

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-61**

### **PROCEDURAL HISTORY**

On June 8, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Puyallup School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On June 11, 2018, OSPI contacted the Parent and confirmed that a copy of the complaint was provided to the District.

On June 12, 2018, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On June 15, 2018, the District requested an extension of time to respond to the complaint. OSPI granted the request and extend the timeline to July 16, 2018 for the District to respond.

On July 3, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on July 5, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not provide a reply.

On July 28, 2018, the OSPI complaint investigator conducted a site visit and interview with the District's executive director of special education.

OSPI considered all of the information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the site visit and interview.

### **OVERVIEW**

The Student transferred into the District at the end of September 2017 and was eligible for special education and related services under the category autism. The District adopted the Student's November 2016 individualized education program (IEP) from a previous Washington school district, which included accommodations to provide the Student with positive behavior interventions and reinforcement, and placed the Student in a self-contained classroom and program for students with autism. At the end of October 2017, the Student's IEP team met and developed his annual IEP. The October 2017 IEP provided the Student with goals, specially designed instruction, and related services in the areas of adaptive, social/emotional, math, reading, and writing, and the IEP included accommodations, such as adult proximity and "reinforcement" for behavior. At the October IEP meeting, the Student's special education teacher noted that positive reinforcement occurred daily in the classroom and that specific positive reinforcement would be noted on the Student's daily communication log.

Throughout the school year, the Student had several behavior incidents that included throwing things at other students and other students hitting the Student. In each incident, the Student and the others students were coached, learned about conflict resolution, or faced other consequences for behavior. After an incident in December 2017, the Parent wrote a note to the Student's special education teacher on his daily log and indicated that she may want a meeting. The teacher responded and addressed the Parent's safety concerns. After an incident in late January 2018, where the Parent alleged that the Student had been restrained, the Parent voiced her concerns to the principal about the incident and the incident in December 2017, and the Parent requested an IEP meeting. The Student's IEP team met on February 12, 2018. At the meeting, the Parent largely shared concerns about one of the paraeducators in the Student's class and did not share concerns about the Student's IEP. The District had a local law firm conduct an outside investigation into the Parent's allegations about the paraeducator. On March 5, 2018, the Parent withdrew the Student from the District and provided the District with a signed declaration of intent to home school the Student.

The Parent alleged that the District failed to follow procedures for implementing the Student's IEP, including providing positive behavioral reinforcement. The Parent also alleged that the District improperly restrained the Student, that the Student was denied a free appropriate public education as a result of bullying and harassment, and that the District did not respond to the Parent's request for an IEP meeting. The District denied all allegations.

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation time period, which began on June 9, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

### **ISSUES**

1. Did the District follow procedures for implementing the Student's individualized education program (IEP) during the 2017-2018 school year, including providing positive behavioral reinforcement or implementing a behavioral intervention plan (BIP)?
2. Did the District follow procedures regarding the use and reporting of isolation and/or restraint consistent with the requirements of WAC 392-172A-02110 during the 2017-2018 school year?
3. Did the Student experience bullying and harassment that resulted in a denial of a free appropriate public education (FAPE)?
4. Did the District follow procedures for responding to the Parent's request(s) for an IEP meeting during the 2017-2018 school year?

### **LEGAL STANDARDS**

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will

measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments and if the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why: the student cannot participate in the regular assessment and the particular alternate assessment selected is appropriate for the student; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

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

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

impedes his or her learning or that of others, and for whom the IEP team has decided that a BIP is appropriate, the IEP team must include a BIP in the child's IEP to address the behavioral needs of the child. Questions and Answers on Discipline Procedures (OSERS June 2009) (Question E-1 and E-2).

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 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.

Isolation: Isolation as defined in RCW 28A.600.485 means: Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. WAC 392-172A-01107.

Isolation Conditions: Isolation shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of isolation as defined by RCW 28A.600.485 is subject to each of the following conditions: a) the isolation must be discontinued as soon as the likelihood of serious harm has dissipated; b) the isolation enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purpose of human occupancy; c) the isolation enclosure shall permit continuous visual monitoring of the student from outside the enclosure; d) an adult responsible for supervising the student shall remain in visual or auditory range of the student at all times; e) either the student shall be capable of releasing himself or herself from the enclosure, or the student shall continuously remain within view of an adult responsible for supervising the student; and, f) any staff member or other adults using isolation must be trained and certified by a qualified provider in the use of isolation, 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 isolation consistent with RCW 28A.600.485. WAC 392-172A-02110.

Follow-up and Reporting Requirements: School districts must follow the documentation and reporting requirements for any use of isolation or restraint consistent with RCW 28A.600.485. WAC 392-172A-02110. Following the release of a student from the use of restraint or isolation,

the school must implement follow-up procedures. These procedures must include: reviewing the incident with the student and the parent or guardian to address the behavior that precipitated the restraint or isolation and the appropriateness of the response; and reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents. Any school employee, resource officer, or school security officer who uses isolation or restraint on a student during school-sponsored instruction or activities must inform the building administrator or building administrator's designee as soon as possible, and within two business days submit a written report of the incident to the district office. The written report must include, at a minimum, the following information: the date and time of the incident; the name and job title of the individual who administered the restraint or isolation; a description of the activity that led to the restraint or isolation; the type of restraint or isolation used on the student, including the duration; whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents. The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred. If the school or school district customarily provides the parent or guardian with school-related information in a language other than English, the written report under this section must be provided to the parent or guardian in that language. RCW 28A.600.485.

Disability-Based Harassment: Each school district shall adopt a policy and procedure that prohibits the harassment, intimidation, or bullying of any student. RCW 28A.300.285. Bullying is defined as aggression used within a relationship where the aggressor has more or real perceived power than the target, and the aggression is repeated or has the potential to be repeated. *Dear Colleague Letter*, 69 IDELR 263 (OSERS/OSEP 2013). However, confrontations between students that are not characterized by a power imbalance generally do not constitute bullying. *District of Columbia Pub. Schs.*, 111 LRP 24663 (SEA DC 2011) (finding that a single incident of two high school students fighting over a girl did not amount to bullying).

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

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

Parent Request for IEP Meeting: IEP meetings must be held periodically, but not less than annually to develop the IEP, and to revise or review it as necessary. 34 CFR §300.324; WAC 392-172A-03110. When a parent requests an IEP meeting to discuss issues of FAPE the school district must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting to determine whether such a change is needed, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of free appropriate public education to the student. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20).

## **FINDINGS OF FACT**

### **Background**

1. Prior to moving to the District, the Student attended schools in several different school districts in Washington State.
2. In 2014, another Washington district (district 1) completed an initial evaluation of the Student and determined that he was eligible to receive special education services under the category autism.
3. In January 2016, the Student attended an elementary school in a different district (district 2) and was reevaluated. The Student's January 2016 evaluation report recommended that the

Student receive specially designed instruction in the areas of adaptive behavior, reading, math, written expression, and social/emotional, and related services in the area of speech language therapy.

4. At the start of the 2016-2017 school year, the Student attended elementary school in a third district (district 3) and on November 29, 2016, the Student's individualized education program (IEP) team met and developed the Student's IEP. The Student's November 2016 IEP noted that the Student is "an intelligent and charming young man" whose "[attention deficit/hyperactivity disorder] ADHD and autism contribute to behavior [that] significantly impede his learning," for example the Student will hum/talk to himself and ignore directions, and will "begin to scream and cry. He has become destructive in the classroom and aggressive toward students and staff." The November 2016 IEP included several goals in each of the following areas: adaptive/self-help and social emotional/behavioral, and provided for the following specially designed instruction and related services in the special education setting:
  - Adaptive/Self-Help: 120 minutes, 5 times per week (resource teacher)
  - Social Emotional/Behavioral: 120 minutes, 5 times per week (resource instructional assistant<sup>1</sup>)
  - Speech/Language: 30 minutes, 1 time per week (speech language pathologist (SLP))

The IEP also included the following accommodations/modifications:

- Adult proximity (as needed)
- Use of core curriculum for reading, math, and written language
- Access/use of the following: picture schedule
- Behaviorally related: clear and visual expectations; use of positives to encourage behavior and performance; break tickets; rewards – teach another student; choices given
- Organization: picture schedule/communication book

The IEP stated that the Student would spend 33.5% of his school week in the general education setting.

5. According to district 3's prior written notice, dated November 29, 2016, at the IEP meeting (and a previous meeting on November 16), the team discussed the Student's two previous evaluations completed by district 1 and 2, and that the Parent did not agree with the reevaluation completed by district 2. The district 3 IEP team then agreed to develop a "Review IEP" that incorporated the evaluation completed by district 1. The Parent also "expressed concerns the IEP does not define the best program for [the Student] and she continues to indicate the evaluation and IEP presented today, does not reflect the results from the [district 1] evaluation and IEP." The prior written notice stated that the Student's placement was in the resource room with fifteen minutes "at the first of the school day in the General Education classroom with a para-educator." The Student would also begin attending the general education physical education (PE) class, "with a para-educator, beginning at five minutes...working toward a full PE class."

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<sup>1</sup> The documentation provided does not define the "resource instructional assistant" position because this term was used by a previous district the Student attended. It is likely that a resource instructional assistant is a paraeducator.

## 2017-2018 School Year

6. The District's 2017-2018 school year started on September 5, 2017.
7. In late September 2017, the Student was in third grade and transferred to a District elementary school from district 3 and continued to be eligible for special education and related services under the category autism.
8. According to the District's response, once the Student enrolled in the District, the District requested the Student's "transfer IEP" and evaluation records and once received, the District reviewed the November 2016 IEP and placed the Student in a special education self-contained classroom.
9. The Student's special education classroom is one of two classrooms at the elementary school, which has a designated special education program for students with autism, also called the WRAP program. The two classrooms are connected by a smaller room in the middle, which is used primarily for sensory activities. One of the WRAP classrooms has students in third and fourth grade and the other classroom has students in fifth and sixth grade. However, the students in the WRAP classrooms often participate in shared activities. Each classroom is staffed by one special education teacher and two paraeducators.
10. On September 25, 2017, the District provided the Parent with a prior written notice that stated that the District was "proposing to honor [the Student's] current IEP from the previous school district and start providing the special education services outlined in that IEP" until "a new IEP can be written, if it is determined to be necessary, or the anniversary date of the current IEP."
11. The Student's first day of school was September 28, 2017. Beginning on his first day, school staff sent home daily communication logs (daily log) to provide information to the Parent about the Student's school day. The daily log included notes on the Student's behavior, how and what he did during certain lessons and times of the day, and included a space for the special education teacher to write notes to the Parent and the Parent to write back.<sup>2</sup>
12. On September 29, 2017, the Student's special education teacher asked the Parent, via the Student's daily log, if they could schedule an IEP meeting for late October 2017. The Parent wrote back that the special education teacher should just let her know what days were available for a meeting. The daily log also included notes that stated that the Student was still learning classroom routines and "expected behaviors" and that the special education teacher was coaching him on these behaviors.
13. On October 3, 2017, the Student's daily log indicated that staff used redirection and discussed behavior expectations. The log also noted that the Student "spent 5 minutes on the wall for his behavior at first recess, and did great for the rest of recess." The special education teacher

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<sup>2</sup> The District's response included daily communication log pages from September 28, 2017 through March 5, 2018. This decision will reference certain pages that relate to the issues raised in the complaint. The absence of a reference to a daily log does not indicate that it does not exist.



also asked whether the Parent could meet on October 19, 2017, for a parent/teacher conference or “would you just like to do that and the IEP at the same time?” The Parent responded that “it would be okay if we put both of the meetings together.”

14. On October 4, 2017, the special education teacher wrote on the daily log that they could not hold the IEP meeting during the conference on October 19, but that “we could do it towards late October/Early November” and that they could “have both the IEP meeting and the conference at the same time. That would also give us a little more time to get to know [the Student].” The special education teacher suggested times on October 30, November 2, and November 6, 2017. The Parent responded that October 30, 2017 would work.
15. On October 6, 2017, the Student’s daily log noted that he “missed out on this [jobs/super bucks<sup>3</sup>/sensory] due to taking super bucks from a classmate” and that the Student lost time at recess “for throwing woodchips at people.” The special education teacher noted on the log that she “did enforce the consequences and coached [the Student] about being truthful and touching others’ property.” The Parent responded that “the only problem is my son is not having positive reinforcement taking time off his recess is not positive.”
16. On October 9, 2017, the Student’s daily log noted that the Student had his “best recess so far. He earned \$25 plus an additional \$5 [super bucks].”
17. On October 11, 2017, the Student’s daily log noted that he and another student were having conflict and that both the Student and the other student needed “lots of redirection.”
18. On October 11, 2017, the District sent a follow up IEP meeting invitation to the Parent regarding the October 30 IEP meeting.
19. On October 23, 2017, the Student’s daily log noted that he earned additional computer time by completing all of his reading assessments, but that he did not earn super bucks during music because he had “some unexpected behavior.”
20. On October 24, 2017, the Student was involved in an incident where he hit another student while she was standing in line. According to the District’s “incident statement” and the “structured ABC<sup>4</sup> data form” (ABC form), the Student wrote the other student an apology letter and the other student forgave the Student. According to a statement from one of the Student’s paraeducators (paraeducator 1), she was with the Student when the incident happened and characterized the incident as “an intentional act...[the Student] admitted after the fact to myself and to the student that his punch was intentional.” In response, the Parent provided a statement that the Student was trying to “give the student a turkey high-five” and that he “accidentally missed her hand.” The Parent stated that the Student was “wrongfully

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<sup>3</sup> Super bucks are a classroom currency used in the Student’s class; students can earn super bucks for good or “expected” behavior and lose money for “unexpected behaviors.”

<sup>4</sup> ABC = Antecedent, Behavior, and Consequence

accused of purposely punching a student in the stomach, his purpose was not to incite violence but merely communicate a friendly gesture.”

21. Also on October 24, 2017, the elementary school assistant principal emailed the District director of special education (director), the District education specialist<sup>5</sup>, the Student’s special education teacher, and the principal regarding a phone call she had with the Parent that afternoon (about the incident that day). The assistant principal stated that during the conversation, the Parent shared a number of concerns. The Parent stated that she had not shared her concerns with the Student’s special education teacher because “a meeting was supposed to be set up after he joined the class but never happened and that his IEP meeting is Monday, October 30<sup>th</sup>.” The assistant principal also listed the Parent’s other concerns, which included:

- The Parent felt that the Student’s sensory issues were not being addressed and that the Student was not getting enough support, especially at recess;
- That the Student was not getting help for his anxiety;
- That the Student was receiving negative reinforcement instead of positive reinforcement; and,
- That the Student’s behaviors were escalating.

The education specialist responded, provided more information about the Student, and stated that the Parent had been contacted on October 4, 2017, about scheduling the October 30 meeting. The education specialist stated that there had been “2 documented events [that] have been included [in the daily communication log] in which he stole items from peers (he admitted it) and throwing handfuls of woodchips at peers” and noted that there are “2 WRAP paras outside in addition to the recess supervisors. 1 para is always in close proximity to him to provide instruction and reinforcement due to the behaviors.”

22. On October 25 and 26, 2017, the special education teacher noted on the daily log that the Student needed multiple redirections after unexpected behaviors.

23. On October 27, 2017, the Student’s special education teacher sent the Parent a draft of the Student’s proposed October 2017 IEP.

24. Also on October 27, 2017, the daily log noted that the Student “earned super bucks for doing a great job on some assessments. He is very skilled at math”, but also that the Student had a hard time following directions and transitioning to afternoon activities that day.

25. On October 30, 2017, the Student’s IEP team, including the Parent, met and developed the Student’s annual IEP. The October 2017 IEP included goals in the areas of adaptive behavior, social-emotional, written expression, reading, and math, and included the following specially designed instruction and related services in a special education setting:

- Adaptive behavior: 60 minutes, 5 times per week
- Math: 60 minutes, 5 times per week
- Reading: 75 minutes, 5 times per week

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<sup>5</sup> The education specialist is a teacher that is on special assignment to the District and provides support at several different schools.

- Social-emotional: 75 minutes, 5 times per week
- Writing: 30 minutes, 5 times per week
- Speech-Language Consultation: 15 minutes, 1 time per month

The October 2017 IEP also provided the Student with the following accommodations:

- Sensory breaks
- Text-to-Speech
- Behaviorally Related: Adult proximity (daily, in all settings)
- Behaviorally Related: Management system
- Behaviorally Related: Reinforcement
- Content Area: Provide immediate feedback
- Content Area: Give short, concise directions

The IEP stated that the Student would spend 20.35% of his school week in the general education setting for "extra curricular activities [and] when not accessing [specially designed instruction]."

26. On October 31, 2017, the Student's daily log noted that he earned "early sensory" and candy, but that he also needed "a lot of one on one attention and redirect to be quiet."
27. On November 1, 2017, the Student's daily log noted that he earned extra super bucks and had the opportunity to earn extra sensory time and computer time. The special education teacher also wrote on the log that "before [the Student's] IEP can be completed, I need a copy of the doctor's note. It needs to be finalized by tomorrow." The Parent responded that she would email the information from the doctor the following day. The Parent also stated that the Student was sad because paraeducator 1 "took his math book away and she was rude." The special education teacher sent back a handwritten note that stated that paraeducator 1 "took all student's math workbooks away because it was time to work out of the textbooks," but that the Student "doesn't enjoy working out of the textbook." The special education teacher also wrote that paraeducator 1 "said [the Student] had a very successful day in math on Wednesday and earned \$40 super bucks and sensory breaks."
28. On November 2, 2017, the Student's daily log noted that the Student earned additional sensory time and super bucks, and that the Student was provided with "lots of encouragement."
29. The Student's October 2017 IEP was implemented on November 3, 2017. According to the prior written notice, dated November 3, 2017, the Parent had requested at the IEP meeting that positive reinforcement be added to the daily communication form. The Student's special education teacher shared, at the meeting, that "positive reinforcement occurs all day to support [the Student]" but that positive reinforcement would be identified on the daily communication log.
30. On November 6-8, 2017, the Student's daily log noted that the Student earned additional sensory time, super bucks, and candy. On November 6, the log noted that the Student "did a great job solving a conflict with another student by using his polite words." And on November

8, the log noted that there was an incident on the bus where another student hit the Student. The special education teacher wrote that "resolving conflicts appropriately between students is a skill that [the Student] and his classmates are still working on."

31. On November 13, 2017, the Student's daily log noted that he earned super bucks and extra sensory time, but lost candy as a snack during reading/writing time.
32. On November 14, 2017, the Student's special education teacher emailed the Parent and stated that "it was brought to [her] attention that a student hit [the Student] on the way to the buses this afternoon." The special education teacher stated that "an adult checked [the Student] to make sure he was ok and he also indicated he felt fine." The special education teacher said that the Student and the other student were separated on the bus, that they would be distanced from each other in the future, and that she would be contacting the other student's parents.
33. Also on November 14, 2017, the Student's daily log noted that he earned super bucks and extra sensory time. And on November 15, 2017, the Student earned super bucks and extra sensory time, lost some super bucks for not following directions, but then took responsibility and earned some back.
34. On November 16, 2017, the Student's daily log noted that he earned extra super bucks and that the special education teacher provided the Student with coaching on how to "handle himself when he gets into the 'red zone'" and when he needs to "deal with frustration." The ABC form, dated November 16, noted that the Student was "physically blocking a teacher" and that the Student "repeatedly tried to bite [the] teacher." According to the form, consequences included being "redirected, ignored, given break/walk, physical prompt given<sup>6</sup>, change/stop activity, [and] other-sensory room."
35. On November 20, 2017, the Student's daily log noted that he earned super bucks, extra sensory time, candy, and an extra video. And on November 21 and 22, 2017, the Student's daily logs noted that he needed "help to resolve conflicts" and "conflict resolution coaching."
36. On November 27, 2017, the Student's daily log noted that he earned super bucks and extra time on "cool math."
37. On November 28 and 29, 2017, the Student's daily log noted that he earned super bucks, extra sensory time, and candy, also noted that the Student needed "a lot of redirecting" and had a

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<sup>6</sup> According to the District's executive director of special education (executive director), a physical prompt is a Right Response technique where in the teacher or paraeducator locks elbows with, puts a hand on the shoulder, or gives a side hug to a student as a cue to move or walk. The physical prompt is not a two-arm hold or a restraint. According to the District's documentation, both of the special education teachers and all of the paraeducators in the Student's classroom were trained in Right Response and recertified at the advanced level on August 23, 2017, before the 2017-2018 school year began.

hard time following directions during recess. On November 29, the log also noted that the Student "didn't get super bucks but didn't lose" them later in the day.

38. On December 1, 2017, the special education teacher wrote a note on the Student's daily log that "lately [the Student] has seemed easily upset. We gently coach him through these moments and offer extra support."
39. On December 4, 2017, the District provided the Parent with progress reporting that indicated that the Student had made progress, but had not yet met his IEP annual goals in adaptive behavior, social-emotional, and math. The progress reporting also stated that the Student had no progress to report on his written expression and reading goals.
40. Also on December 4, 2017, the Student's daily log noted that he earned extra super bucks during recess. And on December 5-7, 2017, the Student's daily logs noted that he earned extra sensory time, super bucks, math computer time, an extra video, and extra recess time.
41. On December 8, 2017, the Student's daily log noted that while he earned super bucks, extra sensory time, and extra recess, the Student also "had a hard time following expected behavior" during the morning and a "hard time listening to the teacher" and following directions in the afternoon. The special education teacher wrote in the notes that the Student "struggled today with following expected behavior. We gently coached him each time and praised him heavily every time he made good choices." The Parent wrote a note back to the teacher that stated that she had concerns about the Student's safety because another student hit the Student on the bus and then told the Student that the Student was on his "dead list." The Parent stated that this was not the first time the other student had said that or hit the Student. The Parent requested "better supervisions for [the Student] because [the other student] has hit him in the past on several occasions."
42. On December 11, 2017, on the daily log, the special education teacher responded to the Parent's safety concerns and stated that they always have "eyes on" all the students at recess. The Parent responded and stated that the Student was in physical pain. The special education teacher responded on the December 12 daily log that she was "sorry to hear he was in pain at recess...he did not tell us he was hurt or else we would have taken him to the nurse immediately." The special education teacher also wrote that they would "continue to have one-on-one supervision at recess, and send him to the nurse if he complains of any pains." The December 11 and 12 daily logs also noted that the Student earned extra super bucks.
43. On December 12, 2017, according to the ABC form, the Student was "screaming, crying, yelling, [and] upsetting other students" and another paraeducator in the Student's class (paraeducator 2) had to clear the room.
44. On December 14, 2017, the Student's daily log stated that he "had a bit of a meltdown" and that after he was calm, the special education teacher took him to the nurse "just to make sure he was ok." According to the ABC form, dated December 14, the Student throughout the day was "whining, crying, yelling, disruptive, refusing to follow directions, interrupting kids'

game...pushing into teacher, throwing sensitive equipment." According to the form, consequences included: "redirected, ignored, given break/walk, given activity/item, physical prompt given, change/stop activity, [and] taken back to class."

45. In response to the notes on the daily log, the Parent sent a letter to the special education teacher, via the Student's daily communication log that stated:

Today 12-14-17 my son told me that [paraeducator 1] push[ed] him in the morning meeting and [his head] hit on his right side on his forehead and also he was [taken] to the nurse office to get an ice pack. And also she call[ed] him "bull head." [Paraeducator 1] is not being nice to [the Student]...in the comments of today I was never told about my son getting hurt it said he had "a meltdown"...I [would] like to please help my son to see if there is a different parra [sic] than [paraeducator 1], I'm very concerned about my son's safety or we need a metting [sic] ASP [sic].

According to the Parent's complaint, she meant this as a request for an IEP meeting to her concerns regarding the paraeducator and the Student's safety. Later on December 14, 2017, the Parent emailed the special education teacher a scanned copy of the letter she wrote in the Student's daily log.

46. On December 15, 2017, the special education teacher wrote back to the Parent, via the Student's daily communication log, and stated that the Student:

Did have a rough day yesterday but I can assure you, nobody pushed him. [The Student] was in the middle room because he did not want to participate in morning meeting and was quite upset. [Paraeducator 1 and 2] were both in the middle room with him and [the Student] flopped on the ground and said he hit his head. We took him to the nurse only because he said his head hurt. The nurse said she saw no sign of him hitting his head but gave him an ice pack to comfort him. Afterwards [the Student] and [paraeducator 1] made a gingerbread house together (I have a very cute picture I can email you if you'd like) and he asks her for a hug every day...Let me assure you our students' safety and well-being are our top priorities...

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

48. On January 9, 2018, the Parent notified the District that the Student would be absent until January 15, 2018 for medical reasons. The teacher responded the same day and offered to send work home for the Student. According to the Student's attendance record, he was absent for medical reasons from January 2-12, 2018. The District was on break on January 15, 2018.

49. On January 16 and 22, 2018, the Student's daily logs noted that he earned super bucks.

50. On January 25, 2018, according to the Parent, based off the Student's account of what happened, the Student was restrained by two paraeducators (paraeducator 1 and 2). In her complaint, the Parent stated that the Student had a "meltdown, so the classroom was evacuated" and then paraeducator 1 put the Student "in a small room (known by the students as the time out room) that is located in the back of [another special education teacher's]

classroom.”<sup>7</sup> The Parent stated that paraeducator 1 held the door closed with her foot so that the Student would not be able to get out of the small room.

51. According to the ABC form, dated January 25, 2018, the Student was “yelling, crying, refusing to follow directions, disrupting whole class, [and] overreacting.” According to the form, the consequences used were redirection, ignoring the Student, giving the Student a break, giving the Student a “physical prompt,” reprimand, changing or stopping the activity, giving social attention, and having the Student calm down.
52. On January 26, 2018, according to an email from the principal to the director, the Parent came in person to the school to speak with the principal. During the conversation, the Parent expressed concern regarding the Student’s treatment by paraeducator 1 in December 2017 (e.g., that the paraeducator pushed the Student and he hit his head, called the Student a liar, and called the Student names and a “whiner”) and that the Student had been restrained by paraeducator 1 that day or the previous day. The Parent stated that she had requested an IEP meeting in December 2017, but had never received a response from the Student’s special education teacher.
53. Also on January 26, 2018, after the Parent talked to the principal, the Parent met with the District’s executive director of special education (executive director) to share her concerns. According to the executive director, the Parent was upset because she felt as though the principal was not addressing her concerns. The executive director told the Parent that she would follow up with the principal and help facilitate a meeting.
54. Later on January 26, 2018, the principal met with the Student’s special education teacher to discuss the Parent’s concerns. In regard to the Parent’s statement that the Student had been restrained, the special education teacher stated that the following had occurred:  
Morning meeting, [the Student] was blurting out, reminded, encouraged so [paraeducator 2] offered a deal (he began to cry) [the Student] was pushing a wheeled chair, he bumped into another student [with the] chair, then blamed the student for hurting his hand, his crying increased and ultimately, the team cleared the 5<sup>th</sup>/6<sup>th</sup> room to [the 3<sup>rd</sup>/4<sup>th</sup> grade] room to continue meeting. [The special education teacher and paraeducator 2] sat with him. Door open, with teacher, not fully closed and not locked. He was kicking the door, but not pushing out.

In regard to the Parent’s concerns from December 2017, the special education teacher stated that paraeducator 1 had not pushed the Student, which the teacher had explained this in her hand-written letter to the Parent in December, and that most of the day, the Student worked with all of the staff and was only with paraeducator 1 for his math group. The special education teacher also addressed the Parent’s concerns about paraeducator 1 calling the Student names and stated that the Student “does whine and it is addressed in his IEP (not calling him a whiner)

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<sup>7</sup> The fifth/sixth grade WRAP classroom does have a small room, known as the “quiet room”, where students can calm down or the room can be used in a situation where a student needs to be isolated. According to the executive director, this room was not utilized on January 25, 2018, during the incident with the Student.

his whining is a high pitched noise response when things aren't going his way" and that she was "working on self-calming strategies, walk away take a break" with the Student.

55. On January 29, 2018, the Student's daily log noted that he earned extra sensory time and super bucks.
56. Also on January 29, 2018, the Parent and the Student's older sibling met with the principal. According to the principal's notes, they discussed the Parent's concerns and the Student's history of attending "a number of schools where he has had problems and issues with teachers/principals/para's being abusive and lying." The principal noted that the Parent shared the following concerns:
- Student was afraid of paraeducator 1 and did not want to come to school.
  - The Parent did not believe or trust accounts of incidents that were shared with her.
  - The special education teacher's letter from December 2017 was "fake" and the teacher was lying.<sup>8</sup>

The principal shared that the Student is supervised by numerous staff, that they had not had any complaints about paraeducator 1 in the past, but that they could all meet and talk through the situation with the Student and the Student's special education teacher. The principal stated that the Student is not with paraeducator 1 "one on one" and that "in both situations (hitting his head and the reported restraint) that other teachers were present, in the room, and that they are quite different than being reported." The principal stated that there "seemed to be some perception differences and it would help to have the teacher to share her part" and referenced the special education teacher's December 2017 letter. The principal then ended the meeting because she did not feel it was productive to continue, but told the Parent she would speak to the director to plan a team meeting and that it would be helpful to "talk through the situation with the team."

57. According to the Parent's complaint, at the meeting on January 29, 2018, the Parent shared her concerns regarding different incidents that had occurred and the lack of action taken, and then agreed that the Student and special education teacher should join the meeting after the principal suggested they come to the office. According to the Parent, after she shared her concerns about paraeducator 1, the principal stated that paraeducator 1 was "her best friend for a long time and that she would never do something like that." The Parent stated that the principal then suggested the Parent withdraw the Student from school if she did not believe the school environment was safe. The Parent stated that she then requested to speak with the superintendent and the principal said she would email him and ask him to get ahold of the Parent, but that the principal did not email the superintendent. The Parent stated that she considered filing a report with Child Protective Services (CPS) because the school was being uncooperative and that the principal again asked her if she wanted to withdraw the Student.

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<sup>8</sup> According to the executive director, the Parent also stated that she had never received the teacher's response in December 2017.



58. Later on January 29, 2018, the principal emailed the Parent and thanked her for coming in that day and sharing her concerns. The principal stated that she wanted to “address each one and work together to resolve them” and stated that after the meeting, she reached out to both the Student’s special education teacher and the director to schedule an IEP meeting to “revisit the situation from December, as well as the other concerns that you shared.” The principal stated that the Student’s special education teacher would work to schedule a meeting and that the director would be reaching out to the Parent the next day.

The principal also forwarded this email to the director and the executive director and stated that she had already sent them her notes from the meeting with the Parent.

59. On January 30, 2018, the Student’s daily log noted that he earned super bucks. The daily log and the ABC form, dated January 30, also stated that the Student “owed 2 minutes on the wall for talking loudly during the few minutes of quiet time at lunch.” At the bottom of the log, the Parent wrote that paraeducator 1 had put the Student in “time out” and that the Parent wanted to make sure that paraeducator 1 does not have “any interaction directly with [the Student] during lunch.” In response, the special education teacher wrote back (on the January 31, 2018 daily log) that paraeducator 2 assigned the Student and another student two minutes on the wall and that paraeducator 1 supervised as part of paraeducator 1’s recess duties.

60. Also on January 30, 2018, the director and the Parent discussed the Parent’s concerns over the phone.

61. Later on January 30, 2018, the Student’s teacher emailed the Parent regarding available dates for an IEP meeting. Later that same day, the District sent the Parent a meeting notice for the meeting scheduled on February 12, 2018.

62. On January 31, 2018, the director emailed the Parent and stated that the Student’s special education teacher would be scheduling a meeting and that the principal was “doing an investigation based on your conversation with her on Monday.” The director also stated that the Student would be moved out of paraeducator 1’s math group “at minimum until the team is able to meet.”

63. On January 31, 2018, according to the Parent’s complaint, the special education teacher spoke with the Student about paraeducator 1 and asked the Student if paraeducator 1 “was nice,” to which the Student responded “no” and that paraeducator 1 was “mean to him.” The Parent stated that the Student felt “uncomfortable and he felt pressured into saying that she was a nice person, when he felt that she was not.”

64. Also on January 31, 2018, the Student, according to the ABC form, threw a ball at another student and was “pushing [his] body into [the] teacher.” Consequences included being redirected, being ignored, and changing or stopping the activity.

65. On February 1, 2018, the special education teacher wrote on the Student’s daily log, in further response to the Parent’s note on the January 30 daily log, that lunch room expectations were

part of the students' social skills lesson. The Parent wrote back that the special education teacher's responses were not addressing her concerns.

66. On February 2, 2018, the special education teacher emailed the Parent to confirm the IEP meeting scheduled for February 12, 2018.
67. Also on February 2, 2018, the Parent wrote on the Student's daily log that the special education teacher was still avoiding addressing the Parent's concerns. The special education teacher wrote back that all the Parent's concerns would be discussed at the IEP meeting scheduled for February 12.
68. On February 7, 2018, the Student's daily log noted that he won an award in music class and the ABC form noted that during computer time, the Student refused to follow directions and was not using the computer properly. Consequences for this behavior included being redirected, changing or stopping the activity, and taking a break or a walk.
69. On February 12, 2018, the Student's IEP team met and reviewed the Student's IEP. According to the prior written notice, no changes were made to the Student's IEP and the Parent did not express any concerns regarding the IEP. The meeting largely focused on the Parent's concerns regarding paraeducator 1. According to the notice, the Parent shared concerns for the Student's safety while at school and requested "an outside investigation regarding these matters, so these issues were not able to be discussed at the meeting." The notice also stated that "the team offered to have [the Student's] outside case worker come into the classroom to observe."
70. According to the Parent's complaint, the IEP meeting was very short because the director did not want to discuss the Parent's concerns or the "violations of [the Student's] IEP."<sup>9</sup> After the meeting, the Parent stated that she made an appointment with the District's chief human resource officer regarding her concerns about paraeducator 1.
71. On February 16, 2018, the Parent wrote a note on the Student's daily log that stated that the Student had been "punished on multiple occasions for eating with his fingers" by paraeducator 2. In the Parent's complaint, she stated that paraeducator 2 would "punish" the Student by making him "stand by the wall for 'time out' outside during recess by the garbage can" for "eating his noodles during lunch with his fingers," that the paraeducator called the Student "stupid" for not understanding instructions, and that the paraeducator "smashed [the Student's] fingers with the door."
72. On February 23, 2018, the ABC form noted that the Student "threw an ice/snow ball" at another student. Then the Student "walked away from [paraeducator 2] who tried to talk to him, refused to follow directions, screamed, continually pushed into teacher" and "accused [the teacher] of pushing him. He also threatened to tell his mom. 2 adults witnessed the entire

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<sup>9</sup> It is not clear what the Parent is referring to here or which parts of the IEP the Parent believed the District was failing to implement.

episode." Consequences included "redirected, ignored, given break/walk, reprimand, [and] social attention."

73. The Student was absent February 26-March 5, 2018.
74. On February 27, 2018, the Parent emailed the director and asked to schedule a meeting. The director responded and scheduled a meeting on March 2, 2018.
75. On March 2, 2018, according to the District's response, the Parent met with the director and the Parent shared her intent to homeschool the Student. The director offered IEP services and proposed continuing the Student's specially designed instruction through partial enrollment, and the Parent declined.
76. On March 5, 2018, the Parent provided the District with a completed and signed declaration of intent to home school the Student for the remainder of the 2017-2018 school year, and withdrew the Student from the District.
77. On March 8, 2018, the District provided the Parent with a prior written notice, acknowledging the Parent's decision to homeschool the Student. The notice stated that the District "proposed to continue to provide specially designed instruction, through partial enrollment to access Free and Appropriate Public Education (FAPE)." The notice stated that at the meeting with the director on March 2, 2018, the director asked the Parent if she would like to "partially enroll so that [the Student] could access services on the IEP" and the Parent declined. The notice stated that "if at any time the parent would like for the [District] to continue to offer special education services and FAPE, they are encouraged to enroll."
78. On April 18, 2018, the chief human resources officer emailed the Parent and stated that the investigation into paraeducator 1 was complete and stated, in an attached letter, "the District obtained a third party investigator to review your concerns of alleged inappropriate conduct by a paraeducator at [school] toward your son. The outside investigator has completed his work and was unable to substantiate any inappropriate conduct or violations of District policy by any employees." According to the Parent, when she reviewed the investigation report, most of the concerns that she had raised had not been investigated or addressed.
79. On June 8, 2018, the Parent filed this complaint.

## **CONCLUSIONS**

**Issue 1: IEP Implementation (Positive Behavior Reinforcement)** – The Parent alleged that the District failed to implement the Student's individualized education program (IEP), specifically that the Student was not provided the positive behavior reinforcement outlined in his IEP. A district must ensure that it provides all services, including modifications and accommodations, consistent with the student's needs as described in the IEP. When an IEP team determines that a student's behavior impedes his learning, the student's IEP should include positive behavioral interventions, strategies, and supports, and the team should consider whether a functional behavioral

assessment (FBA) and behavioral intervention plan (BIP) are needed. However, the inclusion of positive behavioral interventions in a student's IEP does not prevent the District from enforcing its code of conduct using other forms of disciplinary consequences when appropriate.

Here, the Student's November 2016 IEP provided for specific positive behavior accommodations, such as the use of "positives" to encourage behavior and performance and rewards, while the Student's October 2017 IEP was less specific and included behavior accommodations, such as adult proximity and reinforcement. However, at the October 2017 IEP meeting, the Student's teacher shared that positive reinforcement occurred daily and would be noted on the Student's daily communication log. According to the District's documentation, at various times, staff addressed the Student's behavior in the following ways:

- Coaching
- Time on wall at recess
- Earn/extra (or not earn or get taken away): classroom currency, sensory time, computer time, candy, video, time on math program, recess time
- Redirection
- Provided with encouragement
- Ignored
- Given break/walk
- Given activity/item
- Physical prompt given
- Reprimand
- Change/stop activity
- Social attention
- Take to office
- Time to calm down in the quiet room
- Praise when making good choices

OSPI finds that the District provided the Student with a mix of positive behavior reinforcement and other behavioral consequences. While the Parent may have preferred the use of positive reinforcement only, the District's use of other consequences to enforce its code of conduct is not a violation of the IDEA. OSPI finds that the District implemented the Student's IEP, including providing him with positive behavior reinforcement.

**Issue 2: Use of Restraint and/or Isolation** – The Parent alleged that the District improperly restrained the Student. Restraint (physical intervention or force used to control a student, including the use of a restraint device, to restrict a student's freedom of movement) or isolation (restricting a student alone in a room/enclosure, from which the student may not leave) are permitted only when a student's behavior poses an imminent likelihood of serious harm. Isolation does not include a student's voluntary use of a quiet space for self-calming, or the temporary removal of a student from his or her regular instructional area to an unlocked area for the purposes of carrying out an appropriate positive behavioral intervention plan. In the event that a student is restrained or isolated, a district must follow the documentation and reporting requirements set out in the State regulations.

On January 25, 2018, according to the Parent, the Student was restrained by two paraeducators when the paraeducators put the Student in the "quiet room" (a small room in the fifth/sixth grade classroom) and one of the paraeducators held the door closed with her foot so the Student could not leave the room. According to the District, during the morning meeting with both WRAP classes, the Student began to yell, cry, refuse to follow directions, and disrupt the class. The team cleared the room and the special education teacher and paraeducator 2 guided the Student by his elbow to the small middle room that connected the two classrooms to calm down. The special

education teacher and paraeducator 2 sat with the Student. According to the District, both of the doors were open, the Student kicked at the door, and the teacher remained with the Student until he was calm. The small room, according to the documentation, was often used for sensory activities. The District maintains that it did not restrain or isolate the Student during this incident, and thus did not need to follow the restraint and isolation reporting and follow up procedures. However, the Parent was notified of what happened as parents are provided with copies of the ABC forms.

While the Parent may not agree with or believe the District's version of events, there is no evidence in this complaint that the Student was restrained or isolated. The District did physically touch the Student to prompt him to move into the smaller room; however, there is no evidence that the Student's freedom of movement was restricted or that the Student was restricted alone in a room or enclosure. OSPI finds that the District did not restrain or isolate the Student; and thus, that the District was not required to engage in further reporting or follow up procedures.

**Issue 3: Bullying** – The Parent alleged that the Student was harassed and bullied by peers, which resulted in the Student being denied a free appropriate public education (FAPE). The Parent also alleged that the Student was bullied by staff in the classroom. Harassment and bullying that occurs based on a student's status of having a disability or receiving special education services (or bullying unrelated to the student's disability) that adversely affects or prevents the student from receiving meaningful educational benefit may result in a denial of a FAPE. If a teacher is deliberately indifferent to the bullying and abuse is so severe that the student can derive no benefit from the services that he is offered, then the student has been denied a FAPE. Confrontations between students, which are not characterized by a power imbalance between the students, generally do not constitute bullying. As part of an appropriate response to allegations of bullying, a district should convene the IEP team to determine whether the effects of the bullying have caused the student's needs to change such that the student's IEP is no longer providing educational benefit. The bullying of a student with a disability, or a student with a disability who engages in bullying behavior, may trigger the need for a reevaluation to determine if additional supports and services are needed.

Peer Incidents: Based on the documentation provided in this complaint, there were several incidents of conflict between the Student and other students. The Student, several times, hit other students or threw items (e.g., woodchips, balls, snowballs) at other students. The District's documentation indicates that the Student was coached, redirected, taught to deal with frustration, or otherwise disciplined (see issue no. 1) for his behavior. There were also several incidents where another student hit the Student on the bus, or on the way to the bus, and where the student told the Student he was "on his dead list." The documentation indicates that the District worked with the Student on conflict resolution skills, separated and distanced the Student from the student that hit him, contacted the other student's parents, and ensured that the Student had one-on-one supervision during recess. The school had two paraeducators and additional recess supervisors when the Student was at recess, and there was always a paraeducator in close proximity to the Student to provide instruction and reinforcement.

There is not a clear indication that the other student's aggression towards the Student meets the definition of bullying and the documentation shows that many of the students in the Student's class were learning how to appropriately deal with frustration and resolve conflict. Regardless, the District had a duty to and did respond when the Parent raised allegations or concerns of bullying. It is unclear from the documentation whether there was a clear pattern of behavior emerging, but if the Student returns to school in the District, OSPI strongly recommends that the Student's IEP team discuss whether a functional behavioral assessment (FBA) or behavioral intervention plan (BIP) is warranted. Overall, the District has substantiated that the Student did not experience bullying that resulted in a denial of FAPE and that it responded to all behavioral incidents involving the Student.

Staff Incidents: On several occasions, the Parent raised concerns about the paraeducators in the Student's classroom. The Parent's concerns included that paraeducator 1 pushed the Student, called him names and a liar, was not nice to the Student, and restrained the Student. The Parent also raised concerns about paraeducator 2, including that she punished the Student for eating with his fingers, called him names, and smashed his fingers in the door. After the Parent raised these concerns in December 2017 and January 2018, the Parent met with the principal and had discussions with the District's executive director and director of special education. The Parent shared that she did not trust accounts of the incidents from the school and that she did not want paraeducator 1 to have any direct interaction with the Student. The documentation indicates that the District was available to discuss the Parent's concerns, scheduled an IEP meeting to address the Parent's concerns, moved the Student out of paraeducator 1's math group, offered to allow the Student's case worker to observe the classroom, and ultimately agreed to the Parent's request to have an outside law firm conduct an investigation into her allegations. The outside investigation was unable to substantiate an inappropriate conduct or violations of District policy by any employees. The Parent did not agree with the outcome of the investigation.

The Parent's concerns regarding the safety of the Student are serious and important; and while the Parent may disagree with the outcome of the District's outside investigation, there is no documentation in this complaint that indicates that the staff bullied the Student or that the District was indifferent to the Parent's concerns. The documentation shows that in instances when the Student got hurt (as a result of his own actions or from another student), the school staff immediately addressed any potential injuries, and there were occasions when the Student was disciplined for his behavior by the special education teacher and paraeducators (see issue no. 1). The documentation also shows that the Student had positive relationships with the paraeducators and that the Student faced a range of positive and other consequences for his behaviors. Finally, the documentation does indicate that the Parent's perception of events was different than most of the staff members who were with the Student in the classroom. Regardless of the differences in perception, OSPI finds that the District took steps to address the Parent's concerns and did not deny the Student a FAPE.

**Issue 4: IEP Meeting Request** – The Parent alleged that the District failed to promptly respond to her request for an IEP meeting. IEP meetings must be held periodically, but not less than annually, to develop or revise a student's IEP. When a parent requests an IEP meeting to discuss

issues of FAPE, the school district must schedule a meeting at a mutually agreeable time and place, or notify the parent why the District has determined that a meeting is not necessary to ensure the provision of a FAPE to the student.

October 30, 2017 Meeting: During the 2017-2018 school year, the Student's IEP team met on October 30, 2017, to develop the Student's annual IEP. The October 2017 IEP meeting was scheduled in early October after a series of notes between the Parent and the special education teacher written in the Student's daily communication log where they agreed to have the Student's IEP meeting and academic conference at the same time, in order to have more time to get to know the Student. The District confirmed the meeting on October 11, 2017, when it sent the Parent a review IEP meeting invitation. Later in October 2017, the Parent expressed concerns that a meeting had not been set up sooner after the Student transferred; however, OSPI finds that the District's documentation substantiates that the District scheduled the IEP meeting at a mutually agreed upon date and time.

December 14, 2017 Note: On December 14, 2017, following an incident, the Parent wrote a note in the Student's daily log where she expressed concerns about a classroom paraeducator's treatment of the Student. Among other things, the Parent specifically stated, "I'm very concerned about my son's safety or we need a meeting [sic] ASP [sic]." The Student's special education teacher responded the next day to explain that the paraeducator had not mistreated the Student, and assured the Parent that the Student's safety was a top priority. While the teacher did not schedule a meeting, given the ambiguity in the Parent's note regarding whether she was in fact requesting a meeting or instead wanting the teacher to address her concerns, it was not unreasonable for the teacher to respond to the Parent by providing clarifying information about the incident that occurred on December 14, and not immediately schedule a meeting. It is also noted that it is unclear from the Parent's note whether, at the time, she was requesting an IEP meeting, or if she was only suggesting meeting with the teacher. Given the information and the documentation provided in this complaint, the District has substantiated that it did not fail to respond to the Parent's December 14, 2017 note.

February 12, 2018 Meeting: On January 26 and 29, 2018, following the alleged restraint incident (discussed above), the Parent spoke with the school principal and requested an IEP meeting to discuss her concerns about the incidents in December and January. The District and the Parent subsequently agreed to schedule an IEP meeting on February 12, 2018. On February 12, 2018, the Student's IEP team met and reviewed the Student's IEP. The District followed procedures for responding to the Parent's January 2018 request for a meeting.

## **CORRECTIVE ACTIONS**

### **STUDENT SPECIFIC:**

None.

### **DISTRICT SPECIFIC:**

None.

Dated this \_\_\_ day of August, 2018

Glenna Gallo, M.S., M.B.A.  
Assistant Superintendent  
Special Education  
PO BOX 47200  
Olympia, WA 98504-7200

**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)