

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-17

PROCEDURAL HISTORY

On March 8, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a complainant (Complainant) on behalf of a student (Student) who attended high school in the Arlington School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On March 9, 2017, 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 March 31, 2017, OSPI received the District's response to the complaint and forwarded it to the Complainant on April 4, 2017. OSPI invited the Complainant to reply with any information she had that was inconsistent with the District's information. The Complainant did not reply.

On April 28, 2017, OSPI requested additional information from the District. On May 1, 2017, OSPI received the requested information from the District. OSPI did not have the Student's mother's permission to send the Complainant the Student's personally identifiable information, including education materials, and did not send this information to the Complainant.

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

OVERVIEW

At the beginning of the 2016-2017 school year, the Student attended a District high school and was eligible to receive special education and related services under the category of other health impairment. In January 2017, the District held a manifestation determination meeting to address the Student's behavior, although the Student had not yet been suspended for 10 school days. In February 2017, the District held another manifestation determination when it changed the Student's placement, suspending him for 10.5 days during the school year, and determined that the Student's theft, disrespect, and truancy were not a manifestation of the Student's other health impairment disability. In March 2017, the District held a third manifestation determination meeting when it changed the Student's placement by suspending him for 14 days during the school year, and determined that the Student's disruption of the educational process, lewd conduct and bullying was not a manifestation of the Student's disability. The District assigned the Student to serve in-school suspension for the episodes that preceded the manifestation determinations in February and March 2017. However, the District did not hold an IEP meeting to determine whether the in-school suspension was an appropriate location or services for the Student's interim alternative education services (IAES) that would be provided. Although the Student's behavior was

twice determined not to be a manifestation of his disability, the school team decided to initiate a reevaluation and conduct a functional behavioral assessment, and obtained the Student's mother's consent. The Complainant alleged that the District failed to follow special education disciplinary procedures, and failed to respond to the Student's mother's request to review the Student's IEP. The District admitted it did not follow special education disciplinary procedures, and proposed correction actions to address the violation. The District denied it received any requests to review the Student's IEP from the Student's mother.

ISSUES

1. Did the District follow special education disciplinary procedures during the 2016-2017 school year?
2. Did the District follow procedures for responding to the Parent's request(s) to revise the Student's individualized education program (IEP) during the 2016-2017 school year?

LEGAL STANDARDS

Parental Notice and Procedural Safeguards: No later than the date on which the district makes the decision to remove a student, creating a change of placement through discipline for more than ten school days, it must notify the parents of that decision. 34 CFR §300.530(h); WAC 392-172A-05145(8). A copy of the parents' procedural safeguards under the IDEA must accompany this notification. 34 CFR §300.504; WAC 392-172A-05015(1); WAC 392-172A-05145(8).

Disciplinary Removals – No Change of Placement: School districts may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155. A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or fewer in that school year, if it provides services to a student without disabilities who is similarly removed. 34 CFR §300.530; WAC 392-172A-05145.

Disciplinary Removal that Results in a Change of Educational Placement: A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days; or, when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. 34 CFR

§300.536; WAC 392-172A-05155. After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. WAC 392-172A-05145(4).

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-05145(5).

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, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or, if a behavioral intervention plan already has been developed, review the behavioral intervention 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-05145(6).

When a disciplinary exclusion exceeds ten school days and the behavior in question is found not to be a manifestation of the student's disability, a district may apply the same relevant disciplinary procedures, in the same manner and for the same duration as it would to a student not eligible for special education, except that: the student must continue to receive services that provide a FAPE and enable the student to continue to participate in the general education curriculum and progress toward meeting annual IEP goals, even if services are provided in another setting; and receive, as appropriate, a functional behavioral assessment and behavioral intervention services that are designed to address the behavior violation so that it does not recur. 34 CFR §300.530(c)(d); WAC 392-172A-05145(3)(4).

Functional Behavior Assessment (FBA): An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a

wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a behavioral intervention plan (BIP) that will reduce or eliminate the misbehavior. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2). An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP. As with other individualized evaluation procedures, and consistent with 34 CFR §300.300(a) and (c), parental consent is required for an FBA to be conducted as part of the initial evaluation or a reevaluation. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4).

Consent for Reevaluation: A district is required to obtain informed parental consent before conducting any assessments as part of a reevaluation of a student eligible for special education services. 34 CFR §300.300(c); WAC 392-172A-03000(3). A district is required to obtain consent when conducting a functional behavior assessment (FBA). *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4).

Parent Request for IEP Meeting: 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. If the district refuses to hold an IEP meeting requested by the parent, it must provide the parent with prior written notice documenting its refusal and an explanation of why the IEP meeting is not necessary to ensure the provision of FAPE to the student. 64 Fed. Reg. 48 12476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20).

FINDINGS OF FACT

1. At the beginning of the 2016-2017 school year, the Student attended a District high school and was eligible to receive special education and related services under the category of other health impairment.
2. The District's 2016-2017 school year began on September 7, 2016.
3. The Student's individualized education program (IEP) in place at the beginning of the school year was developed on September 23, 2015. The Student's September 2015 IEP provided for specially designed instruction in a special education setting in the areas of math, reading, and writing. The Student's IEP also provided for the following accommodation/modifications: preferential seating, use of a calculator, and a separate test setting.
4. On September 14, 2016, the Student's IEP team, including the Student and the Student's mother, met to develop the Student's annual IEP. The September 2016 IEP stated the Student "struggles to perform grade level tasks due to skill deficiencies in basic academics". The IEP further stated the Student's "inability to read at grade level, understand basic math skills, and use evidence in his writing

prevent him from satisfactory progress". The IEP provided for the following specially designed instruction in a special education setting:

- Math: 55 minutes – five times per week
- Reading Comprehension: 25 minutes – five times per week
- Written Expression: 30 minutes – five times per week

The IEP also provided for the following accommodation/modifications as needed:

- General Education Setting – limited multiple choice, simplified test wording, spelling and grammar devices, extra time for quizzes, and extra time to complete assignments
- Any Class – preferential seating, use of spellcheck and/or word prediction software, and a separate test setting
- Special Education – spelling and grammar devices
- Math and Science Classes – use of a calculator
- State Testing – text to speech software and a separate test setting

5. The September 2016 IEP was based on the Student's most recent reevaluation completed on September 23, 2014. The evaluation report stated the Student was initially evaluated for services in kindergarten and that the evaluation recommended services in behavior, reading, math and written language. The report also stated the Student "had an early history of defiance, tantrums, in attention, hyperactivity and aggressive behavior". The report further stated, "the behavior issues at school have centered around inattentiveness and hyperactivity, with some mild difficulties with peer relationships". The report further stated the Student's "attention deficit hyperactivity disorder (ADHD) continues to impact his classroom that the Student exhibits poor orientation toward academic work and the Student's lack of focus and intentionality toward doing quality work impacts his ability to interact in a meaningful way with the newly presented material". The evaluation recommended specially designed instruction in reading comprehension, written expression, and math.
6. Also on September 14, 2016, the District issued a prior written notice, proposing to initiate the Student's IEP beginning on September 22, 2016.
7. On November 21, 2016, the in-school suspension supervisor referred the Student to the school office for disrespecting the teacher's authority. The referral form stated that the Student did not attend lunch detention even after the supervisor sent the Student a reminder note.
8. The District was on break November 24-25, 2016.
9. On November 28, 2016, the high school assistant principal (assistant principal 1) processed the November 21, 2016 referral from the in-school suspension supervisor. Assistant principal 1 then assigned the Student one (1) day of in-school suspension, noted that the Student would serve lunch detention until he caught up with his schoolwork, and telephoned the Student's mother.
10. Also on November 28, 2016, the District sent a letter to the Student and his parents, notifying them that the Student was suspended from school for one day. The letter

stated the Student “skipped his assigned lunch detention even after sending him a reminder note”. The letter also stated the Student violated the District Board Policy on Student Conduct, specifically insubordination. The letter further stated the Student’s parents could request an informal conference with the principal or assistant principal pursuant to the Washington Administrative Code (WAC) to resolve any grievances concerning the Student’s suspension. The in-school suspension was effective on November 29, 2016.

11. On December 1, 2016, the Student’s science teacher referred him to the school office for excessive tardiness and continual lack of performance. The science teacher stated the Student was late to class multiple times in a row, and noted the Student “continues to choose not to get class work out at all during class.” Prior to this referral, the science teacher “contracted with [the] student” and emailed the parent.
12. On December 1, 2016, assistant principal 1 emailed the science teacher, stating she had spoken with the Student’s mother, and asked whether the science teacher had been contacted by the Student’s mother asking to discuss the Student’s assignments. The science teacher responded, stating she had been in communication with the Student’s mother and the Student’s after school tutor, but she had not spoken with them in a few weeks.
13. On December 2, 2016, the high school in-school suspension supervisor emailed assistant principal 1, the science teacher, and the assistant principal’s secretary, stating the Student was a “no show”.
14. On December 5, 2016, the Student’s special education teacher referred him to the school office for insubordination and violating the school’s cell phone policy. The special education teacher stated the Student would not stop using his phone, and then refused to surrender his phone to her after she gave the Student a second warning.
15. Also on December 5, 2016, the in-school suspension supervisor emailed assistant principal 1, the science teacher, assistant principal 1’s secretary, and the special education teacher, stating the Student was a “no show for lunch” but did report to her class when the special education teacher directed him to in-school suspension for the last few minutes of his fourth period.
16. Later on December 5, 2016, assistant principal 1 emailed the science teacher, inquiring if there was any progress with the Student. In response, the science teacher stated that even though she “literally gave him the answers in class today and put him in a special seat, handed him a pencil. He did not do the assignment today. For him, it seems to be behavioral.”
17. On December 6, 2016, assistant principal 1 processed the Student’s December 1, 2016 discipline referral from the science teacher, and the December 5, 2016 referral

from the special education teacher. Assistant principal 1 assigned the Student three (3) days of in-school suspension and spoke with the Student's mother.

18. Also on December 6, 2016, the District sent a letter to the Student and his parents, notifying them that the Student was suspended from school for three (3) days. Several District staff were copied on the letter. The letter stated the Student "failed to serve his previously assigned lunch detentions. He's insubordinate with staff. He refused to work in class, and has seven tardies in his first period class." The letter also stated the Student violated the District Board Policy on Student Conduct, specifically insubordination. The letter further stated the Student's parents could request an informal conference with the principal or assistant principal pursuant to the WAC to resolve any grievances concerning the Student's suspension. The in-school suspension was effective December 7-9, 2016.
19. The District was on break from December 19, 2016, through January 2, 2017.
20. On January 13, 2017, a high school assistant principal (assistant principal 2) referred the Student to the office for disruption of the educational process. The referral form stated the Student "threw his lunch garbage from bottom of stairs up to garbage at top of stairs". On the same day, assistant principal 2 processed the referral, and assigned the Student two days of lunch detention.
21. On January 17, 2017, the Student was referred to the school office for assault. The referral form stated the Student punched another student who had tapped the Student on the back of his head to get the Student's attention. According to the Student's written statement, the other student kept touching him, so the Student "punched him in the face after he did it again." On the same day, assistant principal 1 processed the referral for assault. Assistant principal 1 assigned the Student a day and a half (1.5 days) of in-school suspension, and telephoned the Student's mother.
22. On January 18, 2017, the District sent a letter to the Student's parents, notifying them the Student was suspended from school for one and a half days. Several District staff were copied on the letter. The letter stated the Student "punched another student in the face after the student tapped him on the back of his head to get his attention." The letter also stated the Student violated the District Board Policy on Student Conduct, specifically assault. The letter further stated the Student's parents could request an informal conference with the principal or assistant principal pursuant to the WAC to resolve any grievances concerning the Student's suspension. The in-school suspension was effective January 17-18, 2017. Including this occasion, the Student had been suspended for five and a half (5.5) school days during the current school year.
23. On January 25, 2017, a District guest teacher and a paraprofessional referred the Student to the school office. The referral form stated the Student was rude to the paraprofessional, made mean comments about another student, refused to work, and eloped from the classroom.

24. Also on January 25, 2017, the Student's special education teacher referred him to the school office for truancy. The special education teacher stated the Student skipped his 3rd period class, and left her classroom without permission. Prior to this referral, the special education teacher telephoned, sent a letter, and held a conference with the Student's parents.
25. On January 27, 2017, the Student's physical education (PE) teacher referred him to the school office for harassment, incivility, and a safety violation. The PE teacher stated that on January 26, 2017, the Student pushed another student, and called that student a profane name while the students were walking down the stairs. The PE teacher also stated the Student refused the teacher's request to stop and talk.
26. Also on January 27, 2017, the Student's science teacher referred him to the school office for vandalism. The referral form stated the Student took another student's Pokémon cards to a sink and ran water on the cards, and then continued to laugh about it throughout the day.
27. Additionally, on January 27, 2017, the science teacher, PE teacher, special education teacher, and a paraprofessional referred the Student to the office for incivility, continual lack of performance, disruption of the educational process, harassment, insubordination, and theft. The referral stated the Student stole a 130-piece Pokémon card set valued at \$399 and destroyed it with water, disrespected the substitute teacher and other staff, called another student a name and pushed him, and skipped class. Assistant principal 1 called the Student's mother to make an appointment to meet with the Student's parents to "discuss plans for the next semester". Assistant principal 1 assigned the Student four (4) days of in-school suspension.
28. Later on January 27, 2017, the District sent a letter to the Student and his parents, notifying them the Student was suspended from school for four days. Several District staff were copied on the letter. The letter stated the parents must schedule an appointment to discuss plans for the next semester before the Student would be able to return to school. The letter stated the Student "stole a Pokémon card set and destroyed it with water, was disrespectful to his substitute teacher, staff members, and other students, and was "caught skipping class." The letter also stated the Student violated the District Board Policy on Student Conduct, specifically theft, incivility, disruption, harassment, and insubordination. The letter further stated the Student's parents could request an informal conference with the principal or assistant principal pursuant to the WAC to resolve any grievances concerning the Student's suspension. The suspension was effective from January 30 through February 2, 2017. Including this occasion, the Student had been suspended for nine and a half (9.5) school days during the current school year.
29. The District's first semester ended on February 2, 2017.
30. The District's second semester began on February 6, 2017, and District schools were closed due to inclement weather.

31. On February 7, 2017, the District issued a notice of meeting to the Student's parents regarding a manifestation determination meeting scheduled on February 13, 2017.
32. On February 10, 2017, the Student's special education teacher again referred him to the office for "refusing to work". The referral form stated the Student completed "a little bit" of the in-class writing assignment and then "was on his phone." When she asked the Student to surrender his phone to her after the second warning, the Student refused. Prior to this referral, the special education teacher spoke with the Student in the hallway twice, and "changed activities to writing". The referral form noted that the Student had multiple referrals.
33. On February 13, 2017, the Student's mother, the Student, the special education teacher, the school psychologist, assistant principal 1, and the school counselor attended a manifestation determination meeting. The review team determined that the Student's conduct was a manifestation of his disability. The Student's mother reported the Student does not have any significant behavior issues at home but "since he has been off meds, [the Student] is much more impulsive and hyper. His behavior difficulties at school have increased since being taken off the medication." The review team considered that the Student may be "trying to sabotage himself and want [sic] to get kicked out of class/school" and discussed a transfer to an alternative District high school which is "much smaller and has more project-based opportunities as well as partial credit options". The Student's mother agreed to discuss the transfer to an alternative setting with her family, and inform the District of their decision.
34. Also on February 13, 2017, the District issued a prior written notice, stating that the Students "recent behavioral incident involving theft, incivility, disruption, harassment and insubordination" was a manifestation of the Student's disability. The notice further stated if the Student continued "to struggle behaviorally, the team may consider initiating a Functional Behavioral Assessment (FBA) to develop a behavior plan".
35. Later on February 13, 2017, the Student's math teacher referred him to the school office for incivility and lewd conduct. It was reported the Student was "using inappropriate language" in class while a substitute teacher was present.
36. On February 16, 2017, assistant principal 1 processed the Student's February 13, 2017 referral from the math teacher. Assistant principal 1 noted the Student admitted to using profane language and telephoned the Student's mother. The Student's mother stated she had scheduled a doctor's appointment for the next week to discuss the Student's medication. Assistant principal 1 assigned the Student one (1) day of in-school suspension.
37. Also, on February 16, 2017, the Student's math teacher referred him to the office for truancy. The math teacher stated the Student did not report to her 5th period class, and instead went to the library. The Student refused the math teacher's request to come to class, but complied when assistant principal 1 intervened. This same day,

assistant principal 1 had a conference with the Student's mother, and assigned the Student one (1) day of in-school suspension.

38. Later on February 16, 2017, the District sent a letter to the Student and his parents, notifying them that the Student was suspended from school for one day. Several District staff were copied on the letter. The letter stated, "it was reported that [the Student] used inappropriate language". The letter also stated the Student violated the District Board Policy on Student Conduct, specifically incivility. The letter further stated the Student's parents could request an informal conference with the principal or assistant principal pursuant to the WAC to resolve any grievances concerning the Student's suspension. The in-school suspension was effective on February 21, 2017. Including this occasion, the Student had been suspended for 10.5 school days during the current school year.
39. The District was on break on February 20, 2017.
40. On February 21, 2017, the District issued a meeting notice to the Student's parents, notifying them that a manifestation determination meeting was scheduled for February 27, 2017.
41. On February 27, 2017, the special education teacher, the school psychologist, assistant principal 1, and the school counselor attended the manifestation determination meeting. The Student and the Student's mother were invited to the meeting but did not attend. The review team determined that the Student's conduct was not a manifestation of his disability. The manifestation determination form stated the school review team "believes that the Student's inappropriate behaviors are intentional. He has reported to administration that he doesn't want to be in class." The review team recommended a full reevaluation, including a functional behavioral assessment (FBA) for the Student. In the meantime, the review team planned to "work on developing a behavioral intervention plan (BIP) as appropriate".
42. On February 27, 2017, the District issued a prior written notice, stating that the Student's "disrespectful conduct ([in]civility/profanity/gestures)" was not a manifestation of the Student's disability.
43. On March 3, 2017, a District guest teacher referred the Student to the office for harassment. The referral form stated that the Student was "making fart noises at [another student] before class" and the other student "was very upset".
44. Also, on March 3, 2017, a paraprofessional referred the Student to the office for disruption of the educational process and lewd conduct. The referral form stated the Student refused to stop "laughing and making fun of the situation" and called his classmates and the paraprofessional a profane name. When the paraprofessional directed the Student to the in-school suspension, the Student refused to report to the classroom and stated he "would just walk around."

45. Also on March 3, 2017, assistant principal 1 processed the Student's referrals from the guest teacher and the paraprofessional. Assistant principal 2 telephoned the Student's mother and left a message.
46. Later on March 3, 2017, the District sent a letter to the Student and his parents, notifying them that the Student was suspended from school for the remainder of the day, and the following three school days. Several District staff were copied on the letter. The letter stated "the Student has been very disruptive and bullying another student". The letter also stated the Student violated the District Board Policy on Student Conduct, specifically disruption of the educational process, lewd conduct, and bullying. The letter further stated the Student's parents could request an informal conference with the principal or assistant principal pursuant to the WAC to resolve any grievances concerning the Student's suspension. The in-school suspension was effective the remainder of the March 3rd school day and March 6-8, 2017. Including this occasion, the Student had been suspended for fourteen (14) school days during the current school year.
47. On March 8, 2017, the Complainant filed this citizen complaint.
48. On March 9, 2017, the District issued a meeting notice to the Student's parents, notifying them a manifestation determination meeting was scheduled for March 10, 2017.
49. On March 10, 2017, the Student's mother, special education teacher, the school psychologist, the Student's after school tutor, assistant principal 1, and a tribal representative attended the manifestation determination meeting. The review team determined that the Student's conduct was not a manifestation of his disability. The manifestation determination form stated the review team "believed that the Student's inappropriate behaviors were intentional." On the day of the incident, assistant principal 1 directed the Student to "stop inappropriate behaviors aimed towards a disabled peer" but the Student did not comply. The review team decided to initiate a full reevaluation, including a FBA, for the Student.
50. Also on March 10, 2017, the District issued a prior written notice, stating that the Student's "conduct (disrupting the educational process, exhibiting lewed [sic] conduct and bullying)" was not a manifestation of the Student's disability.
51. Later on March 10, 2017, assistant principal 1 emailed the high school principal regarding the Student. Assistant principal 1 stated she met with the Student's mother, the school psychologist, a representative from the Student's tribe, and the after school tutor regarding the Student's recent "behavior incidents" and they discussed "at length the Student's behavior and how it has seemed to escalate". Assistant principal 1 also stated she reviewed the reevaluation process with the Student's mother, and discussed supports regarding the Student's behavior.

52. On April 27, 2017, the IEP team, including the Student and the Student's mother, met to review the results of the Student's reevaluation and FBA and developed a new IEP for the Student, which included a BIP.

CONCLUSIONS

Issue 1: Special Education Disciplinary Procedures –

Parental Notice and Procedural Safeguards: The Complainant alleged that the Student's mother did not receive written notice of the Student's March 3rd suspension and did not receive information on "how to dispute it". No later than the date on which the district makes the decision to remove a student, creating a change of placement through discipline procedures for more than ten school days, it must notify the parents of that decision, and send a copy of the parents' procedural safeguards with the notification. Here, the District changed the Student's placement beginning on February 16, 2017, because the Student had been suspended from school for 10.5 school days in the school year. On this same day, assistant principal 1 held a conference with the Student's mother and also sent a letter to the Student and his parents, notifying them of the one-day suspension. The District then again changed the Student's placement beginning on March 3, because the Student had now been suspended for 14 school days in the school year. On this same day, assistant principal 1 left the Student's mother a telephone message and also sent a letter to the Student and his parents, notifying them of the 3.5 day suspension. The District has substantiated it provided notice to the Student's parents about the Student's change in placements. Neither party provided documentation regarding the Complainant's allegation that the District failed to provide the Student's mother with procedural safeguards along with the District's March 3rd notification regarding the change to the Student's placement. However, the District is reminded it is their duty to provide a copy of the parents' procedural safeguards along with the notification of the Student's change in placement.

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 must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. When a disciplinary exclusion exceeds ten school days, and the behavior in question is found not to be a manifestation of the student's disability, a district may apply the same disciplinary procedures as it would to a student not eligible for special education. Although it was not required to hold a manifestation determination meeting in January 2017, when the Student had not yet been suspended for 10 school days, the District proactively took steps to address the Student's behavior, and agreed to continue to monitor the Student and consider a functional behavioral assessment (FBA), if the Student continued to struggle with his behaviors. The District also appropriately held a manifestation determination meeting within six days of changing the Student's placement on February 16, 2017 (10.5 days of suspension) and determined that the Student's theft, disrespect, and truancy were not a manifestation of the Student's other health impairment disability. Additionally, the District held another manifestation determination meeting within five days of changing the Student's placement on March 3, 2017 (14 days of suspension)

and determined that the Student's disruption of the educational process, lewd conduct, and bullying was not a manifestation of the Student's disability. The District substantiated that it properly conducted manifestation determination reviews.

Services in the Interim Alternative Educational Setting: When a student's behavior is determined not to be a manifestation of his disability, and he has been moved to an interim alternative educational setting (IAES), the district must provide the student with services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The student's IEP team determines appropriate services for the student and the location of the IAES. Here, while the District appropriately held two manifestation determination meetings, and determined the Student's behavior was not a manifestation of his disability, the District's documentation in this complaint does not show that the Student's IEP team ever met to determine appropriate services for the Student or the location of the IAES. Instead, the District unilaterally determined the Student's IAES would be in-school suspension. Additionally, the District admitted it did not provide any services to the Student for four school days from January 30-February 2, 2017. The District is reminded it has a duty to continue to provide services to enable the Student to participate in the general education curriculum, and to make progress toward his IEP goals, even during an in-school suspension.

Functional Behavioral Assessment and Behavioral Intervention Plan: When a disciplinary exclusion exceeds ten school days and the behavior in question is found not to be a manifestation of the student's disability, the student must receive as appropriate, an FBA and behavioral intervention services that are designed to address the behavior violation so that it does not re-occur. Here, although the Student's behavior was twice determined not to be a manifestation of his disability, the review team decided to initiate a reevaluation and FBA since the Student was still struggling with his behaviors. The District initially identified the need for a reevaluation and FBA at the February 27, 2017 manifestation determination meeting, and obtained consent from the Student's mother nine school days later on March 10, 2017, when the Student's mother attended the next manifestation determination meeting. The District has provided documentation that the Student's reevaluation and FBA were completed on April 27, 2017, and that the Student's IEP team has since developed a new IEP and BIP for the Student.

Issue 2: IEP team meetings – The Complainant alleged that sometime in February 2017, the Student's mother requested to review the Student's IEP, and the District failed to respond. The Complainant did not provide any additional facts or documentation regarding this allegation. According to the District's response to this complaint, it has no written documentation from the Student's mother requesting a review of the Student's IEP, and there is no record of any verbal requests from the Student's mother. The Complainant has not substantiated that the District failed to respond to the parent's request to review the Student's IEP.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

Given that the District has now completed a reevaluation and FBA of the Student and also developed a new IEP and BIP for the Student, no corrective actions are required.

DISTRICT SPECIFIC:

None.

RECOMMENDATION

OSPI recommends the District review its record keeping procedures to ensure it is able to provide documentation to show it is complying with its duty to provide parents with a procedural safeguards notice in a timely manner.

Dated this ____ day of May, 2017

Douglas H. Gill, Ed. D.
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.)