

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-45

PROCEDURAL HISTORY

On May 7, 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 Tacoma 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 8, 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 May 23, 2018, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on May 24, 2018.

On May 30, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on May 31, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 8, 2018, the Parent requested an extension of time to reply to the District's response. OSPI granted the request and extended the timeline to June 15, 2018 for the Parent to reply.

On June 15, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On June 15, 2018, OSPI also requested additional information from the District. The District provided the additional information on June 29, 2018, and OSPI forwarded that information to the Parent on the same day.

On July 2, 2018, OSPI received additional information from the Parent. OSPI forwarded that information to the District on the same day.

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 services under the category autism. The Student had a history of elopement from the classroom, and at the Student's annual IEP meeting in October 2017, the Parent requested that the Student be assigned a 1:1 paraeducator. The District declined to provide a 1:1 paraeducator and instead decided to conduct a functional behavioral assessment (FBA). In December 2017, according to the District, the Parent indicated that she did not want to continue with the FBA. However, according to the Parent, while she did ask to

reschedule an IEP meeting in December 2017, she did not state that she wanted to discontinue the FBA. In April 2018, the Student ran out of the school building and into the street next to the school, and was ultimately brought back to the school by people who lived near the school. After the incident, the Parent mentioned that her previous request for a 1:1 paraeducator had been denied. The District responded by completing the FBA and by implementing other safety measures. On May 4, 2018, the Student's IEP team met to discuss the incident, the FBA, and to develop a behavioral intervention plan (BIP) for the Student. At the meeting, the Parent again requested a 1:1 paraeducator and the District again refused the request because the District members of the IEP team agreed that previously implemented interventions and the BIP were appropriate to address the Student's elopement behaviors. According to the Parent, many of the suggested safety measures took over a month to implement or have not yet been put in place, and she continues to have concerns about the Student's safety at school. The Parent alleged that the District failed to respond to her requests for a 1:1 paraeducator during the 2017-2018 school year. The District denied the allegation.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation time period, which began on May 8, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUE

1. Did the District follow procedures for responding to the Parent's request(s) for a 1:1 paraeducator during the 2017-2018 school year?

LEGAL STANDARDS

Supplementary Aids and Services: Supplementary aids and services means aids, services, and other supports that are provided in general education classes or other education-related settings to enable students eligible for special education to be educated with nondisabled students to the maximum extent appropriate in accordance with the student's least restrictive environment. 34 CFR §300.42; WAC 392-172A-01185. A student's individualized education program (IEP) must include a statement of the supplementary aids and services to be provided to the student or on behalf of the student. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d).

Parent Request for IEP Meeting: When a parent requests an IEP meeting to discuss issues of FAPE the school district must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting to determine whether such a change is needed, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the

provision of FAPE to the student. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20).

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services, and the child's goals; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5, 9).

IEP Team Unable to Reach Consensus: An IEP team should work toward consensus, but a district has ultimate responsibility to ensure that an IEP includes the services that a student needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority "vote" and no one team member has "veto power" over individual IEP provisions or the right to dictate a particular educational program. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9); *Doe by Gonzales v. Maher et al.*, 793 F.2d 1470, 1490 (9th Cir. 1986); *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). A difference of educational philosophy, however, is not necessarily a denial of opportunity to participate. *Ms. S. v. Vashon Island*; *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Finding that a school district is responsible for providing a student with a disability an appropriate education, even if the educational program is different from a program sought by the parents.)

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. 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 prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice must be given to the parent within a reasonable time before the district initiates

or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. 34 CFR 300.503; WAC 392-172A-05010.

Functional Behavioral Assessment (FBA): An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a behavioral intervention plan (BIP). *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2). The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days of receiving a consent. 34 CFR §300.303; WAC 392-172A-03015. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4). Once the need for a reevaluation is identified, a district must act "without undue delay and within a reasonable period of time;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008).

FINDINGS OF FACT

Background Facts

1. The Student lives with both his mother (Parent) and his father.

2016-2017 School Year

2. During the 2016-2017 school year, the Student attended a District elementary school and was eligible for special education services under the category developmental delay. The Student's placement was in a self-contained special education program for students with autism.¹
3. The Student's triennial reevaluation was completed in October 2016, and on October 28, 2016, the Student's evaluation group, including the Parent, found that the Student continued to be eligible for special education services, but changed the Student's eligibility category to

¹ The Student was diagnosed with an autism spectrum disorder after his initial evaluation and before his triennial reevaluation, thus his placement in the program for students with autism at the beginning of the 2016-2017 school year. According to the District's response, the program for students with autism provided a "smaller classroom environment and lower student-to-adult ratio," which provided "necessary positive behavior support and constant supervision to help ensure [the] Student's personal safety."

autism. The evaluation report recommended that the Student receive specially designed instruction in the areas of social emotional/behavioral, adaptive/self-help, reading, written expression, and math. The evaluation report also recommended that the Student receive occupational therapy and speech/language therapy as related services.

4. On November 8, 2016, the Student's individualized education program (IEP) team, including the Parent, met and developed the Student's annual IEP. The Student's IEP noted that the Parent had "ongoing concerns about [the Student's] personal safety because he continues to attempt running away from...adults." The team discussed the accommodations and modifications that had been put in place to address the Student's elopement attempts, including:
 - Keeping classroom doors and windows closed at all times.
 - Positioning a bookshelf near the classroom entrance, which partially blocked door access and allowed additional time for staff to redirect the Student or otherwise respond to elopement attempts.
 - Positive behavior interventions: a token system with access to preferred activities; visual supports for Student's behavior expectations; and planned sensory and movement breaks throughout the day.

The November 2016 IEP included annual goals and specially designed instruction in the areas of math, reading, adaptive/self-help, social emotional/behavioral, and written expression. The IEP also included annual goals and related services in speech/language and occupational therapy.

Summer 2017

5. During summer 2017, the Student's elementary school moved to a temporary location while the school was being remodeled during the 2017-2018 school year. The remodeled elementary school is scheduled to re-open in November 2018.

2017-2018 School Year

6. The District's 2017-2018 school year started on September 6, 2017. At that time, the Student began attending the same District elementary school, although at the temporary location, and his November 2016 IEP continued to be in place.
7. On October 30, 2017, the Student's IEP team, including the Parent, met and developed the Student's annual IEP. The October 2017 IEP noted that the Student had a "history of elopement," and that "in September [2017], [the Student] was averaging 3-5 escape attempts a day." The IEP stated that teachers had "added higher gates, door alarms, and consistently reminded [the Student] of the expectation to keep 'safe feet' at school. A noticeable decrease in elopement has occurred since these strategies have been implemented."²

² According to the District's response to this complaint, several behavior interventions and strategies were implemented, including: "consistent behavior expectation reminders; mini lessons on 'safe feet' and 'not safe feet'; verbal and social praise every 15-30 minutes when Student maintained 'safe feet'; and functional communication training on how to appropriately request to leave the classroom."

According to the District's response to this complaint, during the IEP meeting, the Parent requested that the Student be provided with a 1:1 paraeducator because of his elopement attempts.

8. The October 2017 IEP included annual goals in the areas of math, reading, written expression, adaptive/self-help, social emotional/behavioral, speech/language, and occupational therapy. The Student's adaptive/self-help goal stated:

When given boundaries for where the Student can independently roam (in the classroom but not the hallway, only these sections of the playground, etc.) the Student will remain within the designated boundaries improving elopement behaviors from 1-3 times a day to less than 1 time a week as measured by teacher observation and data collection.

The IEP provided the following specially designed instruction and related services in the special education setting:

- Social emotional/behavioral: 60 minutes, 5 times per week
 - Adaptive/self-help: 60 minutes, 5 times per week
 - Math: 80 minutes, 5 times per week
 - Reading: 80 minutes, 5 times per week
 - Written expression: 60 minutes, 5 times per week
 - Speech/language: 20 minutes, 2 times per week (provided by a speech language pathologist (SLP))
 - Occupational therapy: 30 minutes, 1 time per week (provided by an occupational therapist (OT))
9. Also on October 30, 2017, the District provided the Parent with a prior written notice that recorded the Parent's request that the Student be assigned a 1:1 paraeducator. The notice stated that the Parent "expressed concern about [the Student's] elopement and requested a one-on-one para-educator. The school based-team proposed opening a [functional behavioral assessment (FBA)] and further collecting data on elopement." The notice stated that "the one-on-one para-educator was rejected today because current data shows strategies that have been implemented since the beginning of the school year are demonstrating a marked decrease in [the Student's] elopement." The notice also stated that the IEP team planned to meet again on December 1, 2017, to review the data from the FBA and discuss further options.
 10. Finally, on October 30, 2017, at the IEP meeting, the Parent signed consent for the FBA.
 11. According to the District's documentation, during October 2017, the Student's special education teacher recorded the following elopement behaviors by the Student:
 - October 16: Zero attempts
 - October 17: Zero attempts and at recess the Student asked an adult "go to receive a walk today"
 - October 18: Elopement during indoor recess
 - October 19: Elopement attempt during transition from specialists and elopement attempt during indoor recess
 - October 20: Elopement during recess

- October 23: Zero attempts
- October 24: Elopement
- October 26: Zero attempts

12. According to the District, the Student stopped engaging in elopement attempts after October 2017 and thus, the District did not continue to collect data.

13. On November 2, 2017, the Student's special education teacher emailed the Student's father an article about elopement and stated that her "initial hypothesis is that [the Student] probably runs for a mixture of attention and automatic reinforcement." The special education teacher stated that the school had been using "safe feet" paired with "lots of social praise" as an alternative positive reinforcement plan.

14. On November 29, 2017, the Parent emailed the Student's special education teacher and requested a copy of the Student's IEP in advance of the December 1 meeting to review the FBA.

15. On November 30, 2017, the Student's father emailed the special education teacher and asked if they could reschedule the December 1 IEP meeting for the following week. According to the documentation provided in this complaint, a rescheduled meeting was not held.

16. On December 1, 2017, the special education teacher emailed the Student's father and stated that because the Student has not eloped since the October 2017 IEP meeting, "the data suggests that we really don't ***need*** to do a [behavioral intervention plan] B.I.P. But since we think he elopes to explore, it is possible we could see an increase in elopement again when we move back to [the elementary school's permanent location]."³ The special education teacher stated that she did want to have a BIP in place by the end of the school year in order to have a "clear blueprint of what we did this year to quickly decrease elopements and keep him safe." In response, the Student's father again asked for a copy of the Student's IEP and the special education teacher emailed him the IEP.

17. According to the District's response, the Parent and the Student's father "later indicated that they did not want to proceed with the FBA."⁴ According to the Parent's reply, this statement is untrue and the Parent never indicated that she did not want to proceed with the FBA.

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

19. According to the District's documentation, the special education teacher recorded the following elopement behaviors for the Student in February and March 2018:

- February 9, 2018: Four attempted elopements

³ According to the Parent's reply, the Parent does not believe that the school had started the FBA at this point and questions the data the special education teacher referred to in her email.

⁴ The District acknowledged that it has no written documentation that showed that the Parent did not want to proceed with the FBA.

- February 13, 2018: One attempted elopement
- March 2, 2018: Two attempted elopements
- March 20, 2018: Three attempted elopements

20. According to the Parent, she had not seen documentation of the elopement attempts in February and March 2018 until she received the District's response to this complaint. Further, the Parent stated that there were other times when she was notified of the Student's attempts to elope, but that these elopements or attempts were not documented by the District. The Parent also stated that she later requested data on the Student's elopements and was told recorded data did not exist.

21. The District was on break from April 2-6, 2018.

22. On April 24, 2018, the Student eloped from the classroom, left the building, and ran out into the street. According to the incident report⁵ that the District provided to the Parent⁶, the Student:

Ran from the classroom, up to the main level and out the front doors. Prior to him eloping the class had been seated singing along with a video, the teacher had been at her desk. One staff member was helping...a child two other paras were seated with the group watching the video. A guest para was located by the classroom door. [The Student] moved away from the group and was dancing around the guest para went over to engage him and he ran to the door opened the gate and ran out. The guest para went out the door and verbally called for him to stop and then told the other para she couldn't chase him. Another para then went running after him. [The Student] went 100ft down the sidewalk and ran into the middle of the street. A para was running after him, but was unable to catch him. Two neighbors ran into the street and caught him and met [the paraeducator] on the sidewalk.⁷

The incident report goes on to note that two other staff members followed the paraeducator outside and the principal helped bring the Student back inside. The principal had the Student "sit for a minute in the office in 'time out' and then repeated to him 'no going out the doors,' 'no going in the street.'" After returning the Student to his classroom, the principal asked the special education teacher to contact the Parent. The Parent came to school, met with the principal, and stated that she had requested a 1:1 paraeducator, but that the District denied her request. The District's response to this complaint stated that this was the first incident in which the Student had left school grounds.

⁵ The incident report provided in the District's response to this complaint differs slightly from the incident report that the District provided to the Parent, which she included in her original complaint. The District's version of the report does not include the details about what the class was doing prior to the Student's elopement and stated that the Student "went ¼ block down the sidewalk." It is unclear why the two incident reports are different.

⁶ The District provided the Parent a copy of the April 24 incident report on May 3, 2018.

⁷ According to the Parent's reply, the street the Student ran into was a busy street and someone that lived near the school had to stop traffic before getting the Student out of the street. The Parent stated that she has been in contact with the neighbor about what happened.

23. Later on April 24, 2018, the principal emailed the director of student services for elementary programs (elementary director) details of the Student's elopement that day.
24. According to the documentation, the Student did not attend school April 25-May 8, 2018, due to the Parent's concerns about the Student's safety.
25. On April 26, 2018, the principal emailed the special education teacher regarding the incident on April 24 and stated that the following measures would be implemented:
 1. I am sending out an email and making a sign to have the double doors at both ends of your hall closed at all times.
 2. [Elementary director] will be submitting to Maintenance a request for the special type of door handle.
 3. If parents want to have a 1:1 considered then we need to set up an IEP team meeting and review the data.

The principal asked the special education teacher to schedule an IEP meeting with the Parent.

26. Also on April 26, 2018, the principal emailed the elementary director and asked him to order the new door handle. The principal stated that the school staff were also scheduling an IEP meeting and that she had communicated with staff about keeping the doors closed.
27. Later on April 26, 2018, the special education teacher emailed a teacher on special assignment for student services (student services teacher) and stated that the IEP team was going to have "another IEP to discuss the data because parents want a 1:1 (I still do not think the data supports a 1:1 and neither does [the principal], but we need to offer a meeting anyway)." The special education teacher asked the student services teacher about her availability to attend an IEP meeting because the principal wanted District representation at the meeting with the Parent.
28. On April 27, 2018, the Parent requested an IEP meeting to discuss concerns regarding the elopement incident and the Student's safety, and stated that she intended to keep the Student out of school because of her safety concerns.
29. Also on April 27, 2018, the elementary director emailed the principal about the plan to include a "lever lock" on the classroom door, which would make it harder for students to let themselves out of the classroom.
30. On April 30, 2018, the District sent the Parent a meeting notice for the IEP meeting scheduled for May 4, 2018 to discuss the FBA and the Parent's safety concerns.
31. Also on April 30, 2018, the District sent the Parent a prior written notice that stated that the FBA had been completed and that the Student needed a BIP. The prior written notice stated that the FBA had not been completed earlier because "conducting the FBA in December was rejected by the parents" and because Student's "elopement behavior has shown a trend towards complete extinction (less than 1 elopement per week)" but that "after spring break, [the Student] started showing an increase in elopement and ran out of the building for the first time all year, which sparked safety concerns from staff and parents."

32. On May 3, 2018, the Parent emailed the special education teacher and requested a copy of the Student's IEP and the April 24 incident report. The special education teacher responded and provided a copy of both the IEP and the incident report.
33. On May 4, 2018, the Student's IEP team met, including the Parent, to review the April 24 incident and discuss the Parent's concerns. The team discussed steps that had already been taken to prevent further incidents, including: ordering a safety lock for the Student's classroom door; keeping the double doors at both ends of the hallway by the Student's classroom closed at all times; new batteries for the radios; and, providing training in the classroom.⁸ Additionally, the team discussed a new protocol to designate a specific staff member who would keep their eyes on the Student at all times and who would follow the Student if he attempted to elope.
34. The IEP team then discussed the Student's FBA, dated May 4, 2018, which stated that:
In October [2017] formal data was collected on [the Student's] elopement...[The Student] was eloping as much as 9 times a day in September/October. In early October, the special education teacher began some extinction procedures. [The Student] was praised for having 'safe feet' in the classroom every 15-30 minutes. [The Student] was given free access to request a 'walk' and leave the classroom with an adult any time he requested. By the end of October, [the Student's] elopement behavior was down to 1-2 times per week. [The Student's] elopement stayed at about 1-2 times per week when he returned from winter break all the way until spring break. Shortly before spring break, parents reported that [the Student] started a new medication...that may cause a change in his behavior. Staff noticed upon return from spring break, that [the Student]...demonstrated an increase in elopement, averaging 4-5 elopements a week.⁹

The FBA stated that the elopement behaviors did not occur with a specific adult, at a specific time, or in a specific location, and that there are no "apparent triggers [and] no clear antecedent events." The FBA did note that elopement "started occurring more frequently after the return from spring break, but it is completely random when it will occur throughout the day." The FBA discussed prior interventions that had been implemented by the special education teacher and that "these interventions worked quickly and the behavior was trending towards extinction in a matter of weeks." The prior interventions included:

- Verbal and social praise for maintaining "safe feet" in the classroom;
- Functional communication training in how to appropriately request to leave the classroom;
- Guided walks around the building when appropriate requests made;
- During elopement, staff appeared visually calm and bored while following the Student;
- Staff did not talk to the Student or make eye contact while bringing him back to class; and,

⁸ The District's response to this complaint does not state what the "training in the classroom" consisted of specifically.

⁹ According to the Parent, she has never seen the data that indicates that the Student eloped one to two times per week between winter and spring break or data that support the Student's increased elopement attempts after spring break. According to the Parent, the District told her that no data had been gathered because the elopement attempts had been decreasing. Further, the Parent states that even after she took the Student off the new medication, the Student continue to attempt elopement.

- Lessons on “safe feet” and “not safe feet.”

35. After reviewing the FBA, the IEP team developed a BIP for the Student. The BIP noted that the replacement behavior being taught was that the Student “will remain inside designated boundaries when in the classroom or outside” and that during transitions the Student “will stay within a 3 foot radius of a staff member.” The BIP included many of the interventions staff were already using, including that the Student will be rewarded with a walk when he appropriately requests one, verbal and social praise for “safe feet”, visual boundaries and gates, and modeling and functional communication training. The BIP also noted that “special door handles will be installed to make it more difficult to leave the classroom” and that “more adult support has been added to the classroom, and an adult is in charge of staying by the exit for safety.”
36. Also on May 4, 2018, at the IEP meeting, the Parent again requested that the Student be assigned a 1:1 paraeducator. The District members of the IEP team did not agree that the Student needed a 1:1 paraeducator, and according to the District’s May 4 prior written notice, explained that “there [are] 5-6 adults in the classroom at all times and data since Oct. doesn’t support it, [the Student’s] elopement data showed a decrease in elopements. Team will not track ‘attempts’ to elope.” The notice stated that the BIP would be implemented on May 4 and the team planned to meet again later in May to make changes to the BIP if necessary. According to the District’s response to this complaint, the District members of the team agreed that the previously implemented interventions and BIP were appropriate to address the Student’s elopement behaviors.
37. According to the Parent’s reply, the District did not follow through on each of the safety measures discussed at the May 4, 2018 IEP meeting. The Parent stated that the hallway doors have been open on multiple occasions when she picked the Student up from school. The Parent also stated that it took over a month (from the incident) to install the new lock on the classroom door. And, the Parent also stated that on multiple occasions when picking the Student up, there have been fewer than five adults in the classroom. Also according to the Parent’s reply, the BIP was inadequate and “everything they are trying to do with the BIP has already been done and it’s not working hence [the Student’s] escape into the busy street where traffic had to be stopped before [he] was hit by a car.” Additionally, the Parent stated that the gate had still not been fixed.
38. On May 7, 2018, the Parent filed this citizen complaint.
39. On May 9, 2018, the principal emailed the elementary director and student services teacher regarding the follow up meeting scheduled with the Parent and the Student’s father on May 10, 2018.¹⁰ The principal stated that she will not be able to attend the meeting and that she had not been able to find a “good replacement gate for the room.” The principal also

¹⁰ The District’s documentation does not specify when this meeting was scheduled, who requested the meeting, or if this meeting was intended to be the meeting where the IEP team finalized the Student’s BIP.

attached the search team plan. The elementary director responded and stated that the level locks had arrived and were being sent to the school to install.

40. According to the District's documentation, the school staff put in place a "Student Search Team Plan." This plan directed classroom teachers to check their rooms for a missing student and directed specified support staff to search assigned areas. The plan also noted that if a missing student "cannot be found within 5 minutes of initial call, school patrol will be called" and that if the student has left the block surrounding the school, law enforcement and the school patrol would be called.
41. On May 11, 2018, the Parent emailed an advocate she was working with and stated that she had gone to the school on May 10, to cancel the meeting scheduled for that day. While at the school, the Parent stated the following occurred:
- The principal handed her a student search team plan and apologized for not already having it in place.
 - The principal told her that the school would be turning on the "buzzers at the top of the door to alert them when a student has left as they are turned off."
 - The principal told her that the school could put a "fake door knob that will trick the children."
 - In response, the Parent stated she suggested they use a hard lever, which she used at home and the Student cannot open.
 - The principal told her that the school would be putting new batteries in the radios.

The Parent also wrote that, in October "his IEP stated the teacher was supposed to be collecting the data of his elopements and she stopped." The Parent wrote that she had "requested the information and [the special education teacher] stated she never did it because [elopements] had lowered and she didn't think it was necessary" and the Parent stated that data collection "was in his IEP they were supposed to be recording everything." The Parent also stated that she was scheduling a meeting for May 17, 2018 and hoped that the advocate could attend.

42. According to the District's documentation, on May 17, 2018, the Parent requested that the District cancel the IEP meeting scheduled for that day and indicated that she intended to bring her attorney to the next meeting.
43. According to the District's documentation, on May 18 and 22, 2018, the Student attempted to elope once each day.
44. On May 22, 2018, the Parent emailed the special education teacher and expressed concerns regarding the District's response to the Student's elopement behaviors, and reiterated her request for a 1:1 paraeducator. The Parent wrote that her understanding of the plan was that the District had "hired two new people for the classroom since spring break and they are going to change a door knob, get [a] new gate and get new radios." The Parent stated that since the May 4 meeting, "stop gaps that were supposed to be in place are still not being addressed. The gate is still broken and accessible to all the children to be able to open." The Parent also wrote that when the Student's father picked him up from school, there were

usually only two or three adults in the room. Additionally, the Parent stated that her understanding was that the District “did not think it would be beneficial for [the Student] to have a one-on-one because the person would still have to take a lunch break. She stated that there were other adults in the class room.” The Parent wrote that she thought the Student needed a 1:1 because he needed eyes on him at all times. The Parent then listed several things she felt the District needed to implement, including:

- Confirmation of necessary training;
- Workable radios;
- Confirmation additional locks have been installed;
- Door alarm will be armed at all times;
- Bus harness implemented;
- Daily communication log;
- Reduced number of transitions;
- Additional support before, during and after a transition;
- Teacher(s) trained for elopement; and,
- Properly installed stop gaps at all levels of the school to ensure no one can escape.

45. On May 23, 2018, the special education teacher emailed the Parent in response to her May 22 email and stated that she had forwarded the Parent’s email to the principal. The special education teacher also wrote that the meeting to discuss the BIP had been rescheduled for May 31, 2018, and that “this meeting will be an opportunity to discuss concerns about the BIP the team presented on May 4th.” In response, Parent stated that she was meeting with an attorney the following week and that she may need to reschedule the May 31 meeting.

46. On May 31, 2018, the Parent asked to reschedule the meeting scheduled for that day so that her attorney could attend.

47. On June 1, 2018, the District provided the Parent with a prior written notice, which updated the May 4, 2018 prior written notice. The June 1 notice indicated that on May 31, the Parent canceled the meeting, but “agreed to close the BIP as written.” The notice stated that the Parent wanted to “continue the discussion regarding a 1:1 at a later date.”

CONCLUSIONS

The Parent alleged that the District failed to respond to her requests for a 1:1 paraeducator during the 2017-2018 school year. Supplementary aids and services, such as a 1:1 paraeducator, are supports that are provided in the general education or other education setting to enable students eligible for special education to be educated with students without disabilities to the maximum extent appropriate, in accordance with the student’s least restrictive environment. When a parent requests a change to a student’s free appropriate public education (FAPE) or requests an individualized education program (IEP) meeting to discuss a change, the district must either schedule a meeting or provide written notice of the refusal. If a school district denies a parent’s request to change the provision of a FAPE to a student, the district must provide the parent with written notice and an explanation of the denial. While an IEP team should work toward consensus, ultimately, the district has a responsibility to ensure that a student’s IEP

includes services that provide the student with a FAPE, even if a member of the IEP team disagrees.

October 2017 1:1 Paraeducator Request

At the Student's annual IEP meeting, in October 2017, the team discussed the Student's elopement behaviors and the interventions the school had already implemented. The Parent requested that the Student be assigned a 1:1 paraeducator. The District rejected the Parent's request and provided the Parent with a prior written notice that stated that the 1:1 paraeducator had been rejected because "current data shows strategies that have been implemented since the beginning of the school year are demonstrating a marked decrease in [the Student's] elopement." The notice also stated that in response to the Parent's request, the school team determined that a functional behavioral assessment (FBA) was necessary to collect additional information before examining further options.

An FBA is generally understood to be an individualized evaluation of a student and focuses on identifying the function or purpose behind a child's behavior. Knowing why a child engages in a behavior is helpful to the IEP team in developing a behavioral intervention plan (BIP) that aims to reduce or eliminate the behavior. As with other evaluations, to conduct an FBA, the district must obtain the parent's consent and complete the FBA within thirty-five school days of the receipt of consent.

The Parent signed consent for the FBA on October 30, 2017. The documentation in this complaint shows that some data on the Student's elopement behaviors was collected in October 2017, prior to starting the FBA. There is no documentation in this complaint showing that the District continued collecting data for the FBA or completed the FBA by January 9, 2018 (thirty-five school days from October 30); additionally, there is no evidence that the District consistently collected data on the Student's elopement behaviors despite such data collection being called for in the Student's IEP in order to measure his progress toward his adaptive/self-help goal. According to the District's response, the Parent indicated sometime in December 2017 that she did not want to continue the FBA. However, according to the Parent, she did not ask the District to stop collecting data or indicate that she wanted to discontinue the FBA. The Parent maintains that she has never seen data that indicates that the Student's elopement attempts had decreased to the point that an FBA was unnecessary, and that she continues to have safety concerns regarding the Student. The District completed the FBA on May 4, 2018, six months after receiving consent.

The District did initially follow procedures for responding to the Parent's request for a 1:1 when it discussed the request at the IEP team meeting and provided the Parent with a prior written notice documenting the District's refusal. However, the District did not follow procedures for completing the FBA within the requisite thirty-five school days. Additionally, there is conflicting documentation of data in this complaint used to complete the FBA; for example, the District's documentation includes no supporting data beyond the "summary of data collection" and there is inconsistent evidence of whether and how many elopement or attempts occurred throughout the school year. Further, the FBA states that there were no apparent triggers, locations, or times of day that the behavior occurred; however, based on the limited data provided in this complaint,

it appears that often recess and transitions seemed to be when the Student attempted to elope. Given that the District's response, in part, to the Parent's request for a 1:1 paraeducator was to suggest and then obtain consent for an FBA, overall, the District did not properly respond to the Parent's October 2017 request for a 1:1. Because the FBA has now been completed, no Student specific corrective actions are required to address this. However, the District will be required to develop guidance on FBAs. The District will also be required to keep data from September through December 2018, to provide comprehensive progress reporting regarding the Student's adaptive/self-help goal and in order to inform the Student's October 2018 annual IEP and his behavioral intervention plan (BIP).

May 2018 1:1 Paraeducator Requests

On May 4, 2018, the Student's IEP team, including the Parent, met to discuss the April 24, 2018 elopement incident, the results of the Student's FBA, and to develop a BIP. During the meeting, the team discussed the steps that had already been taken or were planned to prevent further incidents, including designating a specific staff member who would keep their eyes on the Student at all times and would follow the Student if he eloped. The Parent again requested that the Student be assigned a 1:1 paraeducator, and the District rejected the request because the District agreed that the existing interventions and the new BIP appropriately addressed the Student's elopement behaviors. The District provided the Parent with a prior written notice that stated that the District was rejecting the request for a 1:1 paraeducator because there were five to six adults in the classroom and the data showed a decrease in elopements, which did not support the need for a 1:1. The District's documentation indicates that it considered the Parent's request and took steps to address the Parent's safety concerns, but ultimately denied the Parent's request for a 1:1.

At the May 4, 2018 IEP meeting, the Student's IEP team did not finish reviewing the Student's BIP and the District scheduled follow up meetings with the Parent on May 10 and 17. The Parent canceled both meetings. On May 22, 2018, the Parent emailed the special education teacher and expressed her continued concerns about the Student's safety. The Parent noted that some of the promised safety measures (e.g., fixing the gate and getting batteries for the radios) had not yet been implemented and the Parent also requested other changes (e.g., reducing the number of transitions the Student makes) and repeated her request that the Student be assigned a 1:1. In response, the District scheduled a meeting on May 31, 2018, to further discuss the Parent's concerns and the request for a 1:1. The Parent canceled the May 31 meeting because she felt that the District had already made a decision and the District provided her with a prior written notice that noted that the meeting had been canceled and indicated that the District continued to be willing to discuss a 1:1 paraeducator.

While the Parent is concerned that the District has failed to implement some of the discussed safety measures and continues to disagree with the District's decision to not provide a 1:1, the District has shown an ongoing willingness to continue discussing the Parent's concerns and requests by scheduling meetings on May 10, 17, and 31, 2018. Here, the District has partially responded to the Parent's request for a 1:1 paraeducator by scheduling meetings to discuss concerns and by providing the Parent with a prior written notice that the 1:1 request had been

denied. However, the District also responded by proposing and beginning to implement other safety measures; and, based on the documentation, it is not clear that all of the safety measures have been implemented. Therefore, the District has not substantiated that it completed its response to the Parent's requests. The District will meet with the Parent to review the status of the proposed safety measures and engage in safety planning for the next school year.

CORRECTIVE ACTIONS

By or before **August 17, 2018, September 10, 2018, September 28, 2018, November 9, 2018, and January 4, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. By or before **September 5, 2018**, the District will meet with the Parent to discuss the following topics and develop a written safety plan for the Student:
 - The status of the safety measures proposed in May 2017;
 - Safety planning for the start of the school year at the temporary school site; and,
 - Safety planning for the Student once the remodeled building opens.

By **September 10, 2018**, the District will submit: 1) a copy of the meeting invitation; 2) a copy of the Student's safety plan(s); 3) a copy of any related prior written notices; 4) a copy of the agenda or topics discussed at the meeting; and, 5) any other related documentation.

2. The District will collect daily data regarding the Student's elopements and attempts from **September 2018** through **December 2018**. This data will be used to provide the comprehensive progress reporting required by the Student's October 2017 IEP goal in the area of adaptive/self-help. This data will also be shared at the Student's October 2018 IEP meeting and will inform the development of the Student's annual IEP and the BIP. The District will provide OSPI with a copy of the data tracking sheets, IEP progress reporting, and any other supporting documents by or before **November 9, 2018** and **January 4, 2019**.
3. By or before **October 29, 2018**, the Student's IEP team will meet to develop his annual IEP. During the meeting, the IEP team will review and discuss the following additional topics:
 - The elopement data collected in September and October 2018;
 - The Student's safety plans, especially for the transition to the remodeled building; and,
 - The Student's BIP.

The IEP team should consider including or modifying the Student's adaptive/self-help goal and should discuss whether the Student's BIP needs to be updated based on the September and October 2018 data.

By **November 9, 2018**, the District will submit: 1) a copy of any meeting invitations; 2) a copy of the Student's October 2018 IEP; 3) a copy of the Student's BIP; 4) a copy of any related prior written notices; 5) a copy of topics discussed at the meeting; and, 6) any other related documentation.

DISTRICT SPECIFIC:

The District will develop written guidance to be provided to special education administrators, certificated special education teachers, and principals who work at the Student’s elementary school, which will address the procedures for responding to requests for supplementary aids and services and the procedures for conducting functional behavioral assessments (FBA). By **August 17, 2018**, the District will provide OSPI with a copy of the draft guidance. OSPI will approve the written guidance or provide comments by August 31, 2018, and provide additional dates for review if needed.

By **September 21, 2018**, the District will provide all District special education administrators, and the certificated special education teachers and principals who work at the Student’s elementary school with the guidance. By **September 28, 2018**, the District will provide OSPI with documentation that all required staff have reviewed the written guidance. The documentation will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross-reference the list with the actual recipients.

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, 2018

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

THIS WRITTEN DECISION CONCLUDES OSPI’S INVESTIGATION OF THIS COMPLAINT

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