

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-06**

### **PROCEDURAL HISTORY**

On January 24, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a Student (Student) attending the Everett School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On January 27, 2020, 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 February 13, 2020, the District requested an extension. OSPI gave the District until February 25, 2020 to submit their response.

On February 19, 2020, OSPI received the District's partial response to the complaint and forwarded it to the Parent on February 27, 2020.

On February 25, 2020, OSPI received the remainder of the District's response to the complaint and forwarded it to the Parent on February 27, 2020. OSPI invited the Parent to reply.

On February 29, 2020, the Parent emailed OSPI and stated she could not read the CD format of the District's response. On March 2, 2020, OSPI sent the Parent a hard copy of the District's response.

On March 10, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

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

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to and after the investigation period, which began on January 25, 2019 and ended on January 25, 2020. 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 or after the investigation period.

It is also noted that the Parent filed an additional complaint with OSPI on December 31, 2019 (SECC 19-101). That complaint alleged, in part, that the District did not follow procedures to address the Student's behaviors, including conducting and implementing a functional behavioral assessment (FBA) and all behavioral intervention plans (BIPs). On February 28, 2020, OSPI issued its decision in SECC 19-101. Due to the timing and the issues investigated, some of the facts from

SECC 19-101 overlap with this complaint (SECC 20-06). Therefore, this complaint may reference facts from SECC 19-101 that occurred within the timeline of this investigation.

### **ISSUES**

1. Did the Student's Individualized Education Program (IEP) address the Student's need for medication during the 2019-2020 school year?
2. Did the District follow the procedures for conducting a manifestation determination review?
3. Did the District follow least restrictive environment placement procedures when determining whether the Student would attend his home (neighborhood) school, as required by WAC 392-172A-02060(3)?

### **LEGAL STANDARDS**

Health Plans: An individualized education program (IEP) must include a statement of how the student's disability affects the student's involvement and progress in the general education curriculum. The IEP team is required to consider, and describe in the IEP as appropriate, the related services, supplementary aids and services, and accommodations a student needs to enable his participation in his education and to support his teachers. Any nursing or health services a qualified school nurse or other qualified person provides to the student with an IEP should be documented in the student's evaluation and IEP as a related service. This includes an Individualized Health Plan (IHP), an emergency action/care plan, emergency evacuation plan, and any medical accommodations. If services are outlined in an IHP, best practice is to include the IHP as a section in the IEP or to attach the IHP to the IEP and document as a related service. 34 CFR §300.320; WAC 392-172A-03090. 34 CFR §300.320; WAC 392-172A-03090.

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or behavior intervention plan. 34 CFR §300.530(e); WAC 392-172A-05146.

If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct a functional behavioral assessment (FBA), unless the district had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a behavior intervention plan (BIP) for the student; or, if a BIP already has been developed, review the plan, and modify it, as necessary, to address the behavior; and, except for special circumstances, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan. 34 CFR §300.530(f); WAC 392-172A-05147.

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.

A student's IEP team has the responsibility to determine the student's least restrictive environment (LRE), and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9<sup>th</sup> Cir. 1994).

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 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. Unless the student's IEP requires some other arrangement, the student must be educated in the school that the student would attend if not disabled. If the student needs other arrangements, placement must be as close as possible to the student's home. A student should not be removed from his or her age-appropriate general education classroom solely because of needed modifications in the general education curriculum. 34 CFR §300.116; WAC 392-172A-02060. Districts must ensure that students eligible for special education participate in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of each Student. 34 CFR §300.117; WAC 392-172A-02065.

Consideration of Less Restrictive Placement Options: Less restrictive placements must be considered, but they do not always have to be tried. As a rule, when there is uncertainty about the appropriate placement for a student, a district should make a diligent effort to educate him in a less restrictive environment before proposing a more restrictive one. *Seattle School District No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9<sup>th</sup> Cir. 1996).

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.

## **FINDINGS OF FACT**

### **Background**

1. At the commencement of the 2018-2019 school year, the Student was in fifth grade and attended his neighborhood elementary school in the District. He was eligible for special education under the category of emotional/behavioral disability.
2. On December 7, 2018, the Student's individualized education program (IEP)/evaluation team met to review the Student's evaluation. According to the District's response, at the meeting, the team determined the Student remained eligible for special education and changed the Student's eligibility category to autism. The team additionally recommended the Student's location of services be changed to a middle school in the District to enable him to receive services from the "Achieve Autism ('Achieve')" program.<sup>1</sup> Changing the Student's location required advancing the Student to the next grade level (sixth grade) for the second semester of the 2018-2019 school year. The Achieve classroom at the middle school was "designed to assist Students who had social emotional needs, as well as diagnoses of autism."
3. January 7, 2019 was the first day of the second semester for the District for the 2018-2019 school year. The Student began the semester as a sixth grade Student at a District middle school.
4. Also, on January 7, 2019, members of the Student's IEP team met to develop the Student's IEP and to develop a behavioral intervention plan (BIP) based on the December 2018 functional behavioral assessment (FBA).<sup>2</sup> The IEP stated there were no other factors not already addressed (such as medical concerns or other issues) or other adaptations needed.
5. At the January 7, 2019 IEP meeting, the IEP team developed a BIP for the Student. The BIP identified several target behaviors, including excessive arguing, cursing, screaming at others, threatening others, throwing objects, hitting (objects and people), punching and kicking others, hitting himself, walking out of class, and suicidal threats (words, pictures, etc.). The target behaviors and functions were the same as those outlined in the 2018 FBA with the addition that the Student sometimes also experienced negative feelings from home due to his parents' recent divorce.

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<sup>1</sup> According to the Parent's reply, at the IEP meeting, the Parent originally requested the District consider alternative placements, including those outside the District, which would enable the Student to remain in elementary school, but her request was denied.

<sup>2</sup> The Student also has an Emergency Response Protocol (ERP), dated March 5, 2018. The ERP was updated on January 7, 2020.

The Student's January 7, 2019 BIP referenced medication management as an agitation predictor, but did not set forth any direction/instructions on administration of medication.

6. On January 7, 2019, the District issued a prior written notice (PWN), proposing to continue the Student's IEP.
7. On April 9 and June 14, 2019, the District conducted two separate manifestation determination meetings to discuss separate behavior incidents that occurred on March 26 and June 11, 2019, respectively.

### **2019-2020 School Year**

1. On September 4, 2019, at the commencement of the 2019-2020 school year, the Student was in sixth grade and attended his neighborhood middle school in the District.
2. On September 12, 2019, according to a bus incident report, the Student "argued with two other students, and kicked each of them on the bus." The Student received a one-day in-school suspension (ISS) for "dangerous behavior," which he served on September 13, 2019.
3. On November 5, 2019, the Student "called [the] assistant principal a sexually explicit word. He also refused to follow directions not to climb on the staircase." The Student received a one-day ISS for "Abusive/Disrespect[ful]" behavior, which he served on November 6, 2019.
4. On November 7, 2019, according to behavior records, the Student "was not complying with staff requests. He was climbing up the outside railing of the staircase and jumping down. He also used sexually explicit language toward multiple staff members." The Student additionally received two warnings and dropped a tier during first period for "saying 'F' you" to another Student, "doing disruptive stuff in class (standing up, walking in front while [case manager] was giving instruction, climbing in the stairs, saying 'mind your own business, you have a brain damage...'" According to an incident report, the Student was sent home from school early and received a two-day short-term out-of-school suspension for "dangerous behavior."
5. On November 12, 2019, according to an incident report,<sup>3</sup> the Student "pushed [teacher] up against a wall today in class. He also used inappropriate language toward staff, and failed to follow directions from [teacher] or the principal before being picked up by his parent." The

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<sup>3</sup> Behavior records maintained for the week of November 11-15, 2019 indicate that during period 3 for one of the dates, the Student received eight warnings and three tier drops. He "stayed in class with [case manager.] In rare form. Swearing – sexual context – throwing things at Students. Pushed [case manager]." Although there is not a specific date on the behavior form, it appears the incident was from November 12, 2019.

Student was sent home from school and received a four-day short-term out-of-school suspension for "dangerous behavior."<sup>4</sup>

6. The Student was suspended from November 12 through 15, 2019.
7. Also, on November 18, 2019, the Student "threatened to hit [teacher] with a stool. He also climbed the hand railings of the staircase and second floor divider, threatening to jump." The incident resulted in an emergency expulsion from November 18 through December 3, 2019, which was later converted to a five-day out-of-school suspension.
8. On November 20, 2019, the District mailed notice to the Parents and Student that a manifestation determination meeting was scheduled for November 22, 2019.
9. On November 22, 2019, a manifestation determination meeting was held to discuss the Student's emergency expulsion on November 18, 2019, as well as the behavior incidents that had transpired prior to November 18, 2019. The Student's IEP team determined the Student's behaviors were a manifestation of his disability, but determined his IEP had been implemented. The manifestation team agreed to conduct an FBA to develop a new plan for the Student. The Parent consented to the FBA and gave permission for the school to exchange medical information with the Student's mental health providers.
10. On November 22, 2019, the District mailed a PWN to the Parent regarding the outcome of the manifestation determination and the decision that an FBA was needed to gather information to develop a behavior plan to reduce the likelihood the Student would face discipline in the future. It also documented the Parent's provision of consent for the District to exchange medical information.
11. On November 26, 2019, according to an incident report, the Student "became physical with [teachers 1, 2, and 3]. He kicked/stomped [teacher 1] and [teacher 2] and elbowed [teacher 2] and [teacher 3]. [Student] also used a pair of scissors to cut his leg." The Student was sent home from school and received a two-day out-of-school suspension.
12. On December 2, 2019, the District mailed the Parents and Student notice that a manifestation determination was scheduled for December 3, 2019.
13. On December 2, 2019, the Student did not attend school because he was suspended as a result of the behavior incident on November 26, 2019.
14. Also, on December 2, 2019, the Parent exchanged emails with the principal, special education director, and special education teacher, requesting that at the manifestation determination, the team discuss the Student's need for a dedicated 1:1 paraeducator. The Parent wrote:

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<sup>4</sup> A manifestation determination, dated November 22, 2019, noted that this short-term suspension was converted; however, it does not mention the number of days. It appears from attendance records it was converted to five days.

I want [Student] to be able to return to school as soon as possible, however, I'm nervous about having [Student] restart without having a chance to discuss changes prior to the day he is starting. This pattern of [Student] being suspended and then restarting with no significant change and then being suspended again isn't healthy. Not academically, emotionally, or socially for him...Again, as I have verbally, I am asking for the team to consider a 1:1 for [Student] for a limited period of time for all of [Student's] time at school. As his behaviors have occurred in all settings...I believe it is important for us to have a plan for him taking all of that into consideration. Having a behavior management trained one to one would not only help to catch [Student's] warning signs and help him manage his behaviors, but also can help obtain data for a new FBA, which we discussed at our last Manifestation meeting on 11/22/19. Also, [principal] or [special education teacher], can you please advise me on who will be present at the meeting tomorrow.

The Principal responded by email the same day: "Finishing [the plan] before the start of the day will allow him to attend school tomorrow. [Special education teacher] is building 'unstructured time' into the plan, so it's [just going] to be an addition."

15. On December 3, 2019, the District held a manifestation determination meeting in response to the behavior incidents on November 7, 12, and 18, 2019. The Student's conduct was found to be a manifestation of the Student's disability, but not the result of the District's failure to implement the Student's IEP. The Parent questioned the level of paraeducator support, noting that when in the general education setting, the Student was "basically 1:1" because he was the only Student with a paraeducator, but that in unstructured times of lunch/recess, he had a shared paraeducator. It was noted on the manifestation determination document that the manifestation determination team agreed that during unstructured times, the Student would be prioritized by the shared paraeducator.
16. On December 3, 2019, the District issued a PWN that at the manifestation determination, it was determined the Student's behavior was a manifestation of his disability. The PWN documented the Parents' "disagreement with Section III titled Boundaries of the attached plan named [Student's] Plan." According to the PWN, "The school psychologist clarified that [Student] is entitled to attend school effective immediately but [Student's] mother stated that she is choosing to keep him out of school due to safety concerns...and she and [Student's] father have requested an immediate discussion with the Special Services department to rectify this situation." The Student returned to school on December 4, 2019.
17. On December 13, 2019, the Student was removed from school for unsafe behavior. According to emails exchanged between the Parent and principal, the Student's absences were excused and not coded as a "suspension."
18. On December 16, 2019, the Student was absent from school due to his unsafe behaviors on December 13, 2019. The same day, the special education teacher emailed the Parents, principal, special education director, and executive director a summary of the events that occurred on December 13, 2019. According to the special education teacher's email, the Student's behaviors included self-injury, suicidal gestures and threats, threats to others, hitting others, elopement, cursing, and other behaviors.

19. On December 20, 2019, the Student was suspended out-of-school for seven days following an incident during which the Student began banging his head, resulting in his head bleeding and the Student being restrained.
20. On December 23, 2019, the District mailed meeting invitations to the Parents and Student for an IEP review meeting scheduled for January 7, 2020.
21. Also, on December 23, 2019, the principal emailed the Parent that the Student would be emergency expelled when the Student returned from winter break due to his behaviors on December 20, 2019, but noted that the attendance coding would be decided at the mediation scheduled for January 10, 2020. He added that "it doesn't mean it will be entered as a discipline."
22. The District was on winter break from December 23, 2019 through January 4, 2020.
23. On December 30, 2019, the Parent filed SECC 19-101.
24. On January 6, 2020, the Parent emailed the principal, case manager, and copied the Student's father and advocate. The email stated, in relevant part, that the Parent had received the principal's email, inviting the Parents to discuss this matter in a scheduled mediation, but that the Parent viewed the manifestation determination meeting separate from topics to be discussed in the mediation. The Parent requested a manifestation determination meeting and work for the Student to complete while out of school. That same day, the principal emailed the Parent and Student's father and informed them the District was gathering the Student's work and would have it prepared by the following day. The principal also stated the plan was to hold the manifestation determination meeting the following day, along with the IEP meeting.
25. On January 7, 2020, the District convened the Student's annual IEP meeting.<sup>5</sup> The IEP stated the Student had an FBA that was recently updated, a BIP, and behavior goals that are reviewed annually. The IEP stated there were no other factors not already addressed (such as medical concerns or other issues) or other adaptations needed.
26. On January 9, 2020, the Parent emailed the principal and special education director, copying the Student's father and advocate and stated, "It was my understanding from what we talked about on [January 7, 2020], that I was to hear from [principal] yesterday about scheduling [Student's] Manifestation Meeting. I would like to know when the Manifestation Meeting is to take place." The Parent also asked when the Student would be able to return to school and requested a meeting with the 1:1 paraeducator that would be working with the Student before returning him to school. The principal responded to all parties copied on the original email from the Parent and stated that the manifestation determination meeting could take place after the mediation on January 10, or anytime Monday, January 13, 2020.

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<sup>5</sup> Based on documentation provided by the Parent and the District, it appears the manifestation determination did not take place on January 7, 2020.



27. On January 10, 2020, the District and Parent participated in mediation to address reintegrating the Student back into school.
28. On January 12, 2020, the Parent emailed the principal and stated since they ran out of time after the mediation, could he please update her on the plans for the manifestation determination meeting and Student's re-entry to school.
29. The District was closed because of weather conditions between January 13 and 15, 2020.
30. On January 13, 2020, the principal responded to the Parent, copying the special education director, case manager, and Student's father, stating, "As you know the district is closed today due to snow, but as a result of the meetings on Tuesday [IEP meeting] and Friday [mediation] I am writing to let you know that [Student's] Emergency Expulsion starting on [January 6, 2020] is ending today [January 13, 2020]." The email acknowledged that the Parent wanted to hold a manifestation determination prior to the Student's return to school, but that this was not required to allow him to return. That same day, the Parent responded, via email, copying all parties from original thread and stated, in relevant part:

This is not the order that things are supposed to happen. Before [Student's] suspension ends, we are to have a Manifestation Meeting. This has not happened...[Student] needs to know who his 1:1 is going to be and he needs more than 24 hours advanced notice when he is to go to school. Beyond that, I have asked both in person and in writing, that I (and [Student's father], if he wishes) speak directly with the 1:1 so that they can better understand our son and what works for him...We need to follow the order of things and I definitely, as [Student's] mother and as a valuable part of the IEP team, have a voice in this. I do not feel the District is listening to my concerns nor taking them into consideration.
31. On January 13, 2020, the District sent the Parent notification that it had ended the Student's emergency expulsion as of that day and that a manifestation meeting was to be held as soon as possible.
32. On January 14, 2020, the Parent emailed the principal and stated, "[I]t sounds like since a fill in para[educator] (until the highly trained 1:1 can start) has not yet been selected by you, [Student] is to not return to school until Thursday. Clearly, for the safety of [Student] we need to be proactive and have these things planned out ahead of time. The manifestation really does need to be done before [Student's] return to school." That same day, the Principal responded via email, in relevant part, "Once [...] the winter weather allows for school to re-open, we will schedule the manifestation. I am very hopeful that is tomorrow."
33. On January 20, 2020, the District was closed for Martin Luther King Jr. day.
34. On January 21, 2020, the District's nurse supervisor emailed the Parent regarding a medication audit and investigation related to the Student. The errors and discrepancies included medication not being given to the Student as indicated in his health plan (missed doses), medication not being accounted for in the Student's medication administration record, and documentation suggesting the Student may not have received the correct dosage of

medication following a change in dosage having been reported to the school. These errors were believed to have occurred on the following dates:<sup>6</sup>

- November 4, 2019 (missed dose)
- November 6, 2019 (medication not dispersed as prescribed – inadequate dose)
- November 26, 2019 (medication not dispersed as prescribed – inadequate dose)
- December 4, 2019 (missed dose)

35. On January 22, 2020, the nurse supervisor emailed the Parent and stated:

OSPI and the Washington Department of Health guidance does not support the alerting of the prescriber for medication errors in the school setting unless the error results in bodily harm or injury to the Student, causes the Student to be seen by emergency services or necessitates monitoring and or interventions to preclude harm. If the prior statement is not met, the supervising nurse, using clinical judgment, determines the level of severity of the medication error and can alert the provider if the severity warrants it. For errors in Category A-D...we do not generally alert the provider. The errors I found are in the A-D category. Having said that, if you would like us to notify the provider, I would be glad to do so.

That same day, the Parent responded and asked the nurse supervisor to notify the provider.

36. On January 23, 2020, the Student was expelled due to a physical fight with another Student and threatening to kill the principal in front of two other adults. Based on documentation provided by the Parent in this complaint, the Parent emailed the Student's advocate and stated, in relevant part, "[I]t's an expulsion. End date of [February 5, 2020]. We STILL haven't had his last Manifestation meeting and now we need another."

37. January 23, 2020 was the 10th school day, by which the District needed to hold the manifestation determination meeting related to the December 20, 2019 disciplinary incident.

38. On January 28, 2020, based on documentation provided by the District in response to this complaint, the manifestation determination meeting for the Student's December 20, 2020 suspension was held.

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<sup>6</sup> In an email to the Parent from the nurse supervisor, dated January 21, 2020, the nurse supervisor explained the errors for medication inventory counts by noting the Student had "multiple missed days," and that "it is not easy to do a thorough check for each day of school quickly when each school day (even those the Student is absent) is not clearly marked on the [medication administration record (MAR)]. Without documenting each school day, the nurse would have to reference the Student's attendance and I suspect because the count of medication matched the inventory, she did not dig further. Documenting each day, even when the Student is absent, has been explained to...the nurse...and will happen from now on. I can see that [school nurse] did sign off on the MARS in Sept, Oct. and January." The nurse supervisor further noted that she spoke to the principal on January 21, 2010 to make sure he was aware of the audit and her findings to reinforce the interventions she had put in place to "ensure this doesn't happen again." She added that the principal "expressed that the health room is busy at the time [Student] comes in for medication." The nurse supervisor noted that she troubleshot with the principal and they developed a plan so that the Student could have his medications administered individually if necessary, while other Students wait outside.

## CONCLUSIONS

**Issue One – Medication:** The Parent alleged the Student’s individualized education program (IEP) did not address the Student’s need for medication during the 2019-2020 school year. Specifically, the Parent alleged that the Student was unable to access his free appropriate public education (FAPE) due to behaviors resulting from a lack of appropriate administration of the Student’s medication.

An IEP team is required to consider, and describe in the IEP as appropriate, the related services, supplementary aids and services, and accommodations a student needs to enable his participation in his education and to support his teachers. Any nursing or health services a qualified school nurse or other qualified person provides to the student with an IEP should be documented in the student’s evaluation and IEP as a related service. If services are outlined in an Individualized Health Plan (IHP), best practice is to include the IHP as a section in the IEP or to attach the IHP to the IEP and document as a related service.

Here, the Student’s medication distribution schedule was managed through a health plan, which was not a part of the Student’s IEP. If the IEP team determined that the Student’s health plan and medication were required for the Student to access a FAPE, then the health plan with medication accommodations should be added or attached to the IEP. According to the IDEA, each IEP should include a statement of related services, supplementary aids, program modifications and/or supports needed. The fact that the Student’s medication was listed as an aggravating factor in his behavioral intervention plan (BIP), and medication management was a target informing the BIP of factors that impacted the Student’s behavior, demonstrates that the IEP team was aware that the Student’s health plan and medication were required for him to access a FAPE, and therefore should have been included as a related service in the Student’s IEP. While a district may, a district is not required to include the provisions of a student’s health plan directly in their IEP. However, if the health plan is maintained in a separate document, it should be attached to the IEP to ensure all providers are aware of the health needs.

OSPI accordingly finds the District’s failure to include or attach the Student’s health plan as a related service in the Student’s IEP, when the Student’s BIP demonstrated the IEP team’s awareness of the Student’s need for his medication to access a FAPE, resulted in a procedural violation. The District will be required to hold an IEP meeting to discuss incorporating the health plan into the IEP.

**Issue Two – Manifestation Determination:** The Parent alleged the District failed to follow the procedures for conducting a manifestation determination review regarding the Student’s December 23, 2019 emergency expulsion. Within ten school days of the district’s decision to change a student’s placement through discipline, the district, parents, and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student’s disability.

The Student was emergency expelled on December 20, 2019. Due to the District being on winter break from December 23 through January 3, 2020, the District’s closures due to inclement weather

from January 13-15, 2020, and a District holiday on January 20, 2020, the Student's manifestation determination should have been held no later than January 23, 2020. Even though the District ended the Student's suspension early and told the Parent the Student could return to school as of January 13, this did not release the District from its obligation to hold a manifestation determination meeting within 10 days of the Student's December 20, 2019 expulsion. The need for the manifestation determination meeting is based on the length of the expulsion only to the extent that it changes the Student's placement through discipline. This expulsion was originally scheduled for seven days, and the District stated the Student could return after serving only six days (although this offer was extended during a snowstorm that closed schools for three days). However, due to the amount of in- and out-of-school suspension the Student had already amassed in the 2019-2020 school year, a manifestation determination meeting was still required to determine whether the Student's conduct was a manifestation of his disability.

Based on documentation provided by the parties in the course of this investigation, the Parent appeared to believe the manifestation determination meeting needed to occur prior to the Student's return to school. Holding the manifestation determination prior to the Student's return to school would have been best practice because a determination that the Student's behavior was a result of his disability would have prompted a review and/or revision of the FBA and/or BIP. A BIP revision or revision to the Student's safety plan may have been necessary for the Student's safe return to school; however, this does not mean the special education regulations require that manifestation determination meeting happen before the Student returns to school. In this matter, despite several attempts to schedule the manifestation determination meeting, the District failed to hold the meeting by January 23, 2020. Because the meeting was not held, the team did not determine whether the incident was a manifestation of the Student's disability, and the team did not have the opportunity to determine whether an FBA or BIP review was appropriate. Therefore, OSPI finds the District failed to comply with the IDEA when it did not hold the Student's manifestation determination meeting within 10 days of the Student's expulsion.

OSPI finds the District in violation and the District will be required to develop guidance related to manifestation determination meetings. Because the manifestation determination meeting was ultimately held on January 28, 2020, no further Student specific corrective actions are required.

**Issue Three – LRE/Placement:** The Parent alleged that the District team did not follow least restrictive environment (LRE) placement procedures when determining whether the Student would attend his home (neighborhood) school. The IDEA implementing regulations require a student's IEP team to ensure that a student's placement is based on the student's IEP and is as close as possible to the student's home.

Here, the Student attended his neighborhood middle school in the District for the 2019-2020 school year, where he attended the Achieve program, designed to assist students with diagnoses of autism and emotional needs. While the law requires that the Parent participate in placement discussions regarding the Student, consensus is not required. School administrators are free to assign the child to a particular school, as long as that determination is consistent with the conclusions of the IEP team. The Parent's allegation likely referred to the IEP team decision made during the December 2018 IEP meeting to place the Student, then a 5th grader, at the Achieve

middle school program. OSPI does not have the authority to address issues that occurred outside of the scope of the investigation period—one calendar year from the date OSPI receives a complete complaint—and this IEP team decision regarding the Student’s placement during December 2018 is outside the scope of this investigation. Therefore, OSPI issues no finding on this matter.

### **CORRECTIVE ACTIONS**

By or before **June 22, 2020** and **August 28, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

By or before **June 15, 2020**, the District will convene an IEP team meeting to review the Student’s IEP, health plan, and medication needs. The IEP team will include or attach the Student’s health plan to his IEP. The team will determine if the IEP should be amended to include this as a related service, accommodation, or simply reference and attach the health plan as the administration of the Student’s medication is necessary for him to access a FAPE.

By or before **June 22, 2020**, the District will provide OSPI with documentation related to the IEP meeting, including: 1) meeting invitation and communications related to scheduling; 2) the Student’s amended IEP; 3) prior written notice; 4) meeting notes and/or agenda; and, 5) any other relevant documentation.

#### **DISTRICT SPECIFIC:**

The District will develop written guidance to be provided to the following District staff: certificated special education staff (teachers and case managers), school psychologists, principals, school nurses, and District special education administration staff, which will address: 1) the procedures for holding manifestation determination meetings, and the importance of reviewing and revising the FBA/BIP as part of the process, if it is determined the student’s behaviors was a manifestation of their disability; and, 2) procedures on how IEP teams determine how and when it is appropriate to include a student’s health plan as a related service in the student’s IEP; or, whether the health plan should be referenced and attached or included as an accommodation. The guidance will include examples.

By **June 22, 2020**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by July 6, 2020, and provide additional dates for review, if needed.

By **August 28, 2020**, the District will provide OSPI with documentation showing that **prior to the first week of the 2020-2021 school year**: 1) the District provided the guidance to the District staff listed above, District-wide; and, 2) the District met with the required staff members at the specific middle school in this complaint to review the written guidance (this meeting will allow the staff at the middle school an opportunity to review the guidance and ask questions). This documentation will include: 1) proof of dissemination of guidance to District certified special education staff (e.g., email to required staff or signed declaration that the guidance was sent out

to required staff); 2) a sign-in sheet for the meeting with required staff members at the middle school in this matter; and, 3) a roster of staff required to attend the guidance review meeting so OSPI can cross reference with the sign-in sheet and verify that staff have reviewed the guidance.

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 March, 2020

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.)