

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-96

PROCEDURAL HISTORY

On October 12, 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 Spokane School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On October 12, 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 November 1, 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 November 5, 6, and 8, 2018, OSPI requested additional information from the District. OSPI received this information on November 6 and 9, 2018. On November 9, 2018, OSPI forwarded this information to the Parent.

On November 13, 2018, OSPI requested additional information from the District. OSPI received this information on November 14, 2018. On November 15, 2018, OSPI forwarded this information to the Parent.

On November 14, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on November 15, 2018.

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

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on October 13, 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 implementing the Student's individualized education program (IEP), including providing adult supervision at all times and other behavioral provisions?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. The initial IEP must be implemented as soon as possible after it is developed. 34 CFR §300.323(c); WAC 392-172A-03105(2). Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105(3)(a). "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

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

FINDINGS OF FACT

Background Information

1. On March 1, 2017, the Student attended school in a different Washington State school district, and that district completed a reevaluation of the Student. The reevaluation included assessments in the areas of medical-physical, cognitive, academic, reading, writing, math, social/emotional/behavioral, and communication. The reevaluation report noted that the Student "is appropriately identified as a student with an Autism Spectrum Disorder and he continues to demonstrate a need for specially designed instruction in reading, writing, social/emotional/behavioral, as well as communication as a related service." It also recommended that "math [be added] as an area of eligibility."

The March 2017 reevaluation report reads, in part:

- “[Student] demonstrates significant communication deficits, difficulty managing behavior and regulating his emotions, low social skills, as well as compulsive, perseverative¹ behaviors.”
 - “[Student] is easily frustrated and becomes quickly upset several times during the course of any given day. [Student] will negatively respond to staff verbal redirects (verbal attacks, physical aggression, or simply leaving an area...several time [sic] during the school day.”
 - “[Student] is challenged by comprehending social interaction and exchanges with fellow students. He has demonstrated difficult remaining in control of his emotions when he feels challenged. During individual or small group activities [Student] can become verbally and physically escalated when losing a game/activity.”
2. On January 17, 2018, the Student transferred into the District. The District provided the Student with services comparable to those called for by the Student’s previous IEP.
 3. According to the Student’s ‘Discipline Report,’ the Student was issued a short term suspension on February 28, 2018 for, in part, kicking another “student in the head and body multiple times while [the other] student was on the ground.”
 4. On March 13, 2018, the Student’s individualized education program (IEP) team developed a new IEP for the Student, which included goals in the areas of reading, writing, math, behavior/social, and communication. The March 2018 IEP provided the Student with the following specially designed instruction in a *special education setting* from March 13, 2018 through March 12, 2019:
 - Communication—30 minutes weekly (to be provided by a speech language pathologist)

The March 2018 IEP provided the Student with the following specially designed instruction in a *general education setting* from March 13, 2018 through March 12, 2019:

- Reading—350 minutes weekly (to be provided by special education staff)
- Writing—350 minutes weekly (to be provided by special education staff)
- Math—300 minutes weekly (to be provided by special education staff)
- Behavior/social—300 minutes weekly (to be provided by special education staff)
- Behavior/social—395 minutes weekly (to be provided by a general education teacher)

5. On March 13, 2018, the District completed a functional behavioral assessment (FBA) of the Student. The March 2018 FBA reads, in part:

Description of Behavior: When he gets redirected for something he disagrees with, he wanders and ignores staff direction. He over reacts to small situations and has poor impulse control. Staff reports he seems to persevere on peers and staff.

Settings: In all classrooms, hallways, gym/cafeteria, outside of school and bus.

Consequences and Educational Impact: Consequences: reminder of appropriate behavior (when at the minimal level), redirect, time out in the classroom, a reminder of appropriate time out, removal of classroom to Quiet Room, removal of audience/change in environment—sent to outside to line of sight bench.

¹ ‘Perseverate’ means ‘to repeat something insistently or redundantly.’

Educational Impact: Removal from class and learning environment, negative adult and peer relationships, disruption to the learning environment of the school.

Prior Interventions: Removal of audience; case manager and mental health therapist intervention; repair with staff and students; must be with staff at all times², not allowed to sit at meals with female students.

Summary/Recommendations: Daily check-in with case manager, notification of change in routine or schedule, opportunity to “vent”/talk with a staff removed from the consequences before he is able to accept the consequences or accept something he disagrees with.

Skills to be taught—Personal Boundaries with students and staff. To accept responsibility for his actions. Accept feedback from all school staff.

Reinforcements—School store; level system; token economy; verbal praise from staff; 5 minute basketball break—requested by [Student]

6. On March 13, 2018, the Student’s IEP team created a behavioral intervention plan (BIP) for the Student.³ The March 2018 BIP reads, in part:

Antecedent Interventions⁴

- Preferred seating.
- Access to case manager and/or mental health therapist when needed, prior to following progressive discipline.
- Reminders of appropriate behavior expectations—when is it ok to be “silly” and when does it need to stop.
- Provide an opportunity to redo a behavior choice.
- Advanced notice to changes in routine and transitions.
- Praise for appropriate behaviors.
- Frequent communication with home.
- One on one escorts at all times by staff.

² In its investigation of this complaint, OSPI asked for further information on the phrase “must be with staff at all times,” which is found in the Prior Interventions section of the Student’s March 2018 FBA. In response, the District stated: “[Student’s] former case manager [is] not totally sure where ‘must be with staff’ came from. However, she thought it was initiated as a result of the incident which occurred on February 28, 2018. As such it would not have been implemented for more than 7 days prior to the development and implementation of the March [2018] IEP and BIP.”

³ In the District’s response, the FBA and BIP were dated March of 2017. The District stated that this was an error—the FBA and BIP were created by the District in March of 2018, at the same time the Student’s March 2018 IEP was created.

⁴ An ‘antecedent intervention’ is a strategy used to minimize the chance that the ‘target behavior’ will be demonstrated.

Target Behavior: When [Student] gets loud⁵, wanders, or evades his tasks. Staff also reports he seems to perseverate on peers and staff.

Alternative Behaviors to be Taught/Reinforced

- Appropriate boundaries with relationships.
- Accept feedback from all school staff.
- Accept responsibility for his actions.
- Works on required schoolwork and follows expectations without extra redirects.

Reinforcers

- Bravos—(token reinforcement)
- Verbal Praise
- School store—points earned on weekly progress sheets
- Outings/field trips
- Free time
- Class rewards

Consequences for Target Behavior

- Redirect
- Ask him to redo
- Intervention by Mental Health Therapist and/or Case Manager
- Removal from setting where the behavior is taking place
- Communication with home
- Automatic QR⁶ for not being with staff

Behavior Protocol

- Repair with students and staff when appropriate
- Follow school discipline plan
- Develop positive reinforcement plan with [Student] based on things that would be motivating—such as lunch with staff; basketball break or free time

2018-2019 School Year

7. During the 2018-2019 school year, the Student was in the eighth grade, attended a school in the District, and his March 2018 IEP and BIP were in place.
8. According to the District’s disciplinary records, on September 13, 2018, the Student was given a short term suspension for the following:
On the bus on the way to school [Student] was talking with someone about shooting a nun in a...game. Bus attendant warned [Student] about talking like that. Then [Student] said if he had a shotgun or a rifle he would shoot someone. While waiting for a ride, [Student] let

⁵ In the District’s response, the text “gets loud” is crossed out.

⁶ In its investigation of this complaint, OSPI asked the District what “automatic QR” meant. The District stated: “[Student] started to get up and walk out of classrooms at random times or would walk away from the staff that was with him. When this happened he was sent to the Quiet Room. This intervention was started after he physically and verbally assaulted another student on campus [on] February 28, 2018.”

several students and adults into the building during a lockdown, even after being redirected not to do so.

According to the Parent:

When [Student] arrived at school, he did not go to class. He was suspended while a threat assessment [was] completed. The school called the assisted living home where my son [was] staying. The [District asked] that [Student] be picked up from school. While waiting for someone from [the assisted living home] to pick [Student] up, the school let [Student] go outside to play with his friends—unsupervised. According to the video tape, [Student] was last seen at the school at 12:30 P.M. The school did not realize he was missing until 2:30 P.M. I was not told until 4:30 P.M...His IEP is very clear about having adult supervision at all times.

According to the District:

[Student] was waiting for a ride home in the vestibule of the school from 10:25 A.M. until 11:55 A.M., at 11:55 A.M. [Student] chose to leave the building and continued to wait for a ride on the bench until 12:30 P.M. when he eloped. The group home was called at 10:34 A.M. (phone conversation), 12:30 P.M., and 1:30 P.M. Following the elopement, the group home, law enforcement, campus resource officers, school district administrators and [the] transit authority were notified.

9. The local police department located the Student at approximately 8:30 p.m. on September 13, 2018.
10. After the incident on September 13, 2018, the assistant principal drafted a report. This report was based on the quiet room log and cameras at the Student's school. According to this report, at 11:55 a.m. on September 13, 2018, the Student was "directed outside."⁷
11. According to the District, on September 14, 2018:

Several central office administrators spoke to...administration [at the Student's school] about the incident [that took place on September 13, 2018]. They discussed following student IEPs, behavior intervention plans and stressed the importance of making sure they are implemented with fidelity. There was also a problem solving session regarding needed supports in order to ensure that IEPs/BIPs were implemented, including a review of how staff were assigned to supervise students.
12. According to the Parent, on October 3, 2018, when an employee of the Student's assisted living facility came to pick him up from school, that employee found the Student sitting outside on a bench, alone.
13. According to the Student's 'Discipline Report,' on October 4, 2018, the Student was given a short term suspension for the following:

[Student] was sent from class for repeated disruptions. He refused to follow directions or sit down when he was supposed to be. A support team was called, he continued to wander and ignore directions from multiple staff. This caused the school to go into lock-down for

⁷ The Parent's reply contains four different versions of this report. Each of these versions is substantively the same.

over fifteen minutes. Then he attempted to leave the building. He needed to go to the safety room at this point, but he refused until staff was close enough to escort. When he arrive to the safety room⁸ he refused to enter the room. Staff then escorted him. He struggled and attempted to kick staff. He calmed for a second and we wanted to let him go. A staff released his shoulder slightly and [Student] then turned his head and spit directly into that staff member's face. At this point the [community resource officer] took over and was able to get [Student] in the room with the door closed and locked. This resulted in the school to be in lock-down for over ten minutes.

According to the Parent:

[Student] was not following directions at [school]. His behavior escalated. School staff placed him in the Safety Room. Before entering the Safety Room, [Student] spit on the teacher. The teacher returned to the class room. At this point, the school resource officer...took over. There was one hour left to the school day. [Staff from the Student's assisted living facility] were unable to immediately pick [Student] up. [The school resource officer] told [the assisted living facility staff] that [the school] did not have the staff available to be with [Student] for the last hour of school. [The school resource officer] then drove [Student] twenty minutes across town to the Juvenile Detention Center. When I asked [Student] about it, he said that [the school resource office] arrested him and took him to jail.

According to the District: "A school resource officer believed that [Student] carried out criminal behavior and was out of control. As a result, [Student] was taken into custody and transported to the...County Juvenile Detention Center. There is nothing in the IEP prohibiting the action taken."

14. On October 15, 2018, the Student was placed in the Advanced/Autism Behavioral Learning Environment (ABLE) program at a different District elementary school. According to the District, the ABLE program is "designed to support students with autism, including the use of Applied Behavior Analysis and [it] has a relatively low staff to student ratio."
15. In its response, the District stated, "The [Student's] IEP does not include the provision of adult supervision...Contrary to the assertion of the Parent, the [March 2018] IEP does not require adult supervision at all times."

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged that the District did not implement the Student's IEP. Specifically, she alleged that the Student was not provided with adult supervision at all times. A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. (If a student has a BIP, the BIP is considered a part of the

⁸ The 'safety room' referenced in the Student's Discipline Report of October 4, 2018 is separate from the 'quiet room' referenced in the Student's March 2018 FBA. According to the District, "a 'safety room' is equivalent to an isolation or time-out room, where a single student is isolated and monitored until deescalated. The 'quiet room' is a room where multiple students can be at one time, in study carrels, under the supervision of staff to regroup before returning to the classroom setting."

student's IEP.) When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.

In its response to this complaint, the District maintained that the Student's IEP did not contain a provision requiring adult supervision. Here, the March 2018 BIP can be interpreted to require that the Student be provided with constant adult supervision (i.e., antecedent intervention of one on one escorts at all times by staff). OSPI notes, though, that the Parent and school staff clearly have a different understanding about what the Student's IEP and BIP required. At a minimum, the Student should not have been sent outside alone to wait on September 13 and October 3, 2018. On this point, it is informative that the 'Prior Interventions' section of the March 2018 FBA includes the following: "Must be with staff at all times." It is also informative that the 'Consequences and Educational Impact' section of the March 2018 FBA includes the following: "Removal of audience/change in environment—sent to outside to line of sight bench." Even without that support from the FBA, the BIP indicates that the Student should not have been left unsupervised on September 13 and October 3, 2018.

The incident that occurred on September 13, 2018 demonstrates the potentially serious consequences of leaving the Student unattended. For example, the Student was missing for approximately eight hours and local law enforcement had to be relied on to help find him.

Based on the seriousness of the failure to implement the BIP in this situation, it was a violation of the IDEA for the Student to be left unattended on September 13 and October 3, 2018. Therefore, the District and the Parent will hold an IEP meeting to discuss what behavioral interventions and supports the Student requires for safety. If it is determined that the Student requires constant adult supervision, the IEP team will determine if the Student requires that behavior support in all environments or only certain environments. The March 2018 BIP will be amended to clearly reflect the IEP team's determination.

The District took steps to provide professional development meant to address the need to implement IEPs and BIPs with fidelity with school staff on September 14, 2018; however, the school staff failed to implement the BIP again on October 3, 2018, possibly due to misunderstanding of the requirements within the BIP. As the Student has been transferred to a new school since then, there is not a need to retrain those staff.

CORRECTIVE ACTION

By or before **December 21, 2018**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

By **December 14, 2018**, the District and the Parent will hold an IEP meeting to discuss what behavioral interventions the Student requires. If it is determined that the Student continues to require constant adult supervision, the IEP team will determine if the Student requires that

behavior support in all environments or only certain environments. The March 2018 BIP will be amended to clearly reflect the IEP team's determination and relevant school staff will be informed of their responsibilities for implementation.

By **December 19, 2018**, the District will: 1) amend the Student's March 2018 BIP to reflect any changes resulting from this meeting; 2) provide the Parent with a copy of the Student's amended BIP; and, 3) provide the Parent with a prior written notice that explains the changes that were made to the Student's March 2018 BIP and why those changes were made.

By **December 21, 2018**, the District will provide OSPI with 1) a copy of any meeting invitations; 2) a sign-in sheet from the IEP meeting; 3) a copy of the amended or new BIP; 4) a copy of any related prior written notices; 5) a copy of any correspondence with the Parent regarding the IEP meeting and the decisions made at that meeting; and, 6) a copy of any other relevant documentation (including how staff were informed of their responsibilities for implementation).

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.

Dated this ___ day of November, 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.)