

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-08

PROCEDURAL HISTORY

On January 23, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Washougal 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 January 25, 2018, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On February 8, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On February 20, 2018, OSPI received the Parent's reply and forwarded that reply to the District on the same day.

On March 7, 2018, OSPI requested additional information from the District. The District provided the requested information on March 7, 2018, and OSPI forwarded the information to the Parent on March 8, 2018.

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

OVERVIEW

During the 2017-2018 school year, the Student attended a District elementary school and was eligible to receive special education and related services under the category of other health impairment. In mid-November 2017, the Student's placement was changed from a full-day special education program to a part-time special education program. In December 2017, the Student's behavior began to escalate and as a result, he was suspended for two school days. In early January 2018, the Student continued to display aggressive and noncompliant behavior and was suspended for one day. The District then changed the Student's placement to a 1:1 setting, but the Student continued to have behavior difficulties and was suspended for three school days. On January 11, 2018, the Student's individualized education program (IEP) team met to discuss the results of an assessment revision, which included a functional behavioral assessment (FBA). The District members of the IEP team recommended that the Student's placement be changed to a day treatment program operated by another school district, and that while arranging for the Student to attend the day treatment program, his placement be temporarily changed so that he would receive services in his home. The Student then began receiving services in his home and began attending the day treatment program at the beginning of February 2018. The Parent

alleged that the District failed to follow special education discipline procedures when it did not allow the Student to return to school after his suspension was over, failed to provide notice that it was changing the Student's placement to the day treatment program, failed to provide her with documentation following an IEP meeting, and failed to provide her with a copy of the procedural safeguards. The District denied the allegations.

ISSUE

1. Did the District follow special education discipline procedures during the 2017-2018 school year?

LEGAL STANDARDS

Suspensions: Suspension shall mean a denial of attendance (other than for the balance of the immediate class period for "discipline" purposes) for any single subject or class, or for any full schedule of subjects or classes for a stated period of time. A suspension also may include a denial of admission to, or entry upon, real and personal property that is owned, leased, rented, or controlled by the school district. WAC 392-400-205(2).

Disciplinary Removals: School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a student eligible for special education services, who violates a code of student conduct. School personnel 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 under this section, 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 less in that school year, if it provides services to a student without disabilities who is similarly removed. The services may be provided in an interim alternative educational setting. 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. WAC 392-172A-05145. 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.

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

Notice of Procedural Safeguards: The notice of procedural safeguards must provide a full explanation of a student's rights related to: an independent educational evaluation (IEE); prior written notice; parental consent; access to education records; dispute resolution options and procedures; placement during a due process hearing; procedures for placement in an interim alternative setting; requirements for unilateral placement in private schools at public expense; civil actions; and attorneys fees. A copy of the procedural safeguards must be given to parents, at a minimum one time per school year and: the first time the child is referred or the parent requests a special education evaluation; the first time the parent files a citizen's complaint or due process request in a school year; the first time the parent or the district files a due process hearing request during the year; on the date the district decides to make a disciplinary change of placement; or anytime the parent requests a copy. 34 CFR §300.504; WAC 392-172A-05015.

Change in Placement: One of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016). The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has

occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

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) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

FINDINGS OF FACT

2016-2017 School Year

1. During the 2016-2017 school year, the Student attended first grade at a District elementary school (elementary school 1).
2. On May 18, 2017, the District completed an initial evaluation of the Student, and his evaluation group determined that he was eligible to receive special education and related services under the category of other health impairment. The evaluation report recommended that the Student receive specially designed instruction in the areas of reading, mathematics, writing, adaptive, social/emotional/behavioral, and speech and language. The evaluation report also recommended that the Student receive related services in the area of

fine motor and also receive consultation services from an occupational therapist as a supplementary aide and service.

3. On June 8, 2017, the Student's individualized education program (IEP) team developed his initial IEP. The June 2017 IEP stated:

[The Student] demonstrates a number of behaviors that are distracting to himself and his classmates. His behaviors frequently are disruptive to the classroom and he is often removed from that setting. [The Student] does require specially [designed] instruction to support his emotional and behavioral success in the classroom...[The Student] has recently demonstrated a significant increase in aggressive and threatening behaviors toward his peers and adults in the school. Aggressive outburst[s] have occurred 1 or more times weekly in the last three weeks. Aggressive and threatening behaviors that [the Student] demonstrates include physical aggression toward adults, himself, and materials in the room. He is also [] threatening to hurt himself as well as cause damage and destruction to the school.

The IEP also stated that the Student's "challenging behaviors" had an adverse impact on his educational functioning and that he exhibited inattention and hyperactivity that disrupted his learning and the learning of others. Additionally, the Student demonstrated difficulty with social interactions with peers and regulating his body within the classroom. The IEP also stated that the Student perseverated on the topics of "guns, violence, and police" and this had a negative impact on his ability to participate in academic tasks and social interactions with peers. The IEP included annual goals in the areas of reading, writing, mathematics, adaptive, social/emotional/behavioral, and speech and language, and stated that progress reporting would be provided on a trimester basis. The IEP stated that the Student would spend 0% of his school week in a general education setting and provided for the following specially designed instruction and related services:

- Reading – 30 minutes 4 times weekly
- Writing – 30 minutes 4 times weekly
- Mathematics – 30 minutes 4 times weekly
- Adaptive – 45 minutes 4 times weekly
- Social/Emotional/Behavioral – 222 minutes 5 times weekly
- Speech and Language – 30 minutes 1 time weekly
- Fine Motor – 30 minutes 1 time weekly

The IEP also provided for 15 minutes per month of consultation services from an occupational therapist, special transportation, and multiple accommodations, which included a "behaviorally related: management system." The IEP also included an emergency response protocol.

4. Also on June 8, 2017, the District issued prior written notice, proposing to initiate the Student's IEP. The prior written notice stated:

Because of the increases in behavior needs and recent recommendation change from [a] resource room to a classroom more supportive of his behavioral needs the team will complete a functional behavior analysis (FBA) and behavior intervention plan (BIP) in the

early fall. This will also provide an opportunity for the IEP team to reconvene in the fall for updates of progress and concerns over the summer.

The notice also stated that the District elementary school boundaries would change during the 2017-2018 school year, and as a result, the Student would attend a different elementary school (elementary school 2) during the 2017-2018 school year.

2017-2018 School Year

5. The District's 2017-2018 school year began on September 7, 2017. At that time, the Student began attending second grade at elementary school 2 and his June 2017 IEP was in place.
6. The District's documentation in this complaint does not show that the Student's IEP team met in the early fall of 2017, to complete an FBA and develop a BIP for the Student as indicated in the June 8, 2017 prior written notice.
7. On November 21, 2017, the Student's June 2017 IEP was amended without holding a meeting. According to the District's contact record, the Parent agreed that the District could amend the IEP without holding a meeting. The amended IEP stated that the Student would now spend 39.05 percent of his school week in a general education setting. The amended IEP reduced the amount of time the Student would receive specially designed instruction in the area of social/emotional/behavioral from 1,110 minutes per week to 430 minutes per week (86 minutes 5 times weekly). The amount of the Student's other services remained the same.
8. The District's documentation in this complaint included a prior written notice, dated November 20, 2017. It is assumed the date of the notice is incorrect and should reflect a date of November 21, 2017 or later. The November 20 notice stated that the District was proposing to initiate the amendment to the Student's IEP on November 27, 2017. The notice stated "service minutes in sped changing to 1030 minute per week. General education minutes increasing to 1030 minutes per week."¹ The notice stated that the reason for the change in service minutes was that "when [the Student] shows self-regulation he is able to learn in his general education class, with his peers." Additionally, the notice stated that the IEP team had considered not increasing the Student's time in a general education setting, but rejected that option because the Student "benefit[ed] from learning in small amounts of time with his peers. He can see the expected behaviors and unexpected behaviors of a regular education classroom environment." The notice also stated that the IEP team had used behavior charts and teacher observations as a basis for making the decision to increase the amount of time the Student would spend in a general education setting.
9. The District was on break November 22-24, 2017.

¹ This statement is incorrect. The November 2017 IEP amendment stated that the Student would spend 1,030 minutes per week in a special education setting and 660 minutes per week in a general education setting.

10. On December 4, 2017, the Student's special education teacher informed the Student and his classmates that she was leaving her position at the end of December 2017.

11. Also on December 4, 2017, the special education teacher emailed the Parent, stating that the Student came to school in a positive mood and outlook; however, the Student had been having more difficult times in class with his escalations. The teacher stated that the Student usually escalated in voice level and excessive body movements. The teacher indicated that when she had extra staff support in the classroom, a staff member would take the Student outside to walk or exercise his energy. If staff could not take the Student outside, then they dimmed the lights, put on calming music, and offered the Student a weighted blanket. This sometimes worked for a while, but lately it had not been working. The teacher stated that she had been reaching out for recommendations about the Student's sensory overload, and that "deep pressure" was one recommendation. The teacher had also had success using isometrics with the Student, when he was willing to listen to instructions, and had on two occasions used pressure by holding the Student's arms down for a few seconds. The teacher stated that the pressure did calm the Student down, but the Student did not like it very much. Additionally, the teacher stated that she wanted to let the Parent know what the teacher had been "working on that was different". The teacher said that the Student wanted to do well, but was struggling, and that he had relayed that his brain did not "listen to himself." The teacher asked that if the Parent had any questions or concerns, to please let her know.

12. On December 6, 2017, the Student's special education teacher emailed the Parent, stating that she was working with the Student on de-escalation strategies, and that the Student was willing to try to deescalate, letting the teacher know what helped, and what did not. The teacher stated that the Student was receptive to "deep massage on his back [and] isometrics with his arms and legs, while sitting in his chair." The special education teacher then stated that there were some "issues and struggles" she was seeing with the Student in the classroom, which included:

- Social-interaction difficulties – unexpected behavior, unexpected conversations, not knowing when to stop a conversation or that his audience has stopped listening
- Communication challenges – not able to explain his emotions, feeling, needs
- A tendency to engage in repetitive behaviors – hand stemming when emotions are escalated, shouting out the same words over and over, uncontrollable laughter

The teacher also stated that the Student was showing "sensory overload behaviors", such as:

- irritability
- shutting down or refusing to participate in activities and/or interact with others
- avoiding touching or being touched
- getting overexcited
- covering his eyes around bright lights
- making poor eye contact
- covering ears to close out sounds or voices
- complaining about noises that do not affect others
- having difficulty focusing on an activity
- constantly changing activities, never completing a task

- over-sensitivity to touch, movement, sights, and/or sounds
- trouble with social interactions
- extremely high activity levels
- fidgeting
- angry outburst
- difficulty concentrating

The special education teacher stated that she hoped the information helped the Parent and that the Student was “definitely having a harder time since the start of the school year.”

13. On December 6, 2017, the Parent responded to the special education teacher’s email, thanking her for the information. The Parent stated that she would discuss these things with the Student’s private therapist, and stated that she believed she had filled out a form so that the private therapist could speak with school staff. In response, the teacher stated that she was happy the information could be helpful. The teacher also stated that the Student had given good examples of what things were helpful to him, but unfortunately, it was only a “temporary fix” until the Student “re-escalated”. The teacher said that she had taken a walk outside that day with the Student, and that the Student was “feeding off” other students. The teacher stated that they would keep working at finding solutions that the Student could use to start self-calming with.
14. On December 8, 2017, the Student’s special education teacher emailed the Parent regarding the Student’s school day. The teacher stated that the Student had done well that morning, listening to lessons, participating in group talk, and completing one sentence. Then after a short break, the Student started to escalate, but “it only turned into work refusal.” The Student then went to recess with his class, but the teacher was called out to recess because the Student and another student were not getting along. The Student was told by the other student to leave him alone, but the Student “was getting in his face and following him around.” As a result, the teacher brought the Student inside, and the Student was upset. The teacher then took the Student to a classroom with a “de-escalation room (a closet with no doors), and told the Student to stay there and “calm”. The Student then escalated, kicking and punching the walls and screaming “to the point of tears and red face.” The Student repeated that the teacher had stolen his recess. The Student continued to be upset for 1.5 hours. The teacher stated that she did not put her hands on the Student, but did block the exit to the de-escalation room by sitting there. The teacher said that she would fill out an isolation form that would be sent home to the Parent. The teacher also stated that after the Student had deescalated, he had eaten his lunch and was “ok for now”. In response, the Parent thanked the teacher for the update. The District’s documentation in this complaint included a December 8, 2017 “isolation and restraint incident report” (incident report), documenting that the Student was isolated.
15. On December 12, 2017, the Student was restrained and isolated. According to the District’s incident report, the Student and another student transitioned back into the classroom after lunch and were directed to use an iPad until it was time to go to music class. The other student got upset with the special education teacher, and then the Student became angry

with the teacher. Both students began to escalate, and as a result, were moved away from each other to different areas of the classroom with a verbal prompt. The Student then began to run around the classroom and scream. The school psychologist who was in the classroom began to help the Student deescalate and also had the special education teacher contact another teacher to come and block an exit as the Student attempted to leave the classroom. The Student continued to run back and forth in the classroom and scream, and staff attempted to deescalate him by getting him to use an iPad. This had “minimal success” and the Student began to scream and run in the classroom. Staff blocked the exits to the hallway, the bathroom, and an adjoining classroom. The Student then began to “hit, bite, and shove” the staff who were blocking the exits, and because staff could not evade this behavior, staff placed the Student in a one-person seated hold on the floor. The Student then slid to a laying position on the floor and was released. The hold lasted less than one minute.

Next, staff continued to deescalate the Student by prompting him to have a safe body. The Student then locked himself in the bathroom for about one minute, and then continued to hit and attempt to bite, scratch, and charge at staff who were blocking the exits. As a result, staff placed the Student in a one-person seated chair hold, which was transitioned to a two-person hold. The Student continued to struggle and the staff released the Student to maintain his safety and staff safety. The Student then kicked and head-butted, and was placed back in a one-person seated hold on the floor. The hold was then released to maintain safety. Staff then continued to block the exit doors, and the Student ran around the classroom and threw blocks at the staff. The special education teacher and school counselor then introduced playdough and after a few minutes, the Student complied with a verbal prompt to sit at a table in order to use the playdough. The school psychologist contacted the Parent about the incident that same day and left a voice message.

16. On the morning of December 15, 2017, the Student was restrained and isolated. According to the District’s incident report, the Student entered his special education classroom and then started running and yelling in the classroom. The Student then “escaped the classroom” and staff brought the Student back to the classroom. In the classroom, the Student started throwing chairs and playdough and kicked teachers. The teachers then restrained the Student when he “was harmful” and deescalated the Student with “calm talk and environment.” The special education teacher contacted the Parent about the incident that same day. It is noted that the District’s response to this complaint included a copy of a December 15, 2017 incident report, which differs from the copy of the incident report sent to the Parent, as the copy sent to the Parent lists a different incident time, different staff people as involved in the restraint, indicates that two restraints were performed instead of one, and includes other information not included on the District’s incident report.
17. Later on December 15, 2017, the special education teacher emailed the Parent regarding the Parent signing a release so the school counselor could speak with the Student’s private therapist. The teacher also stated that the school counselor would call the Parent on December 18 or 19. The teacher said that the Student was currently doing fine, had played with some toys, and had chosen not to go outside.

18. According to the District's response to this complaint, also on December 15, 2017, the District provided the Parent with progress reporting toward the Student's annual IEP goals. The progress reporting included progress notes from October 2017, November 2017, and December 2017. The progress reporting included the following information:

- Reading Goal – improving accuracy of oral reading from 75% at a first grade level to 95% at a first grade level.
 - 11/6/17 – The Student has been difficult to evaluate. His behavior is impeding his ability to complete work.
 - 12/11/17 – The Student is able to read 25/150 words = 16.7% accuracy on first grade level text.
- Mathematics Goal – Improving subtraction calculation skills from 1 out of 10 problems correct to 8 out of 10 problems correct.
 - 11/6/17 – The Student had been difficult to evaluate. His behavior is impeding his ability to complete work.
- Writing Goal – Improving from copying a single sentence from a model to writing 3 sentences independently.
 - 10/31/17 – The Student will currently write 3-5 sentences that are class generated and copied from the board. The Student needs teacher direction to use conventions.
 - 12/17 – In occupational therapy (OT) the Student's behavior had made it difficult for him to participate in OT activities. He is able to write a sentence given a model. We will continue to work on his handwriting so he is able to achieve 4/5 on the OT rubric. He is currently at 2/5.
- Adaptive Goal – Participate as an individual or group improving appropriate use of tools and materials from violent or aggressive use of tools two or more times daily to violent or aggressive use of tools one or fewer times daily.
 - 10/31/17 – The Student has not shown any aggression toward other students in the special education classroom, PE, or Music classroom. He had mastered this goal. We will continue to monitor this adaptive goal for the remainder of the IEP.
- Social/Emotional/Behavioral Goal – When given an opportunity to interact with teachers and peers the Student will demonstrate an age appropriate verbal response from 0 out of 10 opportunities to 7 out of 10 opportunities.
 - 10/31/2017 – The Student interacts in a positive, age appropriate response 5/10 times. The Student uses kind words with staff and students, he models positive word choices in the special education setting. However, his voice level is 3 or higher, especially when he is excited or acting silly.
- Speech and Language Goal – Student will demonstrate the ability to initiate and respond with peers and adults in an “expected” manner for the setting and communication partner from 1 directed and 13 undirected communications within a 10 minute period in an unstructured setting to 10 directed and less than 5 undirected communications in a 10 minute period.
 - The Student had been participating in a social thinking group this past trimester. We just finished the topic “Hidden Rules” in social situations. The student has shown steady improvement in his ability to initiate and respond to adults in an “expected” manner, especially if he finds the peer annoying or frustrating. With cues and redirection he is able to refocus, this is a great strength. The Student has done an excellent job of identifying expected and unexpected behaviors during our sessions on hidden rules.

19. According to the District's response to this complaint, in November and December 2017, special education teacher 1 and the Parent had ongoing conversations about the Student's behavior. During one of those conversations, they discussed creating a BIP for the Student.
20. On December 18, 2017, the Student's special education teacher emailed the Parent, stating that "she had jumped ahead" of herself, and that the BIP she had formulated would be reassessed after the school psychologist observed the Student. The teacher stated that the school psychologist would contact the Parent to obtain consent. The teacher later sent a second email, stating that she was sending home a release so the school counselor could speak with the Student's private therapist. The District's documentation in this complaint included a "behavior plan", dated December 15, 2017. According to the District's response to this complaint, the Parent was not provided a copy of the proposed December 15, 2017 BIP.
21. On December 19, 2017, the Student was suspended for two school days for "assault". According to the Student's attendance record, he left school at 11:50 a.m. on December 19 as a result of disciplinary action, and then was absent the entire day on December 20, 2017.
22. According to the District's response to this complaint, on December 19, 2017, the school psychologist sent a consent form home with the Student. The consent form addressed the District conducting an FBA of the Student.
23. The District was on break December 21, 2017 through January 2, 2018.
24. On January 3, 2018, a substitute special education teacher began teaching the Student's special education class.
25. Also on January 3, 2018, the Student was suspended for "assault". According to the Student's attendance record, he left school at 11:20 a.m. as a result of disciplinary action.
26. Later on January 3, 2018, the school psychologist emailed the Parent and copied other District staff members. The school psychologist stated that staff would like to meet with the Parent to work together to create a reentry plan for the Student before he came back to school. The psychologist asked that if the Parent was available to meet in the morning on January 4, 2018, prior to the Student's scheduled medical appointments. The psychologist also stated that she had sent home copies of the incident reports from December 8, 12, and 19, and would provide a complete copy of all the incident reports the next day. The Parent did not respond to the email. Based on the documentation in this complaint, also on January 3, 2018, the school psychologist called the Parent.
27. According to the Student's attendance record, he was absent on January 4, 2018, due to medical appointments. Also on January 4, 2018, the school psychologist spoke with the Parent and the Parent agreed to attend an IEP meeting on January 11, 2018.

28. On January 5, 2018, the Student returned to school and displayed threatening and aggressive behaviors at school. At one point, the Student ran into a classroom and began chasing and lunging at other students. As a result, the staff restrained the Student to escort him back to his classroom. Staff contacted the Parent later that afternoon regarding the restraint.
29. Also on January 5, 2018, the Parent emailed the school psychologist, stating that she was trying to get the Student to express his feelings, and that if anyone had paid attention to him, they would have noticed that he had a hard time verbalizing how he felt. The Parent stated that if the Student failed to verbalize his feelings that day, she wanted the school psychologist to inform school staff that the Student had expressed that it was too loud at school sometimes and that he had a hard time controlling his body. The Parent said that hopefully, that information would help keep the staff safe long enough to come up with a solution to keep the Student safe and find out what was going on with the Student. The Parent stated that if the Student was “sent home before a diagnosis [could] be reached, he should stay home until I can get him help”. The Parent also stated that she was preparing a form to bring to the meeting on January 11, 2018 that included information, and the Parent wanted staff to sign the form, saying that they had read it. In response, the school psychologist thanked the Parent for her response and stated that she would pass the information along to the school staff. The psychologist then sent a second email, stating that she would be at the meeting and that staff would review the Parent’s form before they signed anything. Later that same evening, the Parent responded that she was attaching a picture of the signed consent form for the FBA.
30. On Sunday, January 7, 2018, the school psychologist emailed the Parent, stating that she was attaching a prior written notice that explained that the Student would be “working with direct supervision from an adult in a space separate from his peers, as this is the most successful for him at this time.” The psychologist also stated that she was attaching a consent form for an assessment revision, which would allow the District to summarize all the updated behavior information and include it as part of the Student’s May 2017 evaluation report. It would also help the IEP team to determine, along with the FBA, the most appropriate support and placement for the Student. The psychologist asked that the Parent sign and return the consent form. The attached consent form stated that the assessment revision would include a review of existing data and assessments in the area of social/emotional/behavioral. The Parent responded, providing a signed consent form.
31. The District’s documentation in this complaint included a prior written notice, dated January 5, 2018, proposing to initiate “positive behavior intervention strategies” with the Student. The notice stated that school members of the IEP team were recommending to implement positive behavior interventions for the Student, including having him work 1:1 with a staff member in a room separate from all other peers. The notice stated that the reason for the proposed action was:

[The Student] is having an extremely difficult time managing his behaviors. The BIP² that was created for him is not successful in supporting him. He has reported to his mother that it is too loud and he has a hard time controlling his body. The staff have been having to isolate him due to significant aggressive and maladaptive behavior. Upon reentry to school after suspension due to severe behavioral escalations, the staff had [the Student] come straight to a small room with an adult and do some preferred activities. He was successful until he was attempted to be rejoined with his peers. At that time, he escalated again and was put into isolation as an emergency response plan for the rest of the day at school. He was never able to deescalate fully, demonstrate safe behaviors, and rejoin the classroom.

Additionally, the notice stated that the school members of the IEP team rejected having the Student continue to follow his prior school schedule participating with peers until an FBA and a new BIP could be completed. The notice also stated that the Student was currently being evaluated with an FBA and a reevaluation to determine appropriate strategies, supports, and placement, and that there was a meeting scheduled “in less than a week” to review those results and determine if an amendment to the Student’s IEP was needed. The notice stated that the District would begin implementing the positive behavior intervention strategies on January 8, 2018.

32. On Monday, January 8, 2018, the Student was suspended for threatening to hit other students, physical aggression toward staff: hitting, spitting, biting, hair pulling, and choking, and threatening to shoot staff members with pretend guns. The Student served the suspension on January 9-11, 2018.
33. On January 11, 2018, the Student’s IEP team met to complete the Student’s FBA and review his revision assessment. The revision assessment report stated that an assessment revision had been initiated by the IEP team due to an increase in the Student’s maladaptive and unsafe behavior, and included information about the Student’s increase in aggressive behaviors from December 8-January 3, and stated that a BIP had been in place for the Student since mid-December 2017.³ The report included a review of behavior data regarding the Student’s goal of being a safe, respectful, and responsible student each day, showing a gradual decline in earned possible points from 88% of points earned in September to 45% of points earned in December. The report also stated that since January 8, 2018, the Student had worked in a space that was separate from his peers within his classroom, and was provided 1:1 direct supervision throughout his school day to ensure safety. The report noted that the Student made violent comments every ten minutes, and that the FBA completed as part of the assessment revision suggested that the Student’s behaviors were a function of his need to escape overstimulation. The report stated that the Student’s BIP had been revised to address these needs. In the “Summary of Deliberations” section, the report stated:

² According to information provided by the District, the BIP referenced in the January 5, 2018 prior written notice is the December 15, 2017 BIP created by the Student’s special education teacher.

³ Based on the other documentation in this complaint, this statement is not accurate, as the proposed December 2017 BIP was not agreed upon by the Student’s IEP.

The data gathered and reviewed through this assessment revision indicated that [the Student] may currently not be in the least restrictive environment that is appropriate for him as evidenced by the frequent, necessary use of isolation or restraint. [The Student] requires [a] significant amount of adult support and has had a significant increase in his aggressive and maladaptive behaviors. The staff in his current placement are concerned about the regression he has shown and are questioning whether or not [the Student] requires a more restrictive placement where he is able to be successful.

The report recommended that the Student continue to receive specially designed instruction in the areas of reading, mathematics, writing, adaptive, social/emotional/behavioral, and speech and language and related services in the area of fine motor.

Also at the IEP meeting, the IEP team developed a BIP for the Student and reviewed information provided the Parent. The Parent expressed that she believed the District should have helped her obtain a medical diagnosis for the Student, and expressed concern that the District had not provided her documentation, stating that the Student was a danger to himself, which she could provide to the Student's physician.

34. Also on January 11, 2018, the District issued prior written notice, proposing to continue the Student's IEP and eligibility category, and proposing to initiate a BIP and "recommend a change in placement." According to the District's response to this complaint, the Parent was provided with a draft of the prior written notice on January 11, 2018, and a final copy was mailed to the Parent on January 12, 2018. The prior written notice stated that the reason the District was taking the action was that based on the Student's assessment revision, he continued to qualify for special education services, and that his recent increase in maladaptive behaviors required a BIP. Additionally, despite continued behavior interventions, the escalation and unpredictability of the Student's behavior required more support than provided in his current placement in the District's structured learning classroom. The notice stated that the District had provided the Parent with all current special education documents to take to the Student's physician. The prior written notice also stated that the evaluation team had discussed another placement option for the Student, specifically a day treatment program, and that the Parent "was in agreement with this recommendation and is in agreement with moving forward with a referral to a different program, out of district." The notice further stated that the evaluation team had discussed placing the Student "on home instruction during the transition period from his current placement to his new placement. [The Parent] was in agreement with this recommendation."
35. The District's documentation in this complaint included an IEP amendment, which stated that the date of the IEP meeting was January 12, 2018. According to the District, the IEP amendment was drafted on January 12, 2018, to reflect the decisions made at the January 11 IEP meeting. A copy of the amendment was emailed to the Parent on January 18, 2018.⁴ The amended IEP also stated that the Student's behaviors had increased in frequency, intensity,

⁴ According to the District's response to this complaint, due to special education director being ill, there was a delay in sending the Parent a copy of the January 12, 2018 IEP amendment.

and duration, making him unsafe to attend school, and the IEP team had made a recommendation that the Student be referred to a “day treatment program”. The amended IEP stated that the referral was in place and that “homebound instruction” would be provided until the Student was able to finish the intake process at the day treatment program, but also included conflicting information, stating that the Student would attend school 1,690 minutes per week and spend 78.8 percent of his school week in a general education setting. The amended IEP provided for the following amount of specially designed instruction and related services:

- Reading – 60 minutes 1 time weekly
- Writing – 60 minutes 1 time weekly
- Mathematics – 60 minutes 1 time weekly
- Adaptive – 60 minutes 1 time weekly
- Social/Emotional/Behavioral – 60 minutes 1 time weekly
- Speech and Language – 30 minutes 1 time weekly
- Fine Motor – 30 minutes 1 time weekly

36. Also on January 12, 2018, the District issued prior written notice, proposing to change the Student’s educational placement. The notice stated that the IEP team was recommending a change in placement for the Student and that a referral had been made for a “day treatment program”. The notice also stated that until the referral process was completed, the IEP team was recommending that the Student be instructed “via homebound instruction 5 hours per week.” The notice stated that the reason for the proposed change in placement was the Student’s behaviors had “escalated in frequency, intensity, and duration making him unsafe to attend school”. The notice stated that the action would be implemented on January 15, 2018.

37. According to the Student’s attendance record, he was absent January 12, 2018.

38. The District was on break January 15, 2018, due to a holiday. Also on January 15, 2018, the Student’s home placement began.⁵

39. On January 16, 2018, the school psychologist emailed the Parent, stating that the day treatment center was available to have an intake meeting on February 1, 2018. The psychologist asked if the Parent was available to meet at that time. In response, the Parent expressed concern about the date of the meeting, because this was one more week of school the Student would miss. The Parent stated that she would attend the February 1 meeting, but stated that she would appreciate having the meeting sooner so the Student could get back in a classroom and back to learning.

40. On January 17, 2018, the elementary school principal emailed the Parent regarding home based instruction for the Student. The principal stated that a paraeducator would work with the Student on his IEP goals and was available on Monday and Tuesdays from 4:00–6:30 p.m.

⁵ According to the Student’s attendance record, he was absent from elementary school 2 from January 16-31, 2018. The Student’s attendance record does not reflect his placement change to a home setting.

The principal asked if this time worked for the Parent. Based on the documentation in this complaint, another service schedule was later agreed on.

41. On January 18, 2018, the school psychologist emailed the Parent and attached a copy of the January 12, 2018 IEP amendment. The school psychologist stated that the amendment reflected “the home instruction” and the Student’s new placement, and asked that the Parent let her know if she had any questions.
42. On January 19, 2018, a District paraeducator began providing the Student with services at his home. Based on the paraeducator service log, while at the home, the Student’s grandmother commented that the Parent was not happy with the decision to move the Student to the day treatment facility and felt that she had been “tricked” at the January 11, 2018 IEP meeting, as the Parent thought the meeting was to discuss reentry into elementary school 2, up until the last two minutes of the meeting.
43. On January 23, 2018, OSPI received this complaint.
44. Also on January 23, 2018, the District paraeducator provided the Student services. The family canceled the Student’s service time on January 26, and the paraeducator met with the Student on January 29, 2018.
45. On February 1, 2018, the Parent attended an intake meeting at the day treatment program.
46. On February 2, 2018, the District amended the Student’s June 2017 IEP to reflect his placement in the day treatment program. The amended IEP stated that the Student would attend the day treatment program 1,650 minutes per week, and provided for 1:1 paraeducator support throughout his school day. The amended IEP also referenced the Student’s January 11, 2018 BIP.
47. On February 5, 2018, the Student began attending the day treatment program.

CONCLUSIONS

Removal from School – The Parent alleged in her complaint that the Student was not allowed to return to school following his suspension, but was informed that the Student would be sent to another school.

School personnel may remove a student eligible for special education who violates a code of student conduct from his 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 under this section, 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.

Based on the documentation in this complaint, the Student was suspended on December 19 and 20, 2017 and January 3, 9, 10, and 11, 2018, which is a total of six school days. Additionally, beginning on January 8, 2018, the District removed the Student from the educational placement documented in the November 2017 amendment to his IEP due to his behavior. This is a disciplinary removal, and is considered an in-school suspension. Further, it appears the Student was not allowed to return to school on January 12, 2018, which also amounts to a suspension. As of January 15, 2018, the Student's placement was changed to a home setting pending the Student's move to the day treatment program. While the Parent may have disagreed with the decision to move the Student to a home setting, and then the day treatment program, this was not a disciplinary removal, but rather a change of placement based on the IEP team's decision following a reevaluation. Therefore, because the Student was suspended less than ten school days during the time period for this complaint, special education disciplinary procedures are not applicable.

Notice of Procedural Safeguards – The Parent alleged in her complaint that the District failed to provide her with a copy of the procedural safeguards after the District amended the Student's IEP, and the District asserts that a copy was provided to the Parent.

A school district is not required to provide parents with a copy of the procedural safeguards every time a student's IEP is amended, but rather at least once every school year and also: the first time the child is referred or the parent requests a special education evaluation; the first time the parent files a citizen's complaint or due process request in a school year; the first time the parent or the district files a due process hearing request during the year; on the date the district decides to make a disciplinary change of placement; or anytime the parent requests a copy.

As discussed above, the Student was not suspended for more than ten school days during the time frame for this complaint, and there was not a disciplinary change of placement. Therefore, the District was not required to provide the Parent with a copy of the procedural safeguards at the January 11, 2018 IEP meeting or afterward when it amended the Student's IEP.

CORRECTIVE ACTION

By or before **April 6, 2018**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

By **April 1, 2018**, the District will amend the Student's attendance record to clearly reflect all of the days he was suspended during the 2017-2018 school year. The District will also amend the attendance record to reflect the Student's move to a home setting from January 16-February 2, 2018, as the Student was not absent from elementary school 2 during that time period. By **April 6, 2018**, 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.

DISTRICT SPECIFIC:

None

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.

RECOMMENDATIONS

It is recommended that the District review its practices for scheduling meetings and documenting attempts to schedule meetings, as the District's contact reports and meeting invitations provided in response to this complaint contain conflicting and confusing information, and it is unclear when meeting invitations were actually provided to the Parent. It is also recommended that the District review its processes for amending IEPs and ensuring that parents are promptly provided with documentation following an IEP meeting, including a process for ensuring that plans for future reviews are completed as agreed to. Additionally, the District is reminded that it cannot make a significant change in a student's placement without first conducting a reevaluation. The documentation in this complaint does not show that the District conducted a reevaluation of the Student prior to significantly changing the Student's placement in November 2017.

Dated this ____ day of March, 2018

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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