

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-11

PROCEDURAL HISTORY

On January 30, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Seattle 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 February 3, 2020, 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 13, 2020, the District requested an extension of time for submission of their response. OSPI granted their request and requested the District submit their response by February 27, 2020.

On February 25, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on February 27, 2020. OSPI invited the Parent to reply.

On March 11, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on March 12, 2020.

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

ISSUES

1. Did the District follow procedures for implementing the Student's Individualized Education Program (IEP), including all accommodations and modifications and behavioral intervention plan (BIP) on the following dates: **May 23, 2019, June 3, 2019, June 18, 2019, November 1, 2019, December 12, 2019, and January 21, 2020?**
2. If the Student was removed from school for more than ten school days during the 2018-2019 school year, did the District follow special education disciplinary procedures between January 31, 2019 and the end of the 2018-2019 school year?
3. If the Student was removed from school for more than ten school days, starting from the commencement of the 2019-2020 school year through January 30, 2020, did the District follow special education disciplinary procedures?

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. 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, including program modifications and accommodations, consistent with

the student's needs as described in that IEP. 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.

Behavioral Intervention Plan (BIP): A behavioral intervention plan (BIP) is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive a free appropriate public education (FAPE). The BIP, 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.

Program Modifications: An IEP must include a statement of the program modifications that will be provided to enable the student to: advance appropriately toward attaining his or her annual IEP goals; be educated and participate with other students, including nondisabled students in educational activities; and participate, if appropriate, in general education classroom, extracurricular, and nonacademic activities. 34 CFR §300.320(4); WAC 392-172A-03090(1)(d).

Difference between Accommodations and Modifications: Accommodations: 1) do not fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; 2) provide equal access to learning and equal opportunity to demonstrate what is learned; and 3) grading and credit is the same as typical students. Modifications: 1) do fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; 2) provide a student with a meaningful and productive learning experiences based on individual needs and abilities; and 3) grading and credit are different. OSPI, Evaluation and IEP Technical Assistance Module (April 2008).

Disciplinary Removal Generally: When a district removes a student from school for disciplinary reasons, it must make sure that the removal is consistent with state laws and regulations governing discipline for all students. Students eligible for special education may not be improperly excluded from school for disciplinary reasons. 34 CFR §300.530; WAC 392-172A-05140. The procedural rules for the discipline of students who are eligible for special education are based on four general principles: (1) a student eligible for special education's placement should not be changed through discipline for behavior that is a result of his or her disability; (2) a student eligible for special education may be disciplined for behavior that is not a result of his or her disability, but only in a manner that is consistent with the discipline imposed on nondisabled students without disabilities; (3) during a period of discipline, a student eligible for special education should continue to receive services that will allow him or her to progress in his or her education ; and (4) when a student's disciplinary removal from school is significant enough to amount to a change in

educational placement, additional procedural requirements apply. *See generally* WAC 392-172A-05140 through 05175.

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

Disciplinary Removal that Results in a Change of Educational Placement: A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days; or, when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. 34 CFR §300.536; WAC 392-172A-05155. After a student eligible for special education has been removed from his or her current placement for ten school days in the same school year, and the removal is a change of placement, during any subsequent days of removal the student must continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The student's IEP team determines appropriate services. The services may be provided in an interim alternative educational setting. WAC 392-172A-05145(3).

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or behavior intervention plan. 34 CFR §300.530(e); WAC 392-172A-05146.

If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct a functional behavioral assessment (FBA), unless the district had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the student;

or, if a BIP already has been developed, review the BIP, and modify it, as necessary, to address the behavior; and, except for special circumstances, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the BIP. 34 CFR §300.530(f); WAC 392-172A-05147.

When a disciplinary exclusion exceeds ten school days and the behavior in question is found not to be a manifestation of the student's disability, a district may apply the same relevant disciplinary procedures, in the same manner and for the same duration as it would to a student not eligible for special education, except that: the student must continue to receive services that provide a FAPE and enable the student to continue to participate in the general education curriculum and progress toward meeting annual IEP goals, even if services are provided in another setting; and receive, as appropriate, a FBA and behavioral intervention services that are designed to address the behavior violation so that it does not recur. 34 CFR §300.530(c)-(d); WAC 392-172A-05148.

Expulsions: An expulsion is a denial of admission to the student's current school placement in response to a behavioral violation. WAC 392-400-025(7). An expulsion may not exceed the length of an academic term, unless an extension is granted under WAC 392-400-480. WAC 392-400-445.

Suspensions: "Suspension" means a denial of attendance in response to a behavioral violation from any subject or class, or from any full schedule of subjects or classes, but not including classroom exclusions, expulsions, or emergency expulsions. WAC 392-400-025. A suspension may not be for an indefinite period of time and must include an end date. WAC 392-400-430(8)(a). When administering a suspension or expulsion, a school district may deny a student admission to, or entry upon, real and personal property that is owned, leased, rented, or controlled by the district. WAC 392-400-430(7). A suspension may be a short-term, in-school, or long-term suspension. WAC 392-400-435; WAC 392-400-440.

FINDINGS OF FACT

2018-2019 School Year

1. At the commencement of the 2018-2019 school year, the Student was determined eligible for special education services under the category of emotional behavioral disability (EBD), was in the 9th grade, and attended a District high school.
2. The timeline for this complaint began on January 31, 2019.
3. On March 29, 2019, the Student's individualized education program (IEP) team met to develop the Student's IEP. The March 2019 IEP provided that the Student would spend 70% of her time in the general education setting. The Student's IEP also provided the Student with the following number of minutes of specially designed instruction, to be provided in the special education setting:
 - Social/behavior (40 minutes/5 times weekly);
 - Math (53 minutes/ 5 times weekly); and,
 - Study/organization skills (13 minutes/ 5 times weekly).

The March 2019 IEP provided for various accommodations and modifications, including: having access to sensory tools, having a quiet area for sensory breaks, receiving positive reinforcement for positive behavior, having access to sensory-select breaks, receiving preferential seating, having directions broken into smaller parts and repeated, being provided check-ins for understanding, and having a visual task list or written instructions.

The March 2019 IEP included a behavioral intervention plan (BIP), which was developed to address three target behaviors:

- (1) "abrasive and critical [behaviors] towards peers;"¹
- (2) "inappropriate behaviors,"² such as "uncontrollable laughing, center of attention, sexualized actions and language;" and,
- (3) "physical aggression and property destruction."³

Intervention strategies for "**abrasive and critical towards peers**" included:

- "Allow teacher to maintain discipline in the classroom" (*replacement behavior*);
- "Preferential seating and social skills instruction" (*setting event strategies*);⁴
- "Adult proximity" (*antecedent strategies*);
- "Modeling social skills instruction" (*teaching strategies*);

¹ The BIP listed as contributing factors: "People are not meeting her expectations. Lack of trust in adults to do the right thing or understand her perspective, according to her perspective." It noted the behavior occurred across all settings and time of day, was triggered by "perceived improper behavior by peers," "in attempts to dominate peer interactions," and to "gain control and assert herself."

² The BIP indicated these behaviors are "attention seeking" and the result of "low self-esteem, perceived rejection, task avoidance, lack of self-regulation," and occurred in all settings at any time of day. The BIP further stated these behaviors are triggered by "unstructured class time, transitioning between academic settings, when frustrated with peers, when overwhelmed by internal stimuli, when in conflict with peers, or perceived rejection by male peers." It was noted the Student "speaks and acts crudely, does not follow teacher direction, and laughs uncontrollably," to "gain attention and control of the classroom."

³ Under "contributing factors," the BIP listed: "Emotional and self-regulation, perceived lack of control, responding to internal stimuli, when asked to meet expectations she fears she cannot meet, when overwhelmed by expectations she does not understand, not trusting her environment, vengeful, diagnosis of anxiety and [post traumatic stress disorder (PTSD)]." According to the BIP, the behaviors occurred across all settings and time. Antecedents included "perceived slights or threats, lack of control, not trusting her environment, when given expectations she feels she cannot meet, loss of personal space, or student conflict," and resulted in the Student throwing objects, screaming, ripping paper, making verbal threats to self and others, breaking things, writing and drawing about violent or graphic actions on paper to "demonstrate her frustration or anger, when externalizing internalized dysregulation."

⁴ The District's response noted the Student received social skills instruction as part of her specially designed instruction in social/behavior and study/organization during daily Communication Skills class, where the Student's special education teacher and "[case manager] provided explicit social skills instruction, utilizing a dialectical peer-based curriculum, emphasizing mindfulness, distress tolerance, interpersonal effectiveness, and emotional regulation."

- After the target behavior occurs, the Student will receive – “decreased privileges and peer rejection;” After the replacement behavior occurs, the Student will receive – “increased privileges, social acceptance, and decreased frustration” (*consequence strategies*);
- To increase the reinforcement behaviors – staff will use “increased privileges, social acceptance, and decreased frustration” (*reinforcement plan*); and,
- If target behavior occurs – staff will use “reminders, redirection, and debrief” (*response plan*).

Intervention strategies for **“inappropriate behaviors”** included:

- “Listen to teacher redirection, take breaks” (*replacement behavior*);
- “Preferential seating, social skills instruction, designated place to take a break” (*setting event strategies*);
- “Self-regulation, follow teacher redirection” (*antecedent strategies*);
- If target behavior occurs – staff will “decrease privileges, time spent alone;” if replacement behavior occurs – staff will “praise, positive reinforcement, incentives” (*consequence strategies*);
- To increase the reinforcement behaviors – staff will use “positive reinforcement” (*reinforcement plan*); and,
- If target behavior occurs – staff will use “reminders, redirection, debrief” (*response plan*).

Intervention strategies for **“physical aggression and property destruction”** included:

- “Using appropriate words and tone, using coping skills (taking a break, coloring, sensory box), ask for help when frustrated” (*replacement behavior*);
- “Preferential seating, designated places to take a break, social skills introduction” (*setting event strategies*);
- “Social skills class, clearly stated expectations” (*antecedent strategies*);
- “Modelling appropriate social skills, coaching, practice appropriate replacement behaviors” (*teaching strategies*);
- After the target behavior occurs, the Student will experience – “loss of privileges, time spent alone, reteaching replacement skills;” and after the replacement behavior occurs, the Student will receive – “praise, positive reinforcement, increased self-esteem” (*consequence strategies*);
- To increase the reinforcement behaviors – staff will provide “positive reinforcement (praise and caught being good tickets)” (*reinforcement plan*); and,
- If target behavior occurs – staff will “do a room clear, time alone” (*response plan*).

4. According to the District’s response, during the 2018-2019 school year, “Throughout the day, [Student] had access to her accommodations, including consistent adult support,⁵ breaks in a calm space, access to sensory tools and coloring, positive reinforcement, and modelling, reminders, and redirection from staff when engaging in inappropriate behavior.” Despite access to this support, the District noted, “[Student] continued to struggle at [school], causing the team and her Parent to raise concerns about [Student’s] mental health...In addition to frequently retreating to the [social emotional learning (SEL)] classroom and engaging in task refusal, [Student’s] behaviors escalated.” In the Parent’s reply, the Parent asserted her belief

⁵ The Student’s IEP did not include 1:1 adult support until August 2019. The Parent noted in her reply that prior to this, the Student did not receive adult support and that since the beginning of the 2019-2020 school year, she felt “this support has been at best intermittent, with up to 11 different staff filling the role since the beginning of the school year, and multiple days without anyone at all, including at the time of the District’s response.”

that the Student did not have access to student-directed breaks, stating the Student was often disciplined for being in an area the Student believed it was permissible to take a break.

5. On May 9, 2019, the Student received a three-day out-of-school suspension.⁶ The Student was absent from school during 6th period on May 9, 2019, and all of May 10 and 11, 2019.
6. The Parent alleged in her complaint that on May 23, 2019, she was called to the school to pick up the Student. She wrote in her complaint that the "vice principal...stated that if [she] did not take [Student] home, [Student] would be suspended." The Parent wrote that the Student and her friend were "being energetic and silly," and their "[case manager], was absent." She added that the "[Student] was very upset at being sent home and said she didn't understand why she was in trouble because it's how she and her friend normally behave." No incident report was created for the date, May 23, 2019, and there is no documentation of disciplinary action for this date. According to the District's response, on May 23, 2019, "[school] administration contacted the Parent to discuss fallout from May 9, 2019, during which Student was disciplined for another incident. [School] administration also raised concerns regarding [Student's] mental health and lack of progress..."
7. On May 24, 2019, assistant principal 1 emailed assistant principal 2, assistant principal 3, and the case manager, stating the Parent had taken the Student home the previous day and would be keeping her home from school that day.⁷ Assistant principal 1 further explained in his email that when he met with the Parent the previous day, they discussed the Student's mental health and how it was "precluding her from successfully navigating school expectations (academically and behaviorally)," that the Student had "essentially self-contained herself in [case manager's] room and [was] failing all class[es], except Communications," and that "[Student's] needs are currently not being met, and there appears to be an open question about what is/should be the plan for [Student] generally and placement appropriateness and efficacy specifically."
8. On June 3, 2019, the Student received a two-day out-of-school suspension⁸ for the following incidents:
 - Incident #1: Student A [Student] and student B were in [case manager's] class before school started and a teacher tried to come into the classroom to speak with them. Student B held the door shut, refusing to allow the teacher in. Student B let go of the door and allowed [teacher] to enter, which is when student A [Student] flipped off the teacher and called her an 'old b****.'

⁶ The Parent did not contest that the Student's IEP and/or BIP was followed regarding this incident.

⁷ The District's response referenced emails sent by the Parent on May 24, 2019, noting the Parent had indicated she would be keeping the Student home from school in response to the Student having received a threatening text message. There is no documentation to support this incident (threatening text message) was related to the incident described by the Parent in her complaint (allegation Student sent home early on May 23, 2019 for "being energetic and silly").

⁸ In the complaint, the Parent alleged the Student was triggered by a staff member who told her, "You have no respect, and you weren't taught manners at home."

Incident #2: Excerpt from email from teacher reporting the incident...“I wanted to report an incident that occurred during first period today in [case manager’s] room. [Case manager] was out today, and [classroom instructional assistant] was supporting other students, so I ran the instruction. [Student] and [student B] were disruptive to the point that I had to take other students out of the classroom to room 139 to finish the activity. They started off the morning hyped up mostly due to the fact that [case manager] was gone, and proceeded to shout over other students when they were answering the group questions. They ignored redirections to talk quieter and allow their classmates chances to participate. I decided that removing the other students to a quieter space was the best choice when [Student] and [student B’s] conversation became targeted: first they started pointing and laughing at [student C] until he stood up and left the room, then they started referring to [student D] as a ‘fat [f*****].’ When I gave the other students the option to go downstairs, the two girls started saying, ‘See you later, [p*****].’” The Student admitted to “taking part in the two incidents...when confronted by security and administration,” and received a two-day short-term suspension, which was implemented as progressive discipline.

9. On June 4-5, 2019, the Parent requested an informal conference with the assistant principal to contest the suspension, asserting District staff did not follow the Student’s BIP. The Parent wrote the Student was acting as one would “expect without appropriate accommodations,” and that “it seems absurd to suspend a child with PTSD for becoming triggered in a situation that had become negative a week or so previously.”⁹
10. On June 10, 2019, the Student’s IEP team met to revise the Student’s IEP and to discuss the Student’s previous suspensions. The June 2019 IEP decreased the amount of time the Student would spend in the general education setting to 53%. The June 2019 IEP included the same accommodations and modifications as the March 2019 IEP.
11. On June 18, 2019, the Student received a four-day out-of-school suspension for the following incident:¹⁰

Student A approached student B in the hallway behind the gym, seeking to ask student B questions about his girlfriend. Student B yelled to student C [Student], who was at the opposite end of the hallway, asking her to help him. Student C [Student] approached students A and B and stepped between them, attempting to block student A from engaging with student B. Student A then pushed student C [Student] and both student A and C [Student] exchanged multiple punches. Student B left the scene, attempting to find a staff member to intervene. Student C [Student] placed student A in a choke hold against the wall on two separate occasions during the fight. The fight was broken up by a student bystander who intervened and separated the two students. In response to the event, the Student received a four-day short term suspension for fighting and violating no negative behavior expectations with student A.

⁹ The Parent reported the Student called the teacher an “old bird,” and that she used the term descriptively only.

¹⁰ In her reply, the Parent wrote that she felt that on June 18, 2019, the IEP and BIP were not followed because the Student was suspended for her behaviors that were in self-defense, and because she was suspended due to a zero tolerance policy.

12. June 20, 2019 was the last day of the 2019-2020 school year for the District.¹¹
13. On August 21, 2019, the Parent emailed the special education teacher that “[Student] does not need a one on one, but she does need someone available at all times if she is upset, to provide support and safety and understanding to mitigate any misunderstanding or threat to her.”
14. On August 29, 2019, the Student’s IEP team met after the Student was denied acceptance to a nonpublic agency (NPA) to which the District applied on the Student’s behalf, and added the following note to her IEP:

After...[Student] was denied placement to [NPA]...Over the summer...[Student’s] IEP team determined that [Student] would attend [District high school] for School Year 19-20, with the assistance of a 1:1 on a provisional basis for social/emotional support. It was determined that [Student] needs a 1:1 due to the following observed behaviors over the past year:

- Frequent self harming behaviors including cutting and stabbing
- Frequent externalized, violent behaviors towards classmates
- Frequent suicidal ideations
- Frequently leaving campus/classes unsupervised
- Student denial of school-based counseling supports
- Frequent negative peer interactions, both online and in-person

Additionally, the behaviors often occur unpredictably and inconsistently, in a variety of settings. The comprehensive nature of [school] would compromise the safety of the student if they were not supported by a 1:1 throughout the day.

The IEP team will convene with data at a later time to determine if a permanent 1:1 is required.

On the August 2019 IEP, the IEP team increased the number of minutes of specially designed instruction in all areas (social/behavior, math, and study/organizational skills) to 265 minutes weekly, and added the following supplementary aids and services:

- Additional classroom [Instructional Assistant (IA)] support, 795 minutes weekly in the special education setting; and,
- Additional classroom IA support, 1,030 minutes weekly in the general education setting.

2019-2020 School Year

15. September 4, 2019 was the first day of the 2019-2020 school year for the District.
16. At the commencement of the 2019-2020 school year, the Student continued to be eligible for special education services under the category of emotional behavioral disability. The Student

¹¹ During the 2018-2019 school year, the Student was suspended for a total of seven school days. In its response, the District acknowledged that even if a student is removed from school or serves an in-school suspension without access to academic services, it counts as a removal. It further acknowledged that even if the Student was removed from school on May 23, 2019, the Student would have been removed for eight school days. The Parent chose to keep the Student home from school on May 24, 2019.

was in 10th grade and attended a District high school. The Student's August 2019 IEP was in effect.

17. On October 2, 2019, the District issued a prior written notice (PWN), documenting that the Student's IEP team met in August and recommended a 1:1 be provided to the Student to "provide social/emotional support."
18. On November 1, 2019, the Student received a three-day out-of-school suspension that was converted to a one-day out-of-school suspension for the following incident:¹²

During 4th period, [Student] was in the SPED kitchen being disruptive and destructive. She went into the refrigerator and destroyed a staff member's eggs (by breaking them into the sink), when asked to leave she refused. She then proceeded to make herself a cup of coffee using the Keurig machine, which she was informed not to do. She also used a staff member's flavored creamer. Estimated cost of the destruction and unapproved use of staff member property is approximately \$5. [Student's] mother reimbursed the staff member. The original length of the suspension was 3 days but was reduced to 1 day following a meeting with [Student], [Parent] (mother) and school administration.
19. On November 1, 2019, the Parent emailed assistant principal 1, assistant principal 2, assistant principal 3, and the case manager to appeal the Student's suspension that day. In her email, the Parent asserted the following:
 - "[Student] alleges that being in that particular area is generally permitted by the teacher with the adjoining classroom and that other students also frequent that area and eat food (that is not labeled with a name)...the egg she took for her own use was not labeled."
 - "There is a pattern of [Student] being confronted for a relatively minor behavior by an unfamiliar staff member, which causes her to move into 'fight or flight' mode due to PTSD. In her IEP it indicates that she has a support staff person who should be available to help her with any potential behavioral issue in a non-confrontational manner, and [case manager] is also skilled at de-escalation. I'm unsure why these staff members were not consulted if [Student] was somehow out of bounds in the kitchen area. This seems to be improper implementation of her IEP, and should be remedied immediately."
20. Also, on November 1, 2019, assistant principal 1 responded to the special education teacher, assistant principal 2, assistant principal 3, and the case manager that he would like to meet to discuss "further strategies for support and intervention for [Student]." He added, "We are getting to a point similar to last year in which her behaviors escalate beyond the capacity of our staff to handle in a safe manner."

¹² In the complaint, the Parent stated she believed the IEP and BIP were not followed because the rules were not "clear and enforced consistently." Specifically, the Parent wrote, "[Student's] IEP contains the accommodation of 'visual task list or directions written down.' If [Student] does not have a clear list of acceptable places to take her IEP accommodation of 'student selected break' and 'quiet sensory break,' she should not be disciplined for attempting to take her break where she believes it is allowed." In the Parent's reply, the Parent added the Student believed she had permission to be in the area, "as other students were routinely in that same area," and that "the staff member did not follow the BIP to repeat directions and check for understanding."

21. On November 4, 2019, the Parent emailed the principal and assistant principal to thank him for meeting with her and the Student that morning. She thanked both for their flexibility and wrote, "We came up with a great compromise to have [Student] attend school half days through Wednesdays, while the team restructures communication with [Student] around any potential concerns with [Student] in the afternoons. It was also good to have the opportunity to reimburse school staff \$5 to cover the costs of the two eggs and one cup of coffee used by [Student] in the kitchen."
22. On December 9, 2019, according to a PWN included with the District's response, the Student's IEP team "met to problem solve around [Student's] current progress at [school]." It noted the Student "has struggled to attend any of her classes with the exception of ceramics, which she recently stopped attending..." The PWN also noted the Student's recent suspension was discussed. It noted the IEP team discussed, but did not come to a conclusion on: "1) An academic support/tutor for [Student] in addition to her current 1:1 to assist in academic instruction," and "2) A safe, unsupervised space for [Student]."
23. Also on December 9, 2019, the Parent provided consent for the District to complete a reevaluation of the Student and to conduct a functional behavioral assessment (FBA).
24. On December 12, 2019, the Student received a one-week emergency expulsion for the following incident:¹³
Student A [Student] grabbed student B by the hair and pulled his hair aggressively. Student B asked Student A to stop. Student A did not comply. Student A's 1:1 directed her to stop and at that time Student A released the Student. Student B then punched/hit Student A multiple times in the face...
25. On January 21, 2020, the Student received a three-period in-school suspension for the following incident:
Student A [Student] and student B are both upperclassmen and were observed by school security attending 9th grade lunch. Both students were redirected to go to class by a school security, a staff member, and two administrators. Both students refused to go to class and became argumentative with school security and administration. Student A used profanity directed toward school administration as she continued to verbally express her reluctance to go to class. Student A and student B stayed in the hall after 9th grade lunch and continued to create a disruptive environment. Student A and student B continued to refuse to go to class and wrestled in the hallway with each other. Student A ripped and tore things off the door of an administrator's door. Student A threatened school security."¹⁴

¹³ In her reply, the Parent wrote that she felt the Student's IEP and BIP were not implemented on December 12, 2019 because she felt the Student received a different disciplinary action in response to her behaviors than another student for a similar behavior, causing the Student to be "unable to trust [the District] to enforce rules consistently."

¹⁴ In her reply, the Parent wrote that the Student was suspended as a result of "attempting to take a break in an area where she thought it was allowed." The Parent further alleged that the Student did not have access to "student-directed breaks" because rules regarding breaks and where student was permitted to access breaks was not made clear.

26. On January 24, 2020, a manifestation determination was held for the Student. The Student's IEP team determined the Student's behavior was a manifestation of the Student's disability and that the behaviors resulting in discipline were addressed in the Student's BIP. Because the Parent had already consented to the District conducting a reevaluation and developing an FBA on December 9, 2019, the IEP team did not make any modifications to the BIP following the manifestation determination, instead deciding to wait until the completion of the reevaluation.
27. In the District's reply, the District acknowledged that as of December 12, 2019, the Student had been removed for a total of 11 days and that a manifestation determination should have been held prior to January 24, 2020.
28. On January 28, 2020, the Student received an out-of-school suspension for two days.
29. On January 30, 2020, the Parent filed this complaint.
30. On February 3, 2020, a manifestation determination was held. The IEP team determined the behavior resulting in the suspension on January 28, 2020 was a manifestation of the Student's disability, but determined the Student's BIP was implemented at the time of the incident, noting that "depending on the setting and nature of [Student's] behaviors, intervention may look different."

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged the District failed to implement the Student's individualized education program (IEP), including all accommodations, modifications, and behavioral intervention plan (BIP) on the following dates: **May 23, 2019, June 3, 2019, June 18, 2019, November 1, 2019, December 12, 2019, and January 21, 2020.**

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. A District must also ensure it provides all services in a student's IEP, including program modifications and accommodations, consistent with the student's needs as described in that IEP. A BIP is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive a free appropriate public education (FAPE).

Prior to August 2019, the Student's IEPs provided for various accommodations and modifications, including having access to sensory tools, access to a quiet area for sensory breaks, receiving positive reinforcement for positive behavior, having access to sensory-select breaks, receiving preferential seating, having directions broken into smaller parts, having check-ins for understanding, and having a visual task list or written instructions. There was no documentation that the District failed to implement these specific accommodations or modifications, or that a failure to implement one of these accommodations or modifications resulted in a behavior incident on the dates under investigation. The Student's IEP also included the accommodation of "self-selected breaks," which the Parent indicated was not properly implemented because the Student was sometimes found in a location during a break that the District identified as inappropriate. While there may have been confusion regarding where an appropriate location

would be for the Student take a self-selected break, the District never disciplined the Student for being in an inappropriate location during a break, but rather for other behaviors which occurred after the Student was either asked to relocate or for other behaviors which the District determined were violations of the student code of conduct. Further, on August 29, 2019, the District added a 1:1 as a supplementary aid and service to the Student's IEP to support the Student across all settings and at all times of day.

The Student's IEP also included a BIP, which was developed in March 2019. The BIP addressed target behaviors of (1) abrasive and critical behaviors towards peers, (2) inappropriate behaviors, and (3) physical aggression and property destruction, and identified a replacement behavior for each target behavior. Each of the target behaviors included some form of "social skills instruction" and "modeling social skills instruction" to provide the Student an opportunity to learn and practice the replacement behavior, and then provided that the Student should receive "praise" or "positive rewards" when she exhibited the desired replacement behavior. This part of the Student's BIP was built into the Student's special education "Communication Skills" course, where she received social skills instruction using a dialectical peer-based curriculum. The Student received her specially designed instruction in social/behavior and study/organization during this time.

With the exception of May 23, 2019 (Parent opted to take the Student home) and May 24, 2019 (Parent opted to keep Student home), there was a documented behavior incident on each of the dates below which resulted in the suspension or emergency expulsion of the Student. The Parent alleged each was the result of the District's failure to implement the Student's IEP or BIP.

May 23, 2019

The Parent alleged that on May 23, 2019, the District threatened to suspend the Student from school for "being energetic and silly," if the Parent did not come to school and pick up the Student. Although documentation showed the Parent picked up the Student from school on May 23, 2019, and kept the Student home from school the subsequent day, there was no incident report or other formal or informal documentation of a behavior incident on May 23, 2019. Documentation also showed there was a discussion between the District and Parent about ongoing mental health concerns. Without documentation of a specific behavior incident or of a District response to a behavior incident, OSPI finds the allegation that the District did not implement the Student's IEP and BIP on this day to be unsubstantiated and finds no violation.

June 3, 2019

On June 3, 2019, the Student flipped off a teacher and called the teacher an inappropriate name (inappropriate behavior). Then, the Student was documented shouting over other students and not allowing other students to participate (abrasive and critical towards peers). The teacher attempted to redirect the Student by asking her to "talk quieter to allow [her] classmates chances to participate" (reminders and redirection). The Student began laughing and pointing at another student and calling the other student an inappropriate name (inappropriate behavior). The teacher then removed the other students (do a room clearance, time alone). In response to the Student's inappropriate and abrasive behavior, the teacher gave the Student reminders of appropriate

behaviors and tried to redirect the Student. When the Student continued to exhibit inappropriate behavior, the teacher did a room clear and gave the Student time alone. The teacher implemented the Student's BIP as prescribed during the above incident and OSPI finds no violation.

June 18, 2019

On June 18, 2019, the Student intervened in a physical fight that occurred between two other students and subsequently became physically involved in the fight herself and was injured. The Parent alleged the District failed to implement the Student's BIP because the District implemented a zero-tolerance policy on a student with a disability who was known to become aggressive and because she believed the Student acted in self-defense. Implementation of a zero-tolerance policy on violence does not necessarily mean the Student's IEP or BIP was not implemented, nor does having an IEP or BIP mean the District is prevented from disciplining a student in such a situation. There was no documentation to show the District was not implementing the Student's IEP or BIP at the time the incident occurred. OSPI finds no violation.

However, based on this incident, the District recognized the Student's need for additional behavioral support. Immediately following the incident, the District scheduled an IEP meeting to address the Student's behaviors. At the June IEP meeting, the IEP team revised the Student's IEP and recommended a change in placement to provide the Student with additional supports. When the IEP team met again in August 2019, after the Student was denied acceptance at the recommended placement, the IEP team added the additional support of a 1:1 to the Student's IEP for the 2019-2020 school year.

November 1, 2019

On November 1, 2019, the Student was found by a staff member in the special education department's kitchen, where she had thrown away a staff member's eggs (destruction of property). The Student did not have a 1:1 with her when she was discovered in the kitchen. When reminded she was not permitted to be in that space and asked to leave (reminders, redirection), the Student proceeded to make herself a cup of coffee and used a staff member's flavored creamer (destruction of property). The Student was suspended for violating the District's behavior code of conduct. That same week, the Student had an opportunity to meet with the assistant principal to discuss the incident (debrief). After debriefing, the suspension was reduced, and the Student was given an opportunity to reimburse the District for the cost of the eggs and coffee. Thus, the Student was outside her class unsupervised without her 1:1, where she engaged in property destruction and inappropriate behavior. The District is in violation for not implementing the Student's 1:1 as indicated in her IEP, as a 1:1 could have helped the Student select an appropriate location for a break and/or coached the Student in appropriately responding after being confronted for her inappropriate behavior. However, the staff member who found the Student in the kitchen responded by providing reminders of appropriate behavior and attempted to redirect the Student. The Student was also offered an opportunity to debrief and make amends for her behavior, as provided for in the BIP. These responses, in addition to reducing the Student's suspension, helped mitigate the violation of not having a 1:1 present. No further corrective actions are required.

December 12, 2019

On December 12, 2019, the Student grabbed another student by the hair and then failed to comply with a directive by her 1:1 to stop. When the Student released the other student, the Student was hit in her face by the other student. The Student was expelled for engaging in violent conduct. In her reply, the Parent stated she believed the Student's IEP and BIP were not implemented because the District implemented a zero-tolerance policy in suspending the Student and because she believed the Student was acting in self-defense. Here, the Student's 1:1 was present and intervened as required in the BIP. The Student's IEP and BIP were implemented. OSPI finds no violation.

OSPI notes, however, that when the Student was expelled following the incident on December 12, 2019, the Student was removed from school for more than 10 days without the District holding a manifestation determination. This issue is discussed below in issue three.

January 21, 2020

On January 21, 2020, the Student attended a lunch period outside of her scheduled lunch with a peer. She was told by the school security officer to go back to class. The Student refused, became argumentative, and began using profanity (inappropriate behavior). The Student continued to remain unsupervised in the hallway for the remainder of the period. A 1:1 was not present, and the Student continued to be disruptive. The Student then began wrestling with another student (physical aggression) and then ripped and tore things off the walls (property destruction). The Student then made threats to the security officer (inappropriate behavior) and the Parent was called to pick up the Student from school. During the entire incident, the Student did not have a 1:1 with her, nor, according to the incident report and other documents, did a 1:1 or other staff member other than the security guard respond. The District did not implement the Student's IEP and BIP on the date in question because the Student was without a 1:1 and the District staff member who responded to the incident did not use the interventions (reminders, redirection, debriefing, etc.) described in the Student's BIP. Accordingly, the District is in violation.

The District will be required to provide a copy of the Student's IEP and BIP to all the Student's teachers and staff who regularly interact with the Student and will be required to review and confirm with OSPI that they have read both documents. The District will also review the assignment of a 1:1 and determine how to ensure that one is provided consistently, as per the IEP.

Issue 2: Student Discipline during the 2018-2019 School Year – The Parent alleged the District failed to follow special education disciplinary procedures during the 2018–2019 school year. School districts may suspend a student eligible for special education who violates a school code of student conduct to the extent it would suspend a student without a disability for similar violations for not more than ten consecutive school days, or for ten non-consecutive days for behaviors that represent a pattern of behaviors because the conduct resulting in a disciplinary removal is similar, and so long as the removal does not constitute a change in placement. Here, the Student was suspended for seven days during the 2018-2019 school year. The Student was also picked up early by the Parent on May 23, 2019 and kept home by the Parent on May 24, 2019.

While the circumstances surrounding why the Parent removed the Student on May 23-24, 2019 are unclear, even if the Student was removed on May 23-24, 2019, the Student was not removed from school for more than 10 days. Therefore, no change in placement occurred and there was no violation of special education disciplinary procedures.

Issue 3: Discipline during the 2019-2020 School Year – The Parent additionally alleged the District failed to follow special education disciplinary procedures during the 2019–2020 school year.

A change in placement occurs when a student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a year and the student's behavior is substantially similar to the previous incidents that resulted in the removals. After a student eligible for special education has been removed for her current placement for more than ten school days in the same year, and the removal is a change in placement, during any subsequent days of removal, the student must continue to receive educational services that provide a FAPE so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress in the goals set out in the student's IEP. Also, within ten school days of the change in placement, a manifestation determination meeting must be held to determine whether the conduct which resulted in the change in placement was a manifestation of the student's disability. If it is determined the conduct was a manifestation of the student's disability, the IEP team must either conduct a functional behavioral assessment (FBA), unless the district had conducted a FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or, if a BIP already has been developed, review the BIP, and modify it, as necessary, to address the behavior; and, except for special circumstances, return the student to the placement from which the student was removed.

In its response, the District acknowledged the Student was removed for a total of 15 school days during the time period under investigation and had experienced a change in placement. The District further acknowledged that while a manifestation determination was held on January 24, 2020, it occurred more than ten days after the disciplinary change in placement. Thus, OSPI finds the District in violation. The District proposed the Student's IEP team review the requirements of special education discipline procedures, including the requirement to hold a manifestation determination meeting within ten days of a student being removed from her educational placement. OSPI accepts the District's proposed corrective action.

The documentation also indicates that no educational services were provided to the Student while she was removed from school. OSPI finds the District in violation as a district is required to ensure a student continue to receive a FAPE (including an opportunity to participate in the general education curriculum and make progress toward IEP goals). To remedy the Student having been removed for a total of 15 days, the District proposed compensatory education for five school days or 10 hours of compensatory education. OSPI accepts proposed corrective action.

CORRECTIVE ACTIONS

By or before **September 11, 2020, October 2, 2020, and October 30, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **September 4, 2020**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 10 hours of specially designed instruction with at least 3 hours in social/behavior, at least 3 hours in math, and at least 3 hours in study/organizational skills. The remaining hour offered by the District may be used in either social/behavior, math, or study/organizational skills.

The District will provide OSPI with documentation of the schedule for services by or before **September 11, 2020**.

The compensatory education will occur in a one-on-one setting and be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **October 23, 2020**, including those needing to be rescheduled.*

No later than **October 30, 2020**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for Student to access these services, or reimburse Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **October 30, 2020**.

Review of Student's IEP and BIP

By **September 4, 2020**, the District will be required to provide a current copy of the Student's IEP and BIP to all of the Student's special education and general education teachers, and staff who regularly interact with the Student. This may be done by a staffing meeting, which may be held electronically. When reviewing the IEP and BIP, the required members will specifically review the assignment of a 1:1 and determine how to ensure that one is provided consistently, as per the IEP.

By **September 11, 2020**, the District will be required to submit documentation to OSPI that required staff members received and reviewed the assigned documents. Documentation will include a list of the staff members (including their titles) who received a copy of the IEP and BIP, and written confirmation from the staff members that they received and reviewed the IEP and BIP.

The District will also submit a statement regarding how the team determined it will consistently provide the Student with a 1:1 in accordance with the Student's BIP.

DISTRICT SPECIFIC:

Training

The following District staff will receive training: The Student's IEP team, the principal, and assistant principals at the school that the Student is currently enrolled in for the 2019-2020 school year. The training will cover special education discipline procedures, including the requirement to hold a manifestation determination meeting within ten days of a student being removed from a student's educational placement. The training will include examples.

The training will not be presented by someone who is (or was) an employee of the District during the timeline of this complaint. The individual that presents the training is encouraged to consult with its ESD staff in the creation of the training materials.

By or before **September 11, 2020**, the District will notify OSPI of the name of the trainer, provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials, and provide OSPI with a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by September 18, 2020.

By **September 25, 2020**, the District will conduct the training regarding the topics raised in this complaint decision.

By **October 2, 2020**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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 March, 2020

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.)