

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-42

PROCEDURAL HISTORY

On May 28, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Spokane 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 May 31, 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 June 16, 2017, OSPI granted the District an extension of time to submit its response to this complaint.

On June 30, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on July 3, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not reply.

On July 13, 2017, OSPI requested additional information from the District, and the District provided the requested information on July 17, July 18, and July 24, 2017. OSPI forwarded the information to the Parent on July 17, July 18, and July 24, 2017.

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

OVERVIEW

At the beginning of the 2016-2017 school year, the Student transferred into the District and was eligible to receive special education and related services under the category of autism. At that time, the Student's May 2015 transfer individualized education program (IEP) had lapsed. The transfer IEP provided for specially designed instruction in multiple areas and for paraeducator support on a daily basis as an accommodation. At the District elementary school, the Student was not assigned paraeducator support for the first two weeks of school, and the District then developed a new IEP for the Student on September 15, 2016, which did not provide for paraeducator support. From October 2016 through March 2017, the Student had multiple behavioral incidents which resulted in him being suspended for 12.5 school days. The District then held a manifestation determination meeting and determined the Student's behavior was a manifestation of his disability, but did not conduct a functional behavioral assessment (FBA) or develop a behavioral intervention plan (BIP) for the Student. The Student was then suspended two additional half days and the District held another manifestation determination meeting, determined the Student's behavior was a manifestation of his disability, and agreed to conduct an FBA.

The Parent alleged that the District failed to follow procedures for determining if the Student's IEP should include paraeducator support during the 2016-2017 school year. The Parent also alleged that the District failed to follow special education disciplinary procedures. The District denied the allegations.

ISSUES

1. Did the District follow procedures for determining if the Student's individualized education program (IEP) should include paraeducator support during the 2016-2017 school year?
2. If the Student was removed from school for more than ten school days during the 2016-2017 school year, did the District follow special education disciplinary procedures?

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; (g) ESY services, if necessary for the student to receive 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 (effective January 29, 2016).

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's individualized education program (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. 64 Fed. Reg. 48, 12479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral analysis (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).

Behavioral Intervention Plan (BIP): A behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031 (effective January 29, 2016)

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. 34 CFR §300.530(b)(1); WAC 392-172A-05145(2). 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(d)(3); WAC 392-172A-05145(4)(d). After a student eligible for special education has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under WAC 392-172A-05155, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, 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. 34 CFR §300.530; WAC 392-172A-05145(4)(e).

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, 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 or 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. On the date on which the decision is made to make a removal that constitutes a change of placement of a student eligible for special education because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents the procedural safeguards notice. 34 CFR § 300.530; WAC 392-172A-05145.

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).

FINDINGS OF FACT

1. The District's 2016-2017 school year began on August 30, 2016.

2. At the beginning of the 2016-2017 school year, the Student transferred into a District elementary school from another Washington school district and was eligible to receive special education and related services under the category of autism.
3. The Student's transfer individualized education program (IEP) was developed on May 22, 2015. The prior school district did not develop a new IEP for the Student in May 2016. The May 2015 transfer IEP stated that the Student's behavior impeded his learning or that of others, and that the Student should be provided: clear and concise directions and rules, positive reinforcement, praise, choices, and breaks. The transfer IEP did not indicate if the Student had a behavioral intervention plan (BIP). The transfer IEP included annual goals in the areas of reading, writing, math, and behavior and provided for the following specially designed instruction:
 - Reading – 275 minutes per week (special education)
 - Math – 250 minutes per week (special education)
 - Writing – 250 minutes per week (special education)
 - Behavior – 100 minutes per week (special education)
 - Behavior – 75 minutes per week (general education)

The transfer IEP stated that the Student would spend approximately fifty percent (50%) of his school day in a general education setting. The transfer IEP also provided for 15 minutes per month of occupational therapy consultation as a related service, special transportation, and the following accommodations:

- Reminder of rules/directions, breaks, visual schedule, and extra time to complete tasks – daily as needed
 - Behaviorally Related: paraprofessional support – daily, across the district
 - 1:1 and small group instruction – daily, as needed
 - 1:1 or small group assessment – as needed
 - Separate testing location – as needed
4. According to the District's response to this complaint, because the Student's transfer IEP had lapsed in May 2016, the District decided to develop a new IEP for the Student.
 5. On September 15, 2016, the Student's District IEP team, including the Parent, met to develop a new IEP for the Student. The September 2016 IEP stated that the Student's disability adversely impacted "his ability to deal with frustrations during a difficult task. His frustration during a difficult task affects his ability to complete assignments." The IEP also stated that the Student's behavior negatively impacted his learning and the learning of others. The IEP did not state that the Student had a BIP. The IEP included annual goals in the areas of reading, writing, math, and behavior. The Student's behavior goal stated:

The Student will work through assignments at a high frustration level (by asking for help or continuing to work through the task independently) increasing from 2 out of 5 times across 5 assignments to 5 out of 5 times across 5 assignments as measured by teacher created data sheets.

The IEP provided for the following specially designed instruction:

- Reading – 150 minutes per week (special education)

- Writing – 75 minutes per week (special education)
- Math – 150 minutes per week (special education)
- Behavior – 25 minutes per week (general education)

The September 2016 IEP stated that the Student would spend approximately seventy-nine percent (79%) of his school day in a general education setting. The IEP also provided for 15 minutes per month of occupational therapy consultation as a support for school personnel. The IEP provided for the following classroom accommodations:

- Audiobooks/electronic books
- Shortened assignments
- Extra time to complete assignments
- Allow breaks
- Provide individualized/small group instruction
- Provide study outlines/guides/graphic organizers
- Modify/repeat/model directions
- Preferential seating
- Utilize oral response to assignments
- Text-to-Speech software
- Allow dictation to a scribe
- Desktop list of tasks
- Modified grading

6. Also on September 15, 2016, the Parent signed consent for the District to conduct an early triennial reevaluation of the Student. The Student's prior reevaluation was completed in January 2014. It is unclear from the District's documentation in this complaint why the District decided to conduct the triennial reevaluation in September 2016.

7. The District's documentation in this complaint included an evaluation report, dated October 19, 2016. The report was signed by the school psychologist, the Parent, and the Student's special education teacher on October 20, 2016, and the Student's general education teacher on October 24, 2016. The evaluation report stated that the Student continued to be eligible for special education under the category of autism. The evaluation report said that the Student had most recently attended school in another school district "where he had been in a self-contained program for students with academic and behavioral needs. He had a history of aggression and running from the classroom." The evaluation report also stated:

[The Student's] lapsed IEP contained reference to a 1 to 1 paraeducator being assigned to him, in addition to his class being primarily self-contained. When [the Student] arrived in [the District], he was placed in a general education third grade classroom with resource room support. The reported aggressive behaviors which occurred in [the prior district] have not been seen at [the District elementary school]. There was one incident of running from the playground that occurred recently on 10/19/16; [the Student] returned to the playground when the principal ran after him and talked to him. There are no disciplinary incidents reported in [the District's] electronic records as of 10/19/16.

Additionally, the evaluation report stated that on the “aggression scale” the Student’s teacher had noted the Student’s behavior was “only mildly elevated” and noted that he sometimes argued when denied his own way, defied the teacher, sought revenge on others, called other children names, annoyed others on purpose, and hit other children. The evaluation report recommended the Student receive services in the areas of behavior, math, reading, and writing.

8. The District’s documentation in this complaint included a discipline report summary for the 2016-2017 school year regarding the Student. The summary report stated that on October 19, 2016, the Student was hitting and kicking another student at lunch recess, and also ran home. The summary stated that the Student received “in-school intervention”. The discipline report categorized the Student’s actions as “fighting without major injury”.
9. On October 25, 2016, the Student received “in-school intervention” and a half (.5) day out-of-school suspension for leaving school property after “flipping a girl over” at recess, which caused her to fall on her back. The discipline report categorized the Student’s actions as “defiance of a reasonable directive”.
10. On November 16, 2016, the Student received lunch detention for getting mad at another student and throwing bark at the student. The discipline report categorized the Student’s actions as “verbal and physical aggression”.
11. On November 28, 2016, the Student was suspended for one and a half (1.5) days for climbing on stair railings and jumping, climbing on window sills, and trying to hit and kick the assistant principal. The discipline report categorized the Student’s actions as “defiance of a reasonable directive”.
12. On December 16, 2016, the Student was suspended for a half (.5) day for using a pencil as a weapon to threaten staff and students. Additionally, the Student threw snowballs at staff, “threatening to stab them if they came near him.” The discipline report categorized the Student’s actions as “defiance of a reasonable directive”.
13. The District was on break December 19, 2016 through January 2, 2017.
14. On January 23, 2017, the Student received an “in-school intervention” when he “left the playground and was on the sidewalk on a pile of snow near the street until the principal and PA talked him into coming down. On the playground, he tackled one student and threw him down into the snow and kicked another student in the [genitals].” The discipline report categorized the Student’s actions as “fighting without major injury”.
15. On February 2, 2017, the Student received a lunch detention for leaving class without permission. The discipline report categorized the Student’s actions as “defiance of a reasonable directive”.
16. Also on February 2, 2017, the District and the Parent agreed via phone to amend the Student’s September 2016 IEP to reduce his reading services from 150 minutes per

week to 75 minutes per week. The amendment stated that the Student would now spend eighty-three percent (83%) of his school day in a general education setting. It is unclear from the District's documentation why the amount of the Student's reading services were reduced, as the District's February 2, 2017 prior written notice stated only that "changes are necessary to meet the Student's needs."

17. Also on February 2, 2017, the Student's special education teacher emailed the Student's general education teacher, the school principal, and the assistant principal, stating that a meeting was scheduled on February 7, 2017 with the Parent. The District's documentation in this complaint does not include information about what occurred at the February 7, 2017 meeting, and it is unclear if the meeting was meant to be an IEP meeting.
18. On February 3, 2017, the Student was suspended for a half (.5) day because he "left the playground and climbed on large snow piles" and swore at a lunchtime supervisor when she tried talking him into coming down. Once inside with the principal, the Student also left again and went outside. The discipline report categorized the Student's actions as "defiance of a reasonable directive".
19. On February 21, 2017, the Student was suspended for one (1) school day for kicking another student, pushing a table at him, and hitting him. The Student also "ran across library tables" and refused to go the "buddy room", instead running around the school. The discipline report categorized the Student's actions as "defiance of a reasonable directive". The Student served the suspension on February 22, 2017, but the Student's attendance report does not reflect the suspension.
20. Also on February 22, 2017, the District special education coordinator received an "isolation/restraint report" regarding a restraint of the Student, which occurred on February 21. The restraint report included a section titled "activity description" which stated that the Student was working in the special education classroom and was "kicking another student under the table. He got mad, shoved the table at the student and started hitting him." The "restraint description" section of the report stated that the Student was "out of control and running across the library tables and jumping off. He was also running around the library and was a danger to staff and students." The report indicated the Student was restrained for ten minutes. In response to receiving the restraint report, the special education coordinator forwarded the report to the District special education behavior intervention and education specialist (behavior specialist) and asked if she was aware of the Student. The behavior specialist replied that the Student's special education teacher and the school principal had mentioned the Student to her a "few times" and that she had "asked that they do an intervention request." The behavior specialist also stated that she knew "that hopping on tables ha[d] happened several times", but she had not met the Student.
21. On February 24, 2017, the Student was suspended for one and a half (1.5) days for threatening to "bloody a student's nose", and throwing ice which hit three students and three staff members. The discipline report categorized the Student's actions as

“profane and obscene conduct or words”. The Student’s attendance report does not reflect the February 24, 2017 suspension.

22. On March 7, 2017, the Student was suspended for three and a half (3.5) days. The Student was running through the hall and was asked by the school counselor to make a better choice. In response, the Student became “combative” with the counselor, telling her “no” and proceeded to call her an inappropriate name as she walked to the office to tell the principal. The Student then “stormed” into the office, yelling obscenities and became aggressive with the counselor, kicking at her and stomping on her foot. The counselor then went to find help, and the Student followed, continuing to kick at her. The counselor then “ran away” and the Student chased her to the health room, where the counselor had trouble shutting the door because the Student was pushing on it. There was another student in the health room that was frightened by the incident. The Student then ran out of the school building and the assistant principal followed. The Student also “taunted” the school counselor at her office door and slammed it shut. The discipline report categorized the Student’s actions as “fighting without major injury”.
23. On March 8, 2017, the school principal emailed staff at the elementary school and copied the District special education coordinator and the behavior specialist. The principal stated that he had spoken with the Parent and that she would meet with the school staff on March 10. The principal stated that the Student would be out of school the remainder of the week and would return on March 13. In response, the special education coordinator forwarded the principal’s email to the District special education director and expressed concern about how frequently the principal suspended students. The coordinator asked to meet with the director to “problem solve” how she could better support the principal with “alternative strategies”.
24. On March 9, 2017, the behavior specialist emailed the special education coordinator, stating that the principal had mentioned a meeting with the Parent regarding the Student. The behavior specialist stated, “I know we’ve been talking about an intervention request for him. [The principal] said that you and he discussed it.” The behavior specialist then asked if she was “assigned” and if she should plan to attend the meeting with the Parent on March 10.
25. The District’s documentation in this complaint does not include information about what occurred at the March 10, 2017 meeting, and it is unclear if the meeting was meant to be an IEP meeting.
26. On March 10, 2017, the Student’s special education teacher completed a District “intervention request” form. The form stated that the reason for the referral was:
 - Unsafe behaviors – not everyday, but when they happen they are extreme
 - Running away from school (outside)
 - Climbing the banister/railings of stair case or windows
 - Chased a staff member into the health room using aggressive behavior that caused her to fear for her own safety
 - Barricaded himself into a room

- Running across tables in the library after trying to hit a student
- Using profanity

The form indicated that a “success plan” for the Student had been “typed” but no meeting had yet been held. The intervention request was later approved by the District special education coordinator on March 14, 2017.

27. On March 15, 2017, the Student was suspended for a half (.5) day for running across tables, tipping over chairs, throwing crayons and pencils, and threatening others with scissors. The discipline report categorized the Student’s actions as “threat”.
28. On March 21, 2017, the Student was suspended for three (3) school days for throwing balls at adults, kicking, hitting, swearing, and making threats. The discipline report categorized the Student’s actions as “threat to staff”. The Student’s March 21 suspension brought his total number of suspensions for the 2016-2017 school year to 12.5 days.
29. On March 24, 2017, the District held a manifestation determination meeting. Based on the District’s “manifestation determination checklist”, the IEP team members included: the Parent, the school principal, and the Student’s special education teacher. The IEP team determined that the Student’s conduct “was caused by, or had a direct and substantial relationship to, the [Student’s] disability”, but was not a direct result of the District’s failure to implement the Student’s IEP. The IEP team determined the Student’s behavior was a manifestation of his disability. The District’s “manifestation determination checklist” does not include a section discussing whether a student has a BIP or whether a functional behavioral assessment (FBA) should be completed; therefore, it is unclear from the checklist if the Student’s IEP team discussed conducting an FBA and/or developing a BIP for the Student.
30. The District was on break April 3-7, 2017.
31. On April 10, 2017, the Student received a lunch detention when he got mad at another student, chased him, and tried to hurt him. The Student grabbed the other student three times. The discipline report categorized the Student’s actions as “verbal or physical aggression.”
32. On April 13, 2017, the Student received a lunch detention when he pushed and shoved on the playground, and then got upset and ran home. The discipline report categorized the Student’s actions as “verbal or physical aggression.”
33. On May 5, 2017, the Student was suspended for a half (.5) day for getting mad at another student and trying to hurt her. The Student refused to follow adult directions. The discipline report categorized the Student’s actions as “verbal or physical aggression.” The Student’s attendance report does not reflect the May 5,

2017 suspension. The Student's May 5 suspension brought his total number of suspensions for the 2016-2017 school year to 13 days.

34. On May 16, 2017, the Student was suspended for a half (.5) day for climbing up a window ledge, locking himself in a storage room, crawling under a desk, and leaving the classroom three times without permission. The Student also became "very upset" with adults and was yelling. The discipline report categorized the Student's actions as "verbal or physical aggression." The Student's attendance report does not reflect the May 16, 2017 suspension. The Student's May 16 suspension brought his total number of suspensions for the 2016-2017 school year to 13.5 days.

35. On May 22, 2017, the Student's special education teacher emailed the school principal, the behavior specialist, and the Student's general education teacher. The special education teacher stated that she had called the Parent and scheduled a manifestation determination meeting for May 26. The teacher also stated that she had scheduled the Student's IEP meeting for June 6, 2017, "as all September IEP's have to be scheduled/completed before the end of school." Additionally, the teacher stated that a consent form for the FBA and BIP had been sent to the Parent. The Parent had signed it and put it in the Student's backpack, but staff could not find it. The teacher stated the Parent may need another copy of the consent form. In response, the behavior specialist stated that she planned to join the meeting on May 26 and that the Student's "success plan" could be updated at that time. The behavior specialist also stated that she would make sure she obtained a signed consent form as well.

36. On May 23, 2017, the behavior specialist emailed the Student's special education teacher, general education teacher, and the school principal, stating that in preparation for the May 26 meeting, she had updated the Student's success plan and had attached a draft of the plan. The specialist asked that the staff let her know if things should be added to the plan or if the plan should be edited. The specialist stated that the last several times she had been to the elementary school, the Student had been at lunch, specialist classes, or in another setting, but that she planned to "check back" that week. The specialist said that she had seen the Student "have really nice times in resource." Additionally, the specialist stated that she thought staff should have an IEP addendum ready and a new matrix with increased time for behavior support. "We will discuss this further at the meeting of course, but it is likely that we will be doing at least that with the addendum" on May 26.

37. The District's documentation in this complaint included a "success plan" with a date of May 26, 2017. The "success plan" states:

A success plan is often written and implemented when a student requires supports in addition to the individualized education plan (IEP) but does not yet require a full functional behavior assessment (FBA) and behavioral intervention plan (BIP). In this case the team wants to get to know the student better, provide accommodations and supports, collect data, then determine if further supports are necessary. It is helpful to have student success strategies written down so that all adults who interact with

the student have the same understanding (including specialists) as well as helpful for adults who may be unfamiliar with the student such as substitute teachers.

The “success plan” listed the Student’s “problem behavior” as “escape: tantrum” and stated that previous interventions included “self-contained special ed[ucation] preschool, 1:1 paraprofessional, [behavior intervention] classroom, emergency response protocol, picture schedule, first/then and when/then statements with pictures, adult 1:1 time, schedule modifications, and reinforcement systems.” The “success plan” stated that intervention recommendations were: daily progress report (DPR) with daily goals for social skills and check-in/check-out system around goals; and, points and reinforcement associated with DPR. The “success plan” did not address any other problem behaviors, but stated that if the Student was aggressive in his classroom, “he may be sent to the resource room to calm.”

38. On May 26, 2017, the District held a manifestation determination meeting. Based on the District’s “manifestation determination checklist”, the IEP team members included: the Parent, the school principal, the District special education director, and the District behavior specialist. The IEP team determined that the Student’s conduct “was caused by, or had a direct and substantial relationship to, the [Student’s] disability”, but was not a direct result of the District’s failure to implement the Student’s IEP. The IEP team determined the Student’s behavior was a manifestation of his disability. The IEP team agreed that the District would conduct an FBA of the Student, and the Parent provided consent for the District to conduct a reevaluation in the area of behavior. Additionally, based on the checklist and a May 31, 2017 prior written notice, the IEP team agreed to change the Student’s placement to a special education behavior intervention program for the 2017-2018 school year.
39. On May 28, 2017, the Parent filed this complaint.
40. According to the District’s response to this complaint, the Parent was provided notice of the right to challenge the Student’s suspensions, but did not elect to do so. The District’s documentation in this complaint did not include copies of any suspension notices provided to the Parent, and based on information from the District, the District does not have documentation of any suspension notices.
41. On June 6, 2017, the Student’s IEP team met to develop his annual IEP. Based on the District’s June 7, 2017 prior written notice, at the meeting, the Parent requested that the Student receive 1:1 paraeducator support during the 2017-2018 school year. The District refused the request because the “IEP team members [felt] that the proposed BI [behavior intervention] program has adequate staff to student ratios such that a 1:1 is not needed.”
42. The Student’s June 2017 IEP included annual goals in the areas of reading, writing, math, and behavior. The IEP stated that starting August 31, 2017, the Student would spend eight percent (8%) of his school day in a general education setting. The IEP provided for the following specially designed instruction:

- Reading – 150 minutes per week (special education)
- Writing – 150 minutes per week (special education)
- Math – 150 minutes per week (special education)
- Behavior – 1,200 minutes per week (special education)
- Behavior – 150 minutes per week (general education)

The IEP stated that the Student’s behavior negatively impacted his learning or the learning of others, but did not include a BIP. The IEP stated, “see success plan.” Also on June 6, the District developed a new “success plan” for the Student.

CONCLUSIONS

Issue 1: Paraeducator Support – At the beginning of the 2016-2017 school year, the Student’s May 2015 transfer IEP, although lapsed, was in place and provided for paraeducator support on a daily basis. The District should have provided the Student comparable services, including paraeducator support, until it developed a new IEP for the Student on September 15, 2016. However, neither party provided documentation to suggest that the failure to provide paraeducator support as a comparable service impacted the Student’s education for the first two weeks of school, as the Student had no reported behavior issues. Additionally, given that the paraeducator support was listed in the Student’s transfer IEP as an accommodation, the District was not required to conduct a reevaluation prior to removing the support from the Student’s new September 2016 IEP. It is noted however, that the District was required to conduct a reevaluation prior to making a significant change in the amount of specially designed instruction the Student would receive, and should have done so before reducing the Student’s services from approximately 879 minutes per week to 375 minutes per week.

Issue 2: Special Education Disciplinary Procedures – The District failed to follow special education discipline procedures.

October 2016 through March 2017 Suspensions and March 24, 2017 Manifestation Determination Meeting –

- **Manifestation Determination Meeting** – Within ten school days of a district’s decision to change a 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. A change in placement occurs when a student is removed from his current placement because of discipline for more than ten consecutive days, or the student is subjected to a series of removals that constitute a pattern. Here, on March 21, 2017, the Student was suspended for three school days, which brought his total number of suspensions for the school year to 12.5 days. The District then correctly held a manifestation determination meeting on March 24, 2017. However, it is noted that in the District’s response to this complaint, the District stated that it was not required to hold the March 24 manifestation determination meeting because the Student’s “suspensions did not rise to the level of a pattern of removals constituting a disciplinary change in placement.” OSPI disagrees that the Student’s suspensions were not a pattern of removals. Suspensions constitute a pattern of removals when

the removals total more than ten school days in a school year, 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. Here, the Student was suspended on nine occasions for a total of 12.5 days, the behavior which lead to eight of the nine suspensions, consisted of aggression toward peers and staff and/or threats of aggression, and the final six of the nine removals (totaling 10 days of suspension) occurred over an eight week period. This is an extensive pattern of removals.

- **Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP)** – When a student's IEP team determines the conduct was a manifestation of the student's disability, the IEP team must either: conduct an FBA, unless the district had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or, if a BIP already has been developed, review the BIP, and modify it, as necessary, to address the behavior. Here, the Student's IEP team determined the Student's behavior was a manifestation of his disability, at the March 24 meeting. However, the District then failed to conduct an FBA and develop a BIP for the Student. In its response to this complaint, the District stated that it did not address an FBA or BIP at the March 24 manifestation determination meeting because the Student had already been referred to the District behavior specialist on March 9, 2017. Once the Student was suspended for more than ten school days, which changed his placement, special education discipline regulations were triggered, and the regulations *require*, emphasis added, that the District conduct an FBA and implement a BIP. The District's own behavior intervention process does not override the IDEA and state regulations. It is also noted that the District has the responsibility to provide the Student FAPE, which includes having an IEP that is calculated to address the Student's education needs, including any behavior needs. Here, given the Student's history of behavior concerns, and that he continued to exhibit the same behaviors¹, impeding his learning and the learning and safety of others, during the fall of 2016, the District should not have waited until the Student was suspended 12.5 school days (seven months into the school year) to hold an IEP meeting. The District should have held an earlier IEP meeting to discuss the Student's increasingly aggressive and non-complaint behavior, developed a BIP for the Student, as required by WAC 392-172A-03090 and 03110, and also discussed any other additional behavioral supports the Student may have needed. Further, once the District used restraint with the Student on February 21, 2017, WAC 392-172A-02110 required that the District implement the follow-up procedures specified in RCW 28A.600.485. The follow-up procedures include: reviewing the incident with the student and the parent to address the behavior that precipitated the restraint and the appropriateness of the response; and reviewing the incident with the staff member who administered the restraint to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid

¹ See finding of fact no. 7.

similar incidents. The District's documentation does not show that these procedures were followed after the Student was restrained in February 2017.

- **Services** – After a student has been removed from his current placement for ten school days in the same school year, during any subsequent days of removal, the 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 IEP team determines the appropriate educational services. Here, because the Student's suspensions constituted a pattern of removals the District should have begun providing the Student services on his 11th day of suspension and every day thereafter. The District failed to do so. It also noted, that even if the Student's suspensions did not constitute a pattern of removals, the District was still required to provide the Student services starting on the 11th day of suspension as required by WAC 392-172A-05145(4)(e). The District will provide the Student with 4 hours (1 hour of reading, 1 hour of writing, 1.5 hours of math, and 30 minutes of behavior) of compensatory services to address the missed services.

May 5, 2017 Suspension – As discussed above, within ten school days of the District's decision to change the Student's placement through discipline, the District was required to hold a manifestation determination meeting and required to provide the Student services while he was suspended. Here, the Student was suspended on May 5, 2017, for aggressive and non-compliant behavior, which was his 13th day of suspension.² Therefore, the District should have held a manifestation determination within ten school days (by May 19, 2017) and provided the Student services during his suspension. The District did neither. This is a failure to follow special education discipline procedures.

May 16, 2017 Suspension and May 26, 2017 Manifestation Determination Meeting – On May 16, 2017, the Student was again suspended for "verbal and physical" aggression. The District then appropriately held a manifestation determination meeting within eight school days on May 26, 2017 and obtained the Parent's consent for an FBA. However, based on the District's documentation in this complaint, the District still has not complied with special education regulations by completing the FBA and developing a BIP for the Student. A "success plan" is not a substitute for a BIP, and the District has had more than enough time "to get to know" the Student in order to develop a BIP. The District will ensure the Student has a BIP in place by the beginning of the 2017-2018 school year.

Notice to Parents – On the date on which the decision is made to make a removal that constitutes a change of placement of a student eligible for special education because of a violation of a code of student conduct, the school district must notify the parents of

² It is noted that the Student's May 5, 2017 suspension brought the total number of suspensions during the District's second semester to 10.5 days. General education regulations prohibit a district from subjecting a "student in grades kindergarten through grade four...to short-term suspensions for more than a total of ten school days during any single semester or trimester as the case may be." WAC 392-400-245.

that decision, and provide the parents the procedural safeguards notice. Here, the District's documentation does not show that the Parent was notified of the change of placement or provided a copy of the procedural safeguards on March 12, May 5, or May 16, 2017. Additionally, it is noted the District did not substantiate that it provided any notices of suspension to the Parent throughout the 2016-2017 school year as required by WAC 392-400-250. While this is not a violation of the IDEA or state special education regulations, the District is reminded that it must follow both special education and general education discipline regulations.

CORRECTIVE ACTIONS

By or before **August 15, 2017, September 8, 2017, October 6, 2017, October 27, 2017, and November 9, 2017**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. By **August 10, 2017**, the District will amend the Student's attendance record to clearly reflect all of the days he was suspended during the 2016-2017 school year and amend the Student's record in the Comprehensive Education Data and Research System (CEDARS). By **August 15, 2017**, the District will provide OSPI with a copy of the amended attendance record and documentation that the Parent had been provided with a copy of the amended record. The District will also provide documentation that the Student's record has been updated in CEDARS.
2. By **August 31, 2017**, the District will hold an IEP meeting and develop a BIP for the Student. By **September 8, 2017**, the District will provide OSPI with: 1) a copy of the meeting notice; 2) a copy of the FBA; 3) a copy of the BIP; 4) a copy of the Student's IEP, clearly referencing the BIP; 5) a copy of the prior written notice; and, 6) any other related documentation.
3. By or before **August 31, 2017**, the District will meet with the Parent to develop a schedule to provide the Student with a total of 4 hours of compensatory services (1 hour of reading, 1 hour of writing, 1.5 hours of math, and 30 minutes of behavior). The services will be provided outside of the District's regular school day, and may be provided during the summer of 2017. All reading, writing, and math services must be provided by a certificated special education teacher. Services in the areas of behavior may be provided by a certificated special education teacher or a school counselor. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than November 1, 2017. The District will provide OSPI with documentation of the schedule by **September 8, 2017**.

By **November 9, 2017**, the District shall provide OSPI with documentation that the compensatory services have been completed. This documentation must include the

dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District must either provide the transportation necessary for the Student to access these services, or must reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with documentation by **November 9, 2017**.

DISTRICT SPECIFIC:

1. By **August 31, 2017**, the District will amend its "manifestation determination checklist" to ensure that the checklist aligns with special education discipline regulations/procedures. The amended checklist will include a section regarding a functional behavioral assessment (FBA) and behavioral intervention plan (BIP), and include a section regarding the provision of services when a student is suspended. By **September 8, 2017**, the District will provide OSPI with a copy of the amended checklist.
2. By **September 29, 2017**, the District will ensure all District special education administrators, principals, and assistant principals receive training regarding special education discipline procedures. The trainer will not be an employee of the District. The training will include examples, and will include a review of the District's amended "manifestation determination checklist". It is strongly recommended that the District also address general education discipline regulations as part of the training.
 - By **August 15, 2017**, the District will provide documentation that the trainer has been provided a copy of this decision for use in preparing training materials.
 - By **September 8, 2017**, the District will submit a draft of the outside trainer's training materials to OSPI for review. OSPI will approve the materials or provide comments by September 15, 2017 and additional dates for review, if needed.
 - By **October 6, 2017**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet, and 2) a roster of who should have attended so OSPI can verify that staff participated. If any of the staff are unable to participate, the District will contract with the trainer for a follow-up session(s) within the required timeframe.
3. By **October 20, 2017**, all District principals will review the "manifestation determination checklist" with all building certificated special education staff, including educational staff associates (ESA). ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. By **October 27, 2017**, the District will provide OSPI with documentation that the principals have reviewed the checklist with all required staff. The documentation will include a roster of all principals.

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 July, 2017

Glenna L. Gallo, M.S., M.B.A.
Assistant Superintendent
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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.)