part of the building and try to resume regular daily learning activities until the student's unsafe behavior subsided. There were multiple days this student displayed unsafe behavior. There were also multiple days where I had to clear the classroom and take other classroom students to different area of the building for their safety. There were days when this student displayed unsafe behaviors and the duration of these unsafe behaviors lasted multiple hours or the entire time student was in school that day.

55. The District's response included a statement from paraeducator 3, who worked with the Student during the 2017-2018 school year. It read, in part:

- [Student's] Use of wheelchair: used for loading and unloading onto bus.
- Behaviors in Classroom I observed: when upset, [Student] would hit and bite other staff members; [Student would] use his walker to run into other staff members.

56. According to the District's response:

During the 2017-18 school year, the SLP was utilizing several AC devices. These are described in the speech language therapist's goals in the IEP and [the] therapy notes. The therapist used three AC devices: PECS (picture exchange communication system), GoTalk device, and Proloquo2go with an iPad tablet. From the therapy notes, the devices were being used, however, the Student was limited due to his limited fine motor skills. The Student continued to need hand-over-hand direction for communication using PECs.

57. The 2017-2018 special education teacher provided the following information on the wheelchair:

The wheelchair did have a harness that went over [Student] that buckled. It was a 'seatbelt' to keep him safe while being transported on the bus. He rode in the wheelchair to school and back home because it was easier to keep him in it on the bus than putting him in taking him out putting him in and taking him out each bus ride.

The 'gait trainer' is the belt that was provided by a PT during the 16-17 school year to go around [Student's] waist to help him stand and walk. We would hold onto the back to keep him from falling. It is the thing they use with elderly or people that have had strokes to help them remain standing and walk[ing]. His walker was orange with 4 wheels and provided by the family.

I do not remember the exact date we started using the wheelchair during the 2017-2018 school year. I know we did not get the wheelchair until after I returned from maternity

leave in January 2018. We started using it because [Student] was not safe going up and down on the lift with a walker that did not lock all 4 wheels. It locked if he was trying to move backwards but not forward. The bus driver would leave the wheelchair in the morning. We would use it to get [Student] and another student off the bus. [Student] was always the first one to get off the bus in the wheelchair because he staying in it for the bus ride as his seat. We would get [Student] off the bus first, put him in his walker and then use the wheelchair to get the other student off the bus. The wheelchair then remained parked in the classroom until it was time to go home. I was under the impression from the bus garage that the wheelchair was to be only used for transportation. When [Student] started going home at lunch we would put him in the wheelchair about 12:30 once his diaper was changed because his bus came between 12:35-12:40. We would get him ready to go and 1 person would wheel him out and 1 person would take his walker. During the 17-18 school year we used the wheelchair to and from the bus. For assemblies we would set down the seat of his walker and he would sit on there between the bleachers. I made the choice to have him sit on the seat because he was at the end of the row so he was with the class and he was able to see better from the seat.

Summer 2018

58. During a phone interview with the OSPI investigator, the Parent stated that the Student received two in-home sessions in both communication and physical therapy during the spring or summer of 2018. (The Parent was not certain exactly when these took place.)

59. During the investigation of this complaint, the Parent provided OSPI with the following letter, dated August 27, 2018, and written by a private medical provider of the Student (letter from the Student's private medical provider):

I am writing to share my recommendation that [Student] needs a designated one-on-one support staff in order to have access to a successful educational experience.

Both in and out of school, [Student] forms strong attachments to specific individuals and demonstrates an ability to work with them successfully. With those people, he is less likely to engage in problem behaviors and is more likely to comply with the even high demands...While all people have preferential relationships, [Student's] attachments appear to be a function of his disability, as they span across settings and appear unrelated to the strategies and approaches utilized. The obsessive nature of his disability...dictates a need for stable, consistent support.

Moreover, [Student] has already demonstrated that his behavior will increase in response to staffing changes and that his behavior will escalate to dangerous levels...my recommendation is that [Student] be assigned a designated, one-one-one instructional aide.

60. According to the District, a "multidisciplinary team meeting" took place on August 28, 2018, to "discuss programming," and during this meeting, the Parent submitted a "request for a partial day placement."

The record contained a District-created meeting notes document (meeting notes) that memorialized the August 28, 2018 meeting. It read, in part, "[Parent] discussed wanting a ½ day program for [Student]."

During a phone interview with the OSPI investigator, the Parent stated that the portion of the August 28, 2018 meeting notes quoted above is inaccurate; the Parent stated that she did not ask on that date that the Student be placed in a half day program.

2018-2019 School Year

61. The District's 2018-2019 school year began on August 29, 2018. During the 2018-2019 school year, the Student was in the second grade and attended a District elementary school. The Student continued to be eligible for special education services and the Student's February 2018 Amended IEP was in place.

62. The Student's schedule for the 2018-2019 school year was as follows:

- Music
- Physical Education
- Life Skills
- Life Skills

In its response, the District described the Student's 2018-2019 life skills classroom as follows, "14 students with documented disabilities (including the Student), 1 teacher, 4 paraeducators."

63. In its investigation of this complaint, OSPI was provided with the following information concerning the presence of paraeducators in the Student's life skills classroom in 2018-2019:

- According to the District, during the 2018-2019 school year, there were four paraeducators in the Student's life skills classroom.
- In its investigation of this complaint, OSPI asked the District if a specific paraeducator had been assigned to the Student during the 2018-2019 school year. The District stated that, "per Parent's request," paraeducator 4 was assigned to the Student during the 2018-2019 school year.
 - In its investigation of this complaint, OSPI asked the District for clarity on this point. OSPI asked the District: "Concerning [paraeducator 4]: was the understanding for the 2018-2019 school year that [paraeducator 4] would be with Student for the entirety of the Student's day whenever the Student was in school?" The District's answer was: "yes."
- According to the District, the Student "received more 1:1 support than was in his IEP. He received 150 minutes a day of 1:1 support in the classroom."

64. According to the 2018-2019 special education teacher:

Services were missed (PT and Speech) in the 2018-2019 school year during instances when the Student's behavior was excessively violent. Service times were only missed because of safety concerns and not because of 'teacher decision' about misbehavior alone. Several times both the SLP and the PT [came] into the classroom to get the student for his scheduled services in the middle of a violent behavioral episode. The decisions were made in conjunction with one another and not on the part of one individual alone.

65. The Student's "Physical Therapy Student Data" log included the following entries for September 2018: "9/27/18: [Student absent]."

66. According to the Student's speech log, the Student received zero speech therapy sessions in September 2018.

The Student's speech log contained two entries for month of September 2018: on September 21, 2018, the SLP completed an "observation [of Student in] class;" and, on September 28, 2018, the Student was absent.

67. In September of 2018, the Student had five excused absences.

68. According to the District's response, on September 4, 2018, during a "multidisciplinary team meeting," the Parent requested a new FBA and BIP.¹⁴

69. According to the District, another "multidisciplinary team meeting" took place on September 6, 2018, in order to continue the conversation that started on August 28, 2018.

The District's meeting notes memorialized a meeting that took place on September 6, 2018. It read, in part:

New para in the classroom will be designated 1:1 for [Student's] 1:00 p.m. through 3:30 p.m. school day. [Student's] school day will be from 1:00 p.m. through 3:30 p.m. starting Monday, September 10, 2018. Parents will only allow [Student] to attend school when both the teacher and the 1:1 aid are present.

An FBA will be completed. Parent agrees to have [board certified behavior analyst 1] do the FBA. The FBA will consist of 2 weeks of observation.

70. According to the District, "during the September 6, 2018 meeting, the [Parent] requested an augmentative and alternative communication device¹⁵ and an assessment utilizing the free resources by the Special Education Technology Center (SETC)."¹⁶ According to the 2018-2019 speech language pathologist's recollection of this issue:

[Parent] requested an individual iPad for [the] Student. The Student had access to several iPads already in the classroom. Parent believed that SETC would provide one for free. [Parent] did not voice any concerns that PECS or the various AAC devices were not sufficient, only that they wanted an iPad.

¹⁴ The District's meeting notes do not include any information on a September 4, 2018 meeting. Upon knowledge and belief, the District intended to reference a September 6, 2018 meeting.

¹⁵ According to the District, the Parent did not make a specific request for an augmentative communication device at any point during the 2017-2018 school year.

¹⁶ According to its website, the Special Education Technology Center "provides training, consultation, technology loans and resource information to help school districts and families implement assistive technology interventions in addressing the special learning needs of children with disabilities." <https://www.specialedtechcenter.org/wa-state-needs-projects/>

According to the District's special education director, in response to the Parent's request for an augmentative and alternative communication device and an assessment from SETC: "I made the recommendation to use a more local resource...I also explained that SETC timelines can be very challenging and delayed...I explained that my intent was to match devices used at school with the home environment."

The District further stated the following in regard to this issue:

At the meeting District agreed to pursue the "free" services provided by SETC as requested by Parent. I informed the Parent that their services are not "free," devices are on 30 day loan and typically are not the most current. Also, SETC will have a phone conversation with SLP, but any further consultation they charge. Parent disagreed because she was told by someone else that SETC services were free. District agreed to pursue and determine what services were available. District exhausted the "free" accessible services with SETC.

During a phone interview with the OSPI investigator, the Parent stated that, at some point after the September 6, 2018 meeting, the District told her that utilizing SETC would require "too much paperwork."

71. In its investigation of this complaint, OSPI asked the District for clarity on the following language found in the District's meeting notes from September 6, 2018: "Parents will only allow [Student] to attend school when both the teacher and the 1:1 aid are present." In response, the District stated that the Parent made this statement and that the District stated that: "regardless [of whether] the teacher or 1:1 were absent, the Parent need[ed] to send the Student to school and the District [would] provide trained coverage for both...Parent disagreed and expected to be called when this happens and Parent will decide whether or not to send Student to school."

According to the District:

It was the suggestion of the Parent to start Student on a reduced day because Parent felt Student would not be ready to start back after a long break to full day...the Parent's Partnership for Action, Voices for Empowerment (PAVE)¹⁷ representative agreed with the Parent. District agreed to start Student on a half-day placement and then meet again in 20-30 days to review progress.

According to the Parent, during the September 6, 2018 meeting, the Parent provided the District with a copy of the letter from the Student's private medical provider that was dated August 27, 2018. (This letter is quoted in the facts above.)

72. According to the District, "instead of a typed prior written notice [memorializing the decisions made at the September 6, 2018 meeting], the Parent and a PAVE representative requested a copy of the handwritten notes taken by the building principal...these notes are found in the [District's meeting notes]."

¹⁷ According to its website, PAVE is "a parent organization providing support, training and informational resources to empower families and individuals with disabilities." <https://wapave.org/who-we-are/>

The District's response does include a document dated September 6, 2018 that read: "Transcribed prior written notice from handwritten prior written notice requested, copied, and given to parents as per their request at the conclusion of the meeting." This document includes almost the exact same text as that found in the District's meeting notes for the September 6, 2018 meeting. In part, it read:

One of the existing paras...will be the designated aid for [Student] (new para in classroom).
The team will re-visit the plan when [Student] is going full day.

FBA—Parent agrees to have [an FBA conducted]. Two weeks of observation for FBA.

...

Communication devices—[Parent] is fine with anything that helps him communicate...[Parent] wants him to communicate: 'help, I need attention, I need a break, yes, no, I need a drink.'

Use walker at school—try to stop crawling

FBA—[Parent] wants to know what works and what doesn't—she wants a BIP

SETC—[Parent] would like them to come and evaluate [Student]. [The 2018-2019 special education director] will contact [SETC] to get the process started.

73. According to the District, the 2018-2019 special education director contacted SETC at some point in September of 2018, and the special education director received a follow-up email on October 1, 2018.

74. The Student's "Physical Therapy Student Data" log included the following entries for October 2018:

- 10/4/18: [One physical therapy session was completed.]
- 10/11/18: School had a jog-a-thon during scheduled therapy time...requested to try to reschedule therapy.
- 10/18/18: [Student] was...throwing things from the room onto the floor and at walls and white boards...I was not able to give direct therapy to [Student] today due to his negative behaviors, but was able to observe spontaneous movement within the classroom while he was engaged in tantrum behavior.
- 10/25/18: School is having an assembly during scheduled therapy time, no therapy, will attempt to reschedule at a later date.

75. According to the Student's speech log, the Student received three speech therapy sessions in October 2018. Six speech therapy sessions scheduled for October 2018. However, on October 3, 2018, the Student was absent. On October 17 and 19, 2018, the SLP "tried to see [Student], but [Student] was having meltdowns."

The October 2018 entries do not specifically mention the AC devices. Two October 2018 entries do mention that the Student used "signs" on a couple of occasions.

76. In October of 2018, the Student had three excused absences.

77. The record contains an FBA Consent form signed by the Parent, dated October 2, 2018.

78. On October 30, 2018, the Student's evaluation team completed an FBA. There are several things to note about the October 2018 FBA:

- The "Summary of Data Collection" portion states that four sources of data informed the October 2018 FBA: 1) an interview with the Student's special education teacher; 2) a Problem Behavior Questionnaire filled out by both the Student's special education teacher and the Student's primary aide; 3) an interview of the Parent; and 4) classroom observations.
- The target behavior identified in the October 2018 FBA was: "throwing objects at or near others, spitting, and physical aggression towards others primarily seen in the form of hitting, biting, scratching, and pinching."
- The October 2018 FBA set forth numerous strategies.

According to the District, a board certified behavior analyst (BCBA) conducted the October 2018 FBA.

79. On October 31, 2018, the District issued a prior written notice to the Parent. In part, it read:

On 10/30/18, the IEP team met, along with the behavior specialist, to convene a new FBA. It was determined that [Student's] physical aggression is likely due to an attempt to escape the undesired task/environment and gain attention, and his refusal behaviors are likely due to escaping the undesired task/environment. [Student] will stay on partial day placement (from 1:00 p.m.—3:30 p.m.) solely in the Life Skills setting. A new BIP will be put in place along with the new IEP and re-evaluation currently scheduled for November 29, 1018. Waiting until the re-evaluation and IEP due date to create the BIP allows time for the team to take new data on [Student's] behaviors and attempt the behavior specialist's recommendations regarding [Student's] problem behaviors. The new BIP can then be written with known effective strategies. The team agree that [Student] does not seem ready to add time to his day. [Student's] classroom environment is different with new staff this year and he is finding success. A new BIP will appropriately document the new strategies being utilized and ensure school staff is following through with the appropriate protocols to meet [Student's] needs. Although [Student] is finding behavioral success, he still requires an ample amount of support to be successful, and would struggle with additional time to his day.

80. The Student's "Physical Therapy Student Data" log included the following entries for November 2018:

- 11/1/18: [Student] absent.
- 11/5/18: [Memorialization of some communications with the Parent. No indication that a physical therapy session was completed.]
- 11/7/18: [Memorialization of some communications with the Student's special education teacher. No indication that a physical therapy session was completed. Student appears to have been absent.]
- 11/9/18: [Memorialization of some communications with the Parent. No indication that a physical therapy session was completed.]
- 11/15/18: [Student] absent all this week due to half days/mornings for parent teacher conferences.
- 11/19/18: [Student absent].
- 11/26/18: [Physical therapist appears to have conducted some form of reevaluation of the Student. No indication that a physical therapy session was completed.]
- 11/29/18: [Student] absent.

81. According to the Student's speech log, the Student received one speech therapy session in November 2018. Four speech therapy sessions were scheduled for November 2018. The Student, however, was absent on the following dates: November 7, 14, and 21, 2018.

The November 2018 entry does not specifically mention the AC devices. It does mention that the Student worked with magnets of different shapes and colors.

82. In November of 2018, the Student had 15 excused absences.

83. According to the District, in mid-November of 2018, the SLP had a phone conversation with a representative from SETC about the Student and his needs.

84. According to the Parent, on or about November 28, 2018, the Student's bus driver informed her that he had heard the 2018-2019 special education teacher make a negative comment about the Student.

85. On November 29, 2018, the Parent emailed the 2018-2019 special education director, stating, "[Student] will not be attending school until certain safety issues are resolved."

In a phone interview with the OSPI investigator, the 2018-2019 special education director said that he is unaware of what specific "safety issues" the Parent was referencing in her email. The 2018-2019 special education director stated that he believed these "safety issues" were related to a negative comment that the Parent was told the 2018-2019 special education teacher allegedly stated about the Student.

86. The District's response included the following documentation regarding the Student's progress toward his December 2017 (February 2018 Amended) IEP goals:

- Student completed his gross motor goal by May 25, 2018.
- Student made some progress on his two communication goals, but "progress has been difficult to measure due to absences and behavior."
- Student made no progress on the following goals: gross motor standing, fine motor-finger strength and dexterity, adaptive/self-help, cognitive/math readiness, cognitive/reading readiness, and cognitive/writing readiness. The 'Progress Report (Amendment)' states that Student's "frequent absences and behavior...interfered with the [Student's] ability to progress [on his] goals."

87. On November 29, 2018, the District completed a reevaluation of the Student. The November 2018 reevaluation included assessments in the following areas: medical-physical, social/emotional, adaptive, academic, cognitive, communication, occupational therapy, physical therapy. Based on the results of the November 2018 reevaluation, the Student's reevaluation group determined that the Student continued to be eligible for special education under the category of multiple disabilities. The November 2018 reevaluation report recommended that the Student receive specially designed instruction in math, reading, written expression, adaptive/self-help, social/emotional, and communication. The November 2018 reevaluation report recommended that the Student receive related services in occupational therapy and physical therapy.

88. On November 29, 2018, the Student's IEP team created a new annual IEP for the Student. The November 2018 IEP was to be implemented starting November 30, 2018. The November 2018 IEP included annual goals in the areas of reading goals (letter name), writing (tracing), math (number ID), adaptive self-help, social/emotional, communication, occupational therapy, and physical therapy.

The "Present Level of Educational Performance: Communication" section read, in part:

SPEECH PRODUCTION:

[Student] has been working on production of the initial sound /b/ in isolation with a para in the classroom and with the speech therapist. He is able to produce /b/ with a prompt and modeling. His overall intelligibility using verbal speech is 0%. When using the PECS, he pairs verbal production with a prompt and model. [Student] does not have functional verbal speech. His vocalizations are used for getting someone's attention and trying to tell about something. He often uses vocalizations for expression of happiness or anger.

AUGMENTATIVE COMMUNICATION:

Within the classroom [Student] has access to a modified PECS. Pictures are printed on a piece of paper and put on a clipboard. The picture choices are offered to [Student] and he will point to the picture indicating what he is wanting, with a prompt. He has a difficult time grasping a picture card as in traditional PECS. This modification has been working well in the classroom. He does not initiate use of the system, but with a model will make a request. [Student] needs a prompt for him to request. He does sign 'more' and 'all done.' [Student] does not currently use a communication device at home.

The November 2018 IEP provided the Student with the following specially designed instruction in a *special education setting*:

- Reading—30 minutes 5 times a week (to be provided by special education staff)
- Written expression—20 minutes 5 times a week (to be provided by special education staff)
- Math—30 minutes 5 times a week (to be provided by special education staff)
- Social/emotional—65 minutes 5 times a week (to be provided by special education staff)
- Communication—30 minutes once a week (to be provided by an SLP)
- Adaptive/self-help—65 minutes 5 times a week (to be provided by special education staff)

The November 2018 IEP provided the Student with the following related services in a *special education setting*:

- Occupational therapy—15 minutes 3 times a month (to be provided by OT staff)
- Physical therapy—30 minutes once a week (to be provided by a PT)

The November 2018 IEP provided the Student with the following supplementary aids and services in a *special education setting*:

- One-on-one assistance—180 minutes 5 times a week (to be provided by 1:1 support)

The November 2018 IEP provided the Student with several accommodations.

89. On November 29, 2018, the Student's IEP team created a new BIP for the Student.

90. During a phone interview with the OSPI investigator, the Parent stated that, in either late November or early December 2018, a paraeducator informed her that the Student was, on at

least one occasion, buckled into his wheelchair while he was in the classroom—in other words, not while he was being transported. (The Parent did not feel comfortable disclosing the name of this paraeducator to OSPI’s Special Education Investigator.)

91. The Student’s “Physical Therapy Student Data” log included the following entries for December 2018:

- 12/6/18: [Student] absent.
- 12/10/18: [Student] absent.
- 12/12/18: IEP meeting for [Student].
- 12/13/18: [Student] absent.
- 12/20/18: [Student] absent.

92. According to the Student’s speech log, the Student received zero speech therapy sessions in December 2018. Three speech therapy sessions were scheduled for December 2018, but the Student was absent from school on each of the scheduled days.

93. In December of 2018, the Student had 15 excused absences.

94. According to the Student’s speech log, the Student was scheduled to receive a speech therapy session on January 9, 2019, but the Student was absent from school on that date.

95. In January of 2019, the Student had 18 excused absences.

96. In a phone interview with the OSPI investigator, the 2018-2019 special education director stated that, as of February 20, 2019, the Student has not yet returned to school.

97. According to the Parent, during the 2018-2019 school year, the “Student’s private PT...shared concerns that the District was requiring [Student] to use his wheelchair instead of his walker and that this was probably happening because it was easier for school staff.” According to the Parent, the PT expressed that “as a result of the District’s increased reliance on wheelchair usage, [Student’s] physical mobility had regressed.”¹⁸

98. The District’s response included a statement from paraeducator 4, who worked with the Student during the 2018-2019 school year. It read, in part:

Before the student started attending [school], the teacher and I discussed the behavior plan that was put in place so I was prepared. The teacher and I started creating visuals for the student to use for his everyday communication board. We put together different learning activities for the student to complete throughout his day.

When the student got to school he transitioned off the bus in a large blue wheelchair that was provided by transportation. After entering the classroom in the wheelchair he would transition to

¹⁸ During this investigation, the Parent did not provide clarity on whether this was merely a suspicion of the Student’s private PT, or whether the Student’s private PT had actual knowledge that the District was utilizing the Student’s wheelchair in lieu of the Student’s walker. If it was the latter situation, the Parent did not explain how and/or why the Student’s private PT had this knowledge. The Parent did state that the Student’s private PT had a conversation with the Student’s District PT. According to the Parent, though, in this conversation, the Student’s District PT simply agreed with the Student’s private PT that the Student’s physical mobility had regressed.

his chair at his desk. The wheelchair would be placed in the back of the classroom by our laundry door and his walker would be placed by the desk. There were multiple times when myself or the teacher would have to fix the walker after just getting to school as it was not tightened or unstable making it not safe for the student to use. During the day the student would use the walker to get around the classroom or transition to specials. At the end of the day the student and I would pack up and get ready for the bus. I would assist the student in getting into the blue wheelchair so he could transition onto the bus. The blue wheelchair was also used during the jog-a-thon¹⁹ so the student could participate. There was another instance where we had an assembly at the end of the day and the wheelchair was used due to immediate dismissal.

When the student arrived at school, we would immediately begin to work on the specific goals from his IEP. As we began working, there were times when the student would have different aggressive behaviors. A clicker was used to track the behaviors and the information was recorded on our data sheet at the end of each day. This was discussed with the student's agreed upon by the student's parents [*sic*] during the meeting discussing the student's behavior plan resulting from the functional behavior assessment (FBA).

Sometimes these behaviors were small like crawling away from an unpreferred activity, grunting/loud grunts (his way of yelling), or spitting but often times the behaviors were very intense and would range from hitting, kicking, pinching, biting, ramming the walker into items or people and throwing items at staff and students. The teacher and I would work together to de-escalate and diffuse the situation by following the student's behavior plan. There were multiple times where the students would need to evacuate the classroom with another para for their own safety and the safety of the student. There were also multiple times where the student was unable to attend therapies with the specialists due to his unsafe behaviors. When a specialist would enter the room during a behavior, the teacher or I would present the student with the opportunity to attend, given that his aggressive behaviors stop. The result of not being able to stop the aggression the student would have to miss his session and would try again next time out of concern for the student and specialists safety.

99. According to the District's response:

The [2018-2019] SLP [started] with PECs and hand-over-hand. The SLP, after a phone consult with the Special Education Technology Center, is working on introducing again the AC iPad device for a few picture responses.

100. The District's response included the following information on the use of the wheelchair:

When the wheelchair was in use we used the seat belt harness that is attached to the wheelchair. Any time the Student was in the wheelchair (transportation), the seatbelt was secured for his safety. [In the District's Response,] 'gait trainer' and 'walker' are used interchangeably. The Student was usually sent to school with the orange walker that he used for mobility around the classroom and within the school setting. The Student was never transported in the wheelchair due to behavioral issues. The Student was always calm when put in or taken out of the wheelchair because it was a means of transportation only. The instances of one assembly and the jog-a-thon are the only instances the wheelchair was used other than transportation on and off the buses.

¹⁹ According to the District, the Jog-a-Thon was an annual event at the Student's school.

101. In its investigation of this complaint, OSPI asked the District the following question: "Why was the GoTalk and the Prologuo used during the Student's 2017-2018 speech therapy sessions but not [during] the Student's 2018-2019 sessions? Did the Student's needs change at all?" The 2018-2019 SLP provided the following response to this question:

I was using PECS because it was being used successfully in the classroom. And it was working so I was moving forward with that AAC device. I was working on establishing a relationship with student, and was getting ready to implement other AAC devices at the end of November. His sporadic attendance and behavior made it difficult to try new devices. His lack of motor skills in discretely pointed to objects on a iPad was a challenge. I asked our OT to consult with me on his motor skills which we were working on. Also, I feel that my inexperience with Life Skills students and AAC devices contributed to my hesitation in introducing new AAC devices right away. I am currently enrolled in a workshop in April on AAC devices and one of my classes this summer is on AAC devices.

102. The District has a policy (Policy 3122P), entitled, "Excused and Unexcused Absences." It read, in part: "Unexcused absences occur when: the parent, guardian, or adult student fails to submit any type of excuse statement, whether by phone, e-mail or in writing, for an absence."

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged that the Student's various IEPs have not been properly implemented since December 23, 2017. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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 student with a disability and those required by the IEP.

In the situation where the student is absent from school because of the family's or physician's decision that the student not attend school, the general rule is: if the school district makes IEP services available to the student at the normally scheduled time, the school district is not obligated to make other arrangements to provide services. In the situation where the student cannot receive the services in his or her IEP due to reasons associated with participation in school-sponsored activities or the unavailability of needed personnel, then the school district generally will be responsible for making alternative arrangements for providing IEP services.

A state educational agency is authorized to order compensatory education through the special education citizen complaint process. Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. There is no requirement to provide day-for-day compensation for time missed. Generally, services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting.

December 23, 2017 through January 31, 2018

From December 23, 2017 through January 31, 2018, the Student's December 2017 IEP was in effect.

As concerns the provision of specially designed instruction during this time period, the Student's schedule supports a finding that it was provided—in other words, during this time period, the Student's schedule would have allowed him to have receive the amount of specially designed instruction included in his December 2017 IEP. Additionally, in the District's response, it asserts that it "implemented the Student's IEPs."

Two related service sessions, however, will need to be made-up.

On Monday, January 15, 2018, a physical therapy session was scheduled but did not occur because the District did not have school that day—January 15, 2018 was Martin Luther King Jr. Day; for this date, the physical therapist's log read: "No school." The District, however, did have school for the remainder of the week. Therefore, there were four other days that week during which the Student could have received the fine and gross motor services included in his December 2017 IEP: 10 minutes once a week of fine motor and 20 minutes once a week of gross motor. Therefore, this session will need to be made up.

According to the SLP's log, one regularly-scheduled speech therapy session was canceled in January 2018 because the SLP was in a "meeting." As this means that the session could not be provided to the Student because of staff unavailability, *Blackman* requires this session to be made-up. Therefore, the District will be required to provide the Student with one 30 minute speech therapy session as compensatory education.

February 1, 2018 through mid-to-late April 2018

From February 1, 2018 through mid-to-late April of 2018, the Student was enrolled full time at the District. During this time period, the Student's February 2018 Amended IEP was in effect.

As concerns the provision of specially designed instruction during this time period, the Student's schedule supports a finding that it was provided—in other words, during this time period, the Student's schedule would have allowed him to have receive the amount of specially designed instruction included in his February 2018 Amended IEP. Additionally, in the District's response, it asserts that it "implemented the Student's IEPs."

However, one physical therapy session from this time period will need to be made up.

On Monday, February 19, 2018, a physical therapy session was scheduled but did not occur because the District did not have school that day—February 19, 2018 was President's Day; for this date, the physical therapist's log read: "No school." The District, however, did have school for the remainder of the week. Therefore, there were four other days that week during which the Student could have received the fine and gross motor services included in his December 2017 IEP: 10 minutes once a week of fine motor and 20 minutes once a week of gross motor. Therefore, this session will need to be made up.

On March 26, 2018, the District created a BIP for the Student. The record shows that, from March 26, 2018 through mid-to-late April of 2018, the District implemented the Student's BIP. As but one example, on March 30, 2018, on multiple occasions, the Student exhibited the target behavior identified in his March 2018 BIP. In response, the 2017-2018 special education teacher utilized three different strategies, each of which was mentioned in the Student's March 2018 BIP. Therefore, OSPI concludes that the Student's March 2018 BIP was implemented during this time period.

Mid-to-late April 2018 through May 10, 2018

From mid-to-late April 2018 through May 10, 2018, the District considered the Student to be "homeschooled." During this time period, the Student's February 2018 Amended IEP was in effect. The Student did not receive any specially designed instruction or related service therapy services during this time period. The Parent and the District strongly disagree with one another on how and why the Student came to be considered "homeschooled" during this time period. The District stated that the Parent informed the District that she would be homeschooling the Student. The Parent stated that she never stated that she would be homeschooling the Student; the Parent stated that any reference she made to homeschooling was misconstrued by the District. As there is no evidence that the Student was withdrawn from the District, the Student remained entitled to FAPE and compensatory education is warranted.

From mid-to-late April 2018 through May 10, 2018, there were approximately three weeks of school. Therefore, the District will be required to provide the Student with approximately one-half of the specially designed instruction that he should have received, but missed, during this time period. The calculations for those figures are as follows:

- Adaptive self-help—45 minutes 5 times a week (to be provided by special education staff)
 - 45 minutes x 5 times a week = 225 minutes of adaptive self-help per week.
 - 225 minutes x 3 weeks = 675 total minutes of adaptive self-help missed.
 - 675 minutes divided by 2 = **(approximately) 360 minutes (or 6 hours) of required compensatory education in adaptive self-help**
- Cognitive reading readiness—30 minutes 5 times a week (to be provided by special education staff)
 - 30 minutes x 5 times a week = 150 minutes of cognitive reading readiness per week.
 - 150 minutes x 3 weeks = 450 total minutes of adaptive self-help missed.
 - 450 minutes divided by 2 = **(approximately) 240 minutes (or 4 hours) of required compensatory education in cognitive reading readiness**
- Cognitive math readiness—30 minutes 5 times a week (to be provided by special education staff)
 - 30 minutes x 5 times a week = 150 minutes of cognitive math readiness per week.
 - 150 minutes x 3 weeks = 450 total minutes of cognitive math readiness missed.
 - 450 minutes divided by 2 = **(approximately) 240 minutes (or 4 hours) of required compensatory education in cognitive math readiness**
- Cognitive writing readiness—25 minutes 5 times a week (to be provided by special education staff)
 - 25 minutes x 5 times a week = 125 minutes of cognitive writing readiness per week.
 - 125 minutes x 3 weeks = 375 total minutes of cognitive writing readiness missed.
 - 375 minutes divided by 2 = **(approximately) 180 minutes (or 3 hours) of required compensatory education in cognitive writing readiness**

As the Student did not receive any physical or speech therapy during these approximately three weeks of school, the District will be required to provide the Student with the following compensatory education in these areas:

- Three 10 minute sessions of fine motor (to be provided by a PT)
- Three 20 minute sessions of gross motor (to be provided by a PT)
- Three 30 minute communication sessions (to be provided by an SLP)

May 11, 2018 through June 8, 2018

From May 11, 2018 through June 8, 2018, the District considered the Student to be on a "homebound placement." During this time period, the Student's February 2018 Amended IEP was in effect. Both parties agree, though, that, starting on or about June 1, 2018, the Student's family went on a camping trip. Therefore, the Student was not available to receive specially designed instruction or therapy services during the last week of school—the 2017-2018 school year ended on June 8, 2018.

However, the District concedes that the Student did not receive any specially designed instruction from May 11, 2018 through June 1, 2018. This constitutes roughly three weeks of school. Therefore, the District will be required to provide the Student with approximately one-half of the specially designed instruction that he should have received, but missed, during this time period. The calculations for those figures are as follows:

- Adaptive self-help—45 minutes 5 times a week (to be provided by special education staff)
 - 45 minutes x 5 times a week = 225 minutes of adaptive self-help per week.
 - 225 minutes x 3 weeks = 675 total minutes of adaptive self-help missed.
 - 675 minutes divided by 2 = **(approximately) 360 minutes (or 6 hours) of required compensatory education in adaptive self-help**
- Cognitive reading readiness—30 minutes 5 times a week (to be provided by special education staff)
 - 30 minutes x 5 times a week = 150 minutes of cognitive reading readiness per week.
 - 150 minutes x 3 weeks = 450 total minutes of adaptive self-help missed.
 - 450 minutes divided by 2 = **(approximately) 240 minutes (or 4 hours) of required compensatory education in cognitive reading readiness**
- Cognitive math readiness—30 minutes 5 times a week (to be provided by special education staff)
 - 30 minutes x 5 times a week = 150 minutes of cognitive math readiness per week.
 - 150 minutes x 3 weeks = 450 total minutes of cognitive math readiness missed.
 - 450 minutes divided by 2 = **(approximately) 240 minutes (or 4 hours) of required compensatory education in cognitive math readiness**
- Cognitive writing readiness—25 minutes 5 times a week (to be provided by special education staff)
 - 25 minutes x 5 times a week = 125 minutes of cognitive writing readiness per week.
 - 125 minutes x 3 weeks = 375 total minutes of cognitive writing readiness missed.
 - 375 minutes divided by 2 = **(approximately) 180 minutes (or 3 hours) of required compensatory education in cognitive writing readiness**

In regards to the provision of related service therapy sessions during this time period, the record shows that the Student received two speech sessions and two physical therapy sessions. As this time period covered approximately three weeks of school, the Student should have received one

additional session in both speech and physical therapy. Therefore, the District will be required to provide the Student with the following compensatory therapy services to cover this time period:

- One 10 minute session of fine motor (to be provided by a PT)
- One 20 minute session of gross motor (to be provided by a PT)
- One 30 minute communication session (to be provided by an SLP)

August 29, 2018 through November 29, 2018

As a preliminary matter, OSPI also notes that the Student remained on a half-day placement at the beginning of the 2018-2019 school year. The Student's February 2018 Amended IEP, though, stated that the Student would be on a full-day placement starting August 29, 2018. The District informed OSPI that the Student's February 2018 Amended IEP was never amended or revised to reflect the fact that the Student remained on a half-day placement at the beginning of the 2018-2019 school year. Under the IDEA, this is impermissible. IEPs must either be implemented as written, or they must be amended and revised to accurately reflect the services the student actually requires and which the student will be provided. As a result, select District staff will be required to attend training on these requirements.

Assuming that the half-day specially designed instruction and therapy times from the Student's February 2018 Amended IEP were what he was supposed to be receiving from August 29, 2018 through November 29, 2018, the Student's schedule supports a finding that they were provided. Additionally, the District asserts that it "implemented the Student's IEPs."

The District will be required to provide the Student with the following compensatory sessions in physical therapy and communication to cover this time period:

- September
 - Three physical therapy sessions
 - Reason: there were approximately 4 weeks of school in September 2018. The PT's log includes one entry: "9/27/18: [Student] was assigned to my caseload on Monday, September 24, 2018. Went to school to see [Student], teacher reports that he is absent today."
 - Three speech therapy sessions
 - Reason: there were approximately 4 weeks of school in September 2018. The SLP's log states: a) she conducted an observation of the Student on September 21, 2018—in other words, she did not provide the student with any speech therapy on that day; and b) the Student was absent on September 28, 2018. The SLP's log contains no other entries for September 2018.
- October
 - Two physical therapy sessions.
 - Reason: On October 11 and 15, 2018, the PT was not able to provide the Student with his physical therapy sessions because of scheduled school events (the Jog-a-Thon fundraiser and an assembly). Under *Blackman*, the District needs to make these up.

November 30, 2018 through January 2019

On November 29, 2018, the Student's IEP team developed a new IEP for the Student. However, that same day, the Parent emailed the 2018-2019 special education director, stating: "[Student] will not be attending school until certain safety issues are resolved." Based on the Student's attendance record, it does appear that the Parent kept the Student out of school during the months of December 2018 and January 2019. For example, in December 2018, the Student had 15 absences. In January 2019, the Student had 18 absences. From the record, it does not appear that the Student received any physical therapy session in December 2018. (The PT's log does not include any information for January 2019.) It also does not appear that the Student received any communication therapy sessions in either December 2018 or January 2019, due to the absences.

Paraeducator Support

There are two issues with the implementation of the paraeducator support sections of the Student's various IEPs.

First, during the time period under investigation, the Student was supposed to receive 45 minutes 5 times a week of "one-on-one assistance." (This provision is included in both the Student's December 2017 IEP and his February 2018 Amended IEP.) The District, however, states that the Student actually received more paraeducator support than this; according to the District, the Student received 150 minutes a day of "1:1 support in the classroom." Under the IDEA, this is impermissible. As stated earlier, IEPs must either be implemented as written, or they must be amended and revised to accurately reflect the services the student actually requires and which that student will be provided. Furthermore, OSPI notes that the Student's November 2018 IEP states the Student will be provided with 180 minutes a day of one-on-one assistance. Given the confusion on this issue, the District and the Parent will be required to hold an IEP meeting to determine exactly how much one-to-one assistance the Student requires each day.

Second, the Parent and the District appear to have different understandings of what the Student's IEPs mean by the phrase "one-on-one assistance" and "1:1 support." The Parent appears to believe that this does *not* mean that the Student has been assigned a specific paraeducator—in other words, that one specific individual will be assigned exclusively to the Student for his one-to-one assistance. At least as of the 2018-2019 school year, however, this is exactly what the District says was provided to the Student. The District states that, for the 2018-2019 school year, paraeducator 4 was assigned to be the exclusive individual that would provide the Student with his one-on-one assistance. Therefore, the District will issue the Parent a prior written notice explaining this fact to the Parent. The District will also explain this fact to the Student at the IEP meeting where the proper total of one-to-one minutes will be discussed.

Additional IEP Implementation Issues

There are two other issues concerning IEP implementation.

First, the Parent alleged that there were instances where the Student was deprived of physical therapy and speech language therapy, both of which were included in the Student's pertinent IEPs, as a punishment for "misbehaving" in class. The District denies that this ever happened. For

example, four District staff members stated that the Student was only prevented from attending a physical therapy or speech therapy session on those occasions when his behavior made it unsafe for both him and the service provider.

However, the record does show that, on at least one occasion, the Student was denied a physical therapy session because a staff member thought that, if the Student was provided with that session, then the Student would be being "rewarded" for his behavioral challenges. For example, the 2017-2018 special education teacher stated: "I...remember on at least one occasion the [physical therapist] mentioning that she was not going to see [Student] that day because [Student] loved going with her and she felt [that if she allowed the Student to go with her] he would think he was being rewarded." In other words, on this occasion, the District did not follow the procedures for suspending the Student for violating a code of student conduct, as outlined in WACs 392-172A-05145 through -05175. Rather, the District opted to prevent the Student from accessing a portion of his IEP services in an effort to encourage him to demonstrate better behavior. (The record also suggests, quite strongly, that this behavior was the result of the Student's disability.) This is impermissible under the IDEA.

Importantly, by definition, a behavioral intervention plan (BIP) cannot utilize the following strategy: depriving a student access to services listed in his or her IEP in an attempt to get that student to demonstrate more appropriate behaviors; in fact, a student's BIP must include positive behavioral interventions and supports that help that student better access the services listed in his or her IEP. *See, for example*, WAC 392-172A-01031(3)(a) ("The [BIP must], at a minimum, describe: the positive behavioral interventions and supports to reduce the pattern of behavior that impedes the student's learning"). The compensatory education in physical therapy that is required by the above sections of this decision will also account for this particular instance in which the IDEA was not followed.

Second, the District is reminded that Washington general law requires the District to convene an IEP team meeting when a student eligible for special education has three unexcused absences in a month, and to include a behavior specialist or mental health specialist in the meeting where appropriate, to consider the reasons for the absences. Additionally, when a student eligible for special education has between two and five unexcused absences, the District must take data-informed steps to eliminate or reduce the child's absences.

Here, the Student was often absent from school during the time period under investigation. The District characterized each of these absences as "excused." However, it appears that some of these absences were not properly categorized. For example, under its own absence policy, if the parent or guardian of a student does not provide the District with an explanation of why that student will be absent on a particular day, that absence is supposed to be characterized as "unexcused."²⁰ According to the District's "Attendance Record" for the Student, though, there were numerous "excused absences" that contained the following comment: "no reason given [by Parent]." As a non-exhaustive example, the entries for the following dates on the Student's

²⁰ This policy (Policy 3122P) appears to be in general conformity with

"Attendance Record" include the foregoing comment: February 28, 2018, April 9-11, 16, 2018. In light of this fact, the District is reminded of its responsibilities under RCW 28A.225.020 when a student eligible for special education has repeated unexcused absences.

Issue 2: District's Response to Parent's Requests for FBAs – The Parent alleged that the District did not properly respond to her requests that an FBA be conducted for the Student. An FBA focuses on identifying the function or purpose behind a child's behavior. 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.

An FBA is generally understood to be an individualized evaluation of a child in accordance with WACs 392-172A-03005 through -03040. A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related service needs, including improved academic achievement and functional performance, of a student warrant a reevaluation, or if the child's parent or teacher requests a reevaluation. Once the need for an FBA is identified, a district must act without undue delay and within a reasonable period of time; and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015.

The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE.

A district must issue a parent a prior written notice when a decision has been made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate, and why it proposes or refuses to initiate that particular action. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must describe any other options the district considered, and it must explain its reasons for rejecting those options.

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. 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.

March 2018 FBA

According to the Parent, on October 16, 2017, during a phone conversation with a District staff member, she requested that an FBA be completed for the Student. While the initial request occurred prior to the complaint investigation timeline, the District possessed information indicating that the Student was exhibiting a pattern of behaviors that likely warranted an FBA by the time the complaint investigation timeline began on December 25, 2017: the Student experienced significant behavioral regression beginning in late October of 2017 and continuing through at least the end of January 2018. For example, during this time period, the Student exhibited one of the following behaviors on at least 58 occasions: throwing, flopping/laying down, hitting/kicking—which the March 2018 FBA itself later cites as evidence for why an FBA was necessary. The District does not appear to have systematically gathered information on the Student's behavior in January and February of 2018. However, two portions of the record strongly suggest that the Student's behavior continued to worsen during this time period: a) two entries in the PT's log for January 2018 refer to the Student struggling with behavior; and b) the February 1, 2019 prior written notice reads, in part, "[Student's] behaviors have been increasing at school." Under these circumstances (a parental request in October of 2017 for an FBA²¹ and data showing a behavioral regression throughout the fall and early spring), it was unreasonable for the District to wait until January 27, 2018 to obtain signed consent from the Parent to conduct an FBA.

Furthermore, the District did not conduct the FBA within 35 school days of obtaining the Parent's consent. The Parent signed consent for the FBA on January 27, 2018. According to the District's calendar, 35 school days from January 27, 2018 is March 19, 2018. The District, however, did not complete the FBA until March 26, 2018.

Given the above, the District failed to follow procedures for conducting a timely FBA and will be required to conduct training.

As a final note, the District did provide evidence that District staff utilized positive behavioral interventions between December 23, 2017 (the start date of this investigation) and March 26, 2018 (the date an FBA was completed). For example, in response to a question from OSPI concerning certain language in the PT's January 2018 service log, the 2017-2018 special education teacher stated, in part: "Myself and the [educational staff associate] that was always there to help me did everything we could to get him calmed down...we learned that [Student] loved to have his teeth and hair brushed and [we] would brush his teeth or hair as a strategy to keep him calm." Additionally, paraeducator 2, who worked with the Student during the 2017-2018 school year,

²¹ OSPI does note that WAC 392-172A-03005(1) states that a request for an evaluation, including an FBA, should be in writing, and that the Parent's request in October of 2017 appears to have been made verbally.

stated that District staff would “try to de-escalate the situation...we would clear the classroom...and try to resume regular daily learning activities until the student’s unsafe behavior subsided.”²² Therefore, while it appears that the District did make appropriate use of positive behavioral interventions during this time period, OSPI reminds the District that positive behavioral interventions may be utilized, and indeed are required to be utilized (when necessary), even before an FBA is completed. OSPI recommends that any systematic use of positive behavioral interventions for a student be reflected in that student’s IEP.

October 2018 FBA

On September 6, 2018, during an IEP meeting, the Parent requested that a new FBA be completed for the Student. The District agreed to this request; the District’s meeting notes for the September 6, 2018 meeting stated, in part: “Parent agrees to have [a board certified behavior analyst] do the FBA. The FBA will consist of 2 weeks of observation.” On September 6, 2018, the District provided the Parent and the Parent’s PAVE representative a copy of the meeting notes; it was the District’s understanding that the copy of the meeting notes would serve as the prior written notice regarding the decisions made at the September 6, 2018 meeting. (Generally speaking, this is permissible. So long as a prior written notice contains all of the elements required by WAC 392-172A-05010, it does not need to be in any particular form—for example, districts are not required to use the IEP Online format for prior written notices.) Then, on October 2, 2018, the District obtained signed consent from the Parent for the District to conduct an FBA. October 2, 2018 is roughly 3 ½ weeks after the date that the Parent and the District both agreed that a new FBA needed to be completed (September 6, 2018). While this timeframe is permissible, it is not best practice. OSPI recommends that, in the event that a district and a parent both agree that an FBA needs to be conducted for a student, that the district make a good faith effort to obtain signed consent from the parent as soon as reasonably possible, given the unique disability-related needs of the student.

On October 31, 2018, the Student’s evaluation team completed an FBA of the Student. This falls within 35 school days from when signed parental consent was obtained by the District. However, the October 31, 2018 prior written notice does include some peculiar language: “Waiting until the re-evaluation and IEP due date [of November 29, 2018] to create the BIP allows time for the team to take new data on [Student’s] behavior,” which could indicate that the FBA was not actually complete. OSPI notes that the purpose of an FBA is to gather information on the function or purpose of a student’s behavior. OSPI recommends that a student’s evaluation team not consider an FBA complete if that student’s evaluation team believes that it still lacks information necessary to: a) properly understand the student’s behavior; and b) develop an appropriate BIP for that student.

On November 29, 2018, the District completed a BIP for the Student. This is 18 school days after the FBA was completed. Here, the District substantiated that it properly conducted an FBA and developed a BIP. OSPI finds no violation.

²² Paraeducator 2 did not provide a specific date (or date range) for this recollection.

As a final note, the District did provide evidence that District staff utilized positive behavioral interventions between October 31, 2018 (the date a new FBA was created for the Student) and November 29, 2018 (the date a new BIP was created for the Student). For example, paraeducator 4, who worked with the Student during the 2018-2019 school year, stated:

Before the student started attending [school], the teacher and I discussed the behavior plan that was put in place so I was prepared. The teacher and I started creating visuals for the student to use for his everyday communication board...[whenever the Student was exhibiting behavioral challenges,] the teacher and I would work together to de-escalate and diffuse the situation by following the student's behavior plan. There were multiple times where the students would need to evacuate the classroom with another para for their own safety and the safety of the student.²³

Therefore, while it appears that the District did make appropriate use of positive behavioral interventions during this time period, OSPI reminds the District that positive behavioral interventions may be utilized, and indeed are required to be utilized (when necessary), even before an FBA is completed. Furthermore, OSPI recommends that any systematic use of positive behavioral interventions for a student be reflected in that student's IEP.

Issue 3: Placement Procedures – The Parent alleged that the District did not follow proper placement procedures for determining that the Student should be put in a half-day placement during both the 2017-2018 and the 2018-2019 school year.

Students eligible for special education should attend school for the same amount of time as students without disabilities, unless the IEP team decides that a shortened school day is necessary to ensure access to FAPE.

The selection of the appropriate placement for each student shall be based upon: the student's IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through WAC 392-172A-02070; the placement option(s) that provide a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services the student needs, based on the student's IEP and LRE requirements.

Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students.

²³ Paraeducator 4 did not provide a specific date (or date range) for this recollection. Given the content of this recollection, it is possible that this recollection only pertains to events that occurred from August 29, 2018 (the first day of the 2018-2019 school year) through October 31, 2018 (the date a new FBA was created for the Student). It is also possible that certain District staff continued to implement the Student's March 2018 BIP beyond October 31, 2018. On this point, it is important to note that, on multiple occasions during the course of this investigation, OSPI asked the District: "What positive behavioral interventions, if any, did District staff provide to the Student between October 31, 2018...and November 29, 2018?" OSPI did not receive any response to this question from the District.

Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child. The school district must use procedures consistent with the procedures described in WAC 392-172A-03100 (1) through (3). School members of the team may come to the table with pre-formed opinions regarding the best course of action for the child as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions.

February 1, 2018 Half-Day Placement

Here, the record is not clear on some of the factual occurrences surrounding the February 1, 2018 decision to provide the Student with a half-day placement. For example, the District states that a private counselor, invited by the Parent, attended the meeting. The Parent states that a private counselor did not attend the meeting. The District states that the private counselor and the Parent requested the half-day placement. The Parent states that neither herself nor the private counselor requested a half-day placement; the Parent admits that she was concerned "that the classroom didn't have enough supports for the staff...working with [Student]," but that, essentially, the District unilaterally informed her that the Student would be put on a half-day placement. It is difficult for OSPI to weigh in on these areas of the record. However, there is enough in the record for OSPI to note the following as concerns the February 1, 2018 decision to place the Student in a half-day placement:

First, it was premature. A placement decision must be based on the Student's needs, as documented by relevant, accurate data. Here, the Student was put in a half-day placement because his "behaviors [had] been increasing at school." However, as of February 1, 2018, the Student's IEP team had not made a systematic effort to uncover: a) why those behaviors were increasing; and b) if there was anything District staff could do, short of a shortened school day, to address those behaviors. For example, as of February 1, 2018, the Student's evaluation team had not conducted an FBA—this would not be completed until March 26, 2018. In fact, placing a student on a half-day placement without first conducting an FBA and implementing a BIP is in contradiction of the District's own policy: the District's 'Partial Day Placement' reads, in part: "The student must have an FBA/BIP that addresses the need for the partial day with supporting data of prior implementations."²⁴ This policy is in line with the requirements of the IDEA.

Second, because of FAPE and LRE requirements, it was improper for the District to not implement a plan to slowly return the Student to a full-day placement—or, at the very least, to re-visit the half-day placement decision at a date shortly after February 1, 2018. By way of illustration, the

²⁴ The District's 'Partial Day Placement' policy also states that, before a student can be put in a half-day placement, the student's IEP team must produce "documentation that an increase in special services has been attempted to address the needs and a more restrictive setting [has been] considered in the current setting/building." This portion of the District's policy also appears to be in line with the IDEA on this issue. OSPI further notes that the Student's February 2018 Amended IEP did not provide the Student with any specially designed instruction in the area of social/emotional. Perhaps, if the Student's IEP team had added specially designed instruction in social/emotional to his IEP, this would have obviated the necessity of a half-day placement.

February 1, 2018 prior written notice reads, in part: “[Student’s] services need to be adjusted to reflect his 1/2 day placement for the rest of the 2017-2018 school year” (emphasis added). (The last day of the District’s 2017-2018 school year was not till June 8, 2018.) Again, the decision to put the Student on a half-day placement, with no plan for returning the Student to a full-day placement, represents a violation of the District’s own policy. For example, in response to a question from the OSPI investigator, the District provided the following answer:

[The District] does have a policy in place for any student on an IEP that is on a partial day...the District expectation for students on a partial day is that a BIP must be in place and the plan reviewed at regular intervals (usually every 30 days) to monitor progress. The IEP team would then decide the direction of the placement (same, more time, less time) based on the data and input from the team.

In this instance, this policy does not appear to have been followed. While district policy provides additional protections to students with disabilities, it is clear that the IEP team did not consider the entirety of the student needs when it placed him on a half-day schedule, without considering and rejecting other less restrictive options. This is a violation of the IDEA and a training on placement procedures will be required.

September 6, 2018 Half-Day Placement

The record does not include a lot of information on the September 6, 2018 decision to continue the Student on a half-day placement. For example, on this issue, the District’s response stated:

It was the suggestion of the Parent to start Student on a reduced day because Parent felt Student would not be ready to start back after a long break to full day...the Parent’s PAVE representative agreed with the Parent. District agreed to start Student on a half-day placement and then meet again in 20-30 days.

While it was correct for the District to consider and document the Parent’s opinion on the matter, there is no evidence that the other considerations that are required when determining placement were adequately discussed and documented. Those are: the student’s IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through WAC 392-172A-02070; the placement option(s) that provide a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services the student needs, based on the student’s IEP and LRE requirements. For example, the District should have considered the following questions in making the placement determination for the beginning of the 2018-2019 school year:

- Why did the Parent think that the Student could not handle a full day placement at the beginning of the 2018-2019 school year? In other words, what had the Parent noted about the Student’s behavior throughout the summer of 2018 that made her think he would not be able to handle a full day of school?
- Did District staff have any information relating to the Student’s behavior from the latter half of the 2017-2018 school year?
- Were there other strategies that the District could utilize to make a half-day placement unnecessary?
 - Were there other modifications or accommodations that the Student could be provided with that would make a half-day placement unnecessary?

- Would a half-day placement be unnecessary if the Student was provided with specially designed instruction in the area of behavior and/or social/emotional?
- Could the Student's BIP be revised?
- What if the Student was provided with additional one-to-one assistance?

Therefore, the District and Parent will be required to hold an IEP meeting to determine whether a half-day placement continues to be warranted. At that meeting, the aforementioned questions will be discussed. After the meeting, the District will issue a prior written notice that clearly documents both the decision, and the reasons for that decision. The prior written notice will document discussion and consideration of each of the requirements of WAC 392-172A-02060(2). (On this issue, OSPI notes: i) a seemingly comprehensive FBA was completed for the Student in October of 2018 and a BIP for the Student was created in November of 2018; and ii) the Student's November 2018 IEP provides the Student with specially designed instruction in social/emotional.)

If the decision is made to continue the Student on a half-day placement, the Student's IEP team will either: a) decide when the placement decision will be revisited; or b) develop a plan to continually monitor the appropriateness of the half-day placement. This decision will also be reflected in the prior written notice issued to the Parent after the meeting.

Issue 4: Restraint – The Parent alleged that District staff improperly used the Student's wheelchair to restrain the Student.

Restraint means: physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to participate in activities safely. A restraint device shall be used only when a student's behavior poses an imminent likelihood of serious harm. A restraint device does not include a seat harness used to transport a student safely or other safety devices, including safety belts for wheelchairs, changing tables, booster seats, and other ambulatory or therapeutic devices when used for the purpose intended for the safety of a student.

Here, whenever the Student was placed in the wheelchair, the wheelchair's seatbelt harness was fastened. However, multiple District staff stated that the wheelchair was only used when it was necessary to safely transport the Student. Specifically, multiple District staff stated that the wheelchair was only used in the following situations: a) to transport the Student on and off the bus at the beginning and end of each school day; b) to transport the Student through "crowded halls to a crowded assembly;"^{25 26} and c) during a Jog-A-Thon fundraiser event, during which "all

²⁵ The quoted language comes from a statement by paraeducator 1, who worked with the Student during the 2017-2018 school year.

²⁶ From the record, it is not entirely clear as to whether there were multiple school assemblies during which the Student was transported in the hallway in his wheelchair—as opposed to a single assembly. For example, the record contains statements from three staff members that only reference a single school

students, staff and parents walk or run around the track to raise money for the school.” Since, in these three instances, the Student’s wheelchair was used to safely transport the Student, this does not constitute a use of restraint under the IDEA.

The Parent, though, stated that, in either late November or early December of 2018, a paraeducator informed the Parent that the Student was, on at least one occasion, buckled into his wheelchair while he was in the classroom; in other words, the Student was buckled into his wheelchair while he was not being transported and therefore being restrained. This statement by the Parent, though, is in conflict with the following evidence produced by the District:

- Paraeducator 1: “The wheelchair was parked in our classroom during the day and the Student walked to the various places within the building using the Student’s walker.”
- Paraeducator 4: “After entering the classroom in the wheelchair [Student] would transition to his chair at his desk. The wheelchair would be placed in the back of the classroom by our laundry door and his walker would be placed by his desk...During the day the Student would use the walker to get around the classroom.”
- 2017-2018 Special Education Teacher: “We would get [Student] off the bus...put him in his walker...the wheelchair then remained parked in the classroom until it was time to go home. I was under the impression from the [transportation department] that the wheelchair was to be only used for transportation.”
- Statements from 5 different District staff members (including paraeducator 1, paraeducator 4, and the 2017-2018 special education teacher) that the wheelchair was only used during the three situations mentioned in the preceding paragraph.

Here, the District has substantiated that it properly used the Student’s wheelchair to safely transport the Student and did not improperly restrain him. No violation is found.

Issue 5: District’s Response to Parent’s Request for an Augmentative Communication Device

– Here, the Parent alleged that the District did not properly respond to her requests concerning augmentative communication (AC) devices.

The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE.

A district must issue a parent a prior written notice when a decision has been made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student’s educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate, and why it proposes or refuses to initiate that particular action. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student’s identification, evaluation, educational placement or

assembly. However, the record does contain one statement from another staff members that references multiple school assemblies.

the provision of a free appropriate public education. It must describe any other options the district considered, and it must explain its reasons for rejecting those options.

2017-2018 School Year

The Parent stated that one of her concerns was, while "augmentative devices may have been used in the [Student's] speech language sessions, [they were not] carried over to the classroom." The Parent states that she expressed this concern to the District at some point during the 2017-2018 school year. The Parent did not inform OSPI of the specific date (or dates) that she expressed this concern to the District. The District stated that the Parent did not make a specific request for an AC device at any point during the 2017-2018 school year. The record does show that at least three devices were used during the Student's speech language therapy sessions during the 2017-2018 school year: PECS, prologuo, and GoTalk.

The aforementioned facts comprise the totality of the information provided to OSPI concerning both requests for, and the usage of, AC devices during the 2017-2018 school year. Given the evidence, the District did not fail to respond to the Parent's requests and the Student used an AC device during his speech therapy sessions. No violation is found.

2018-2019 School Year

In several regards, the record is not clear as it concerns parental request (or requests) concerning the use of AC devices in the education of the Student during the 2018-2019 school year. However, OSPI notes that this record leaves several important questions unanswered:

- Why did the Parent request an assessment from SETC on September 6, 2018?
 - Did the Parent believe that the Student's needs had changed over the preceding several months?
 - Did the Parent believe that the "Communication" section of the Student's December 2015 evaluation was outdated?
 - Did the Parent believe that the communication services being provided to the Student under his February 2018 Amended IEP were insufficient or inappropriate?
- Why did the Parent request an SETC iPad for the Student if the Student already had access to an iPad in his classroom?
- What exactly did the District agree to in regard to consulting with SETC at the September 6, 2018 meeting?
 - Did the District only agree to pursue one free consultation with SETC? Or was the agreement more open-ended? (OSPI notes that the District's response stated, in part: "District agreed to pursue and determine what services were available [through] SETC." The September 6, 2018 prior written notice reads, in part: "[The 2018-2019 special education director] will contact [SETC] to get the process started." These portions of the record make it seem as if the District agreed to a more open-ended exploration of a relationship with SETC.)
- What did the District members of the Student's IEP team think of the Parent's SETC-related request?
 - Did they think it was warranted? Why or why not?

- What was the substance of the email that the 2018-2019 special education director received from SETC on October 1, 2018?²⁷
- What was the result of the phone conversation that the SLP had with the SETC representative in mid-November of 2018?
 - Did SETC provide the SLP with any additional and/or new strategies, interventions, or supports to use with the Student? If so, what were they? Were they adopted? If so, when?
- What communication, if any, did the District have with the Parent regarding her SETC-related request after the September 6, 2018 meeting?

The only violation that OSPI finds on this issue is as follows: as least in so far as it relates to the Parent's request for an augmentative communication device, the September 6, 2018 prior written notice is insufficient. A prior written notice clarifies that a decision has been made. A prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate, and why it proposes or refuses to initiate that particular action. OSPI will require a training on the requirements of prior written notice.

As the District and the Parent will hold an IEP meeting, OSPI recommends that they discuss the need for AAC. The Parent is encouraged to contact PAVE to see if a representative can attend the meeting with her. Both parties are encouraged to consider holding a facilitated IEP meeting through Sound Options.

Finally, OSPI notes its concern with the following language in the District's response: "At the meeting District agreed to pursue the 'free' services provided by SETC...SETC will have a phone conversation with [our] SLP, but any further consultation they charge...District exhausted the 'free' accessible services with SETC." OSPI reminds the District that, if it is determined that a particular evaluation or service is necessary for a student eligible for special education to access an appropriate public education, that evaluation or service must be provided to the student at no cost to that student's parent(s).

CORRECTIVE ACTIONS

By or before **March 14, 2019, March 15, 2019, March 18, 2019, March 22, 2019, March 29, 2019, April 5, 2019, April 29, 2019, June 7, 2019,** and **September 13, 2019,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. By **March 15, 2019,** the District will work with the Parent to develop a schedule to provide the Student with the following compensatory education:
 - a) 12 hours of adaptive self-help

²⁷ OSPI notes that this email falls within the category of "all emails relevant to the issues in this investigation," which, at the outset of this investigation, OSPI requested that the District produce. OSPI further notes that, on multiple occasions throughout the course of this investigation, the investigator requested that the District produce all emails relevant to the issues in this complaint. Upon knowledge and belief, based on some of the District's responses to, and communications with, OSPI during this investigation, other relevant emails exist that were not produced to OSPI during the course of the investigation.

- b) 8 hours of cognitive reading readiness
- c) 8 hours of cognitive math readiness
- d) 6 hours of cognitive writing readiness
- e) 110 minutes of fine motor (to be provided by a PT)
- f) 220 minutes of gross motor (to be provided by a PT)
- g) 4 hours of communication (to be provided by an SLP)

The services will be provided outside of the District's regular school day. The services will be provided to the Student on a one-to-one basis—the sessions will be comprised of the Student and the service provider. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **September 13, 2019, regardless of any need to reschedule.** The District will provide OSPI with documentation of the schedule by **March 18, 2019.**

The District will be required to provide OSPI with periodic progress reports on the provision of compensatory education to the Student: on **April 29, 2019** and **June 7, 2019,** the District will provide OSPI with documentation of the compensatory services that have been provided up until those respective dates.

No later than **September 13, 2019,** the District shall provide OSPI with documentation that all of the compensatory services have been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District must either provide the transportation necessary for the Student to access these services, or must reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with the documentation pertinent to this corrective action by **September 13, 2019.**

2. By **March 15, 2019,** the District and the Parent will hold an IEP team meeting. At this meeting, the following issues will be discussed:
 - a) Whether a half-day placement is appropriate for the Student.
 - i) Before the required IEP meeting, the District members of the Student's IEP team will review the following portion of OSPI's February 2018 Monthly Update: 'Shortened School Day.' (<http://www.k12.wa.us/SpecialEd/monthlyupdates/Feb2018Updates.pdf>) By or before **March 14, 2019,** the District will certify that the District members of the Student's IEP team have reviewed the 'Shortened School Day' portion of OSPI's February 2018 Monthly Update.

- ii) The prior written notice that the District issues to the Parent after the meeting will clearly and thoroughly document that—in regards to the decision on whether a half-day placement is appropriate for the Student—each of the considerations required by WAC 392-172A-02060(2) were discussed.
 - iii) If the decision is made to continue the Student on a half-day placement, the Student’s IEP team will either: a) decide when (in the relatively near future) the placement decision will be revisited; or b) develop a plan to continually monitor the appropriateness of the half-day placement. This decision will also be reflected in the prior written notice issued to the Parent after the meeting.
- b) The appropriate amount of time that the Student requires for the following supplementary aid and service: one-on-one assistance.
- i) At the IEP meeting, the District will inform the Parent that the Student will be provided with a designated paraeducator—in other words, only one specific individual will provide the Student with his one-to-one assistance. (During the course of this investigation, the District informed OSPI that paraeducator 4 was assigned to be the exclusive individual that would provide the Student with his one-to-one assistance.) This fact will also be reflected in the prior written notice that the District issues to the Parent after the meeting.

OSPI encourages the Parent to contact PAVE to see if a representative can attend the meeting with her. Both the Parent and the District are encouraged to consider holding a facilitated IEP meeting through Sound Options.

By **March 22, 2019**, the District will: 1) create a new IEP and/or BIP for the Student that reflects any changes resulting from this meeting; 2) provide the Parent with a copy of the Student’s new IEP and/or BIP; and, 3) provide the Parent with a prior written notice that explains: the decisions that were made (and the reasons those decisions were made).

By **March 22, 2019**, the District will provide OSPI with 1) a copy of any meeting invitations; 2) a sign-in sheet from the IEP meeting; 3) a copy of the new IEP (and, if applicable, a copy of the new BIP); 4) a copy of any related prior written notices; 5) a copy of any correspondence with the Parent regarding the IEP meeting and the decisions made at that meeting; 6) proof that the District has provided the Parent with a copy of the new IEP (and, if applicable, new BIP); 7) proof that all District staff members responsible for implementation of the new IEP (and, possibly, the new BIP) have received a copy of the same; and 8) a copy of any other relevant documentation.

DISTRICT SPECIFIC:

1. By **March 29, 2019**, the District will provide training to all special education administrators, the principal, the assistant principal, and special education-certified staff, including educational staff associates (ESAs), at the school that the Student was enrolled in during the 2017-2018 and 2018-2019 school years. The training will cover the following topics:
 - WAC 392-172A-03105(2)(b) (IEPs must be implemented as written)

- WAC 392-172A-03110 (Development, review, and revision of the IEP)
- WAC 392-172A-03015(1)(a) (A reevaluation must be conducted when a district determines that the educational or related service needs, including improved academic achievement and functional performance, of the student warrant a reevaluation)
- WAC 392-172A-03015(3)(a) (A reevaluation must be completed within 35 school days after the date written consent for an evaluation has been provided to the school district by the parent)
- WAC 392-172A-02060 (Placement procedures)
- WAC 392-172A-05010 (Prior written notice and contents)

The training will include examples. The training will not be presented by someone who is (or was) an employee of the District during the timeline of this complaint. The individual that presents the training will be required to consult with ESD 171 staff in the creation of the training materials.

By or before **March 15, 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 **March 22, 2019**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by March 27, 2019 and additional dates for review, if needed.

By **March 29, 2019**, the District will conduct the training regarding the topics raised in this complaint decision.

By **April 5, 2019**, the District will submit documentation that required 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.

Dated this ____ day of February, 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.)