

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-124**

### **PROCEDURAL HISTORY**

On October 1, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the Parent of a student (Student) attending the Kent 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 2, 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 by October 22, 2020.

On October 22, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on October 23, 2020. OSPI invited the Parent to reply.

On October 28, 2020, OSPI received the Parent's reply and the reply was forwarded to the District on October 29, 2020.

On November 2, 2020, OSPI received additional information from the Parent and forwarded it to the District on November 3, 2020.

On November 20, 2020, OSPI requested additional information from the District. The District did not send the information.

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 that occurred prior to the investigation period, which began October 2, 2019. 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 period.

### **ISSUES**

1. Did the District follow procedures in determining the Student's needs in developing the Student's individualized education program (IEP), including elopement?
2. Did the District consider the Parent's request for supports for school personnel, including 1:1 paraeducator support?
3. Did the District provide the Parent with an opportunity to provide input and ensure parent participation in IEP team decisions, including the providing the following:
  - Sufficient time in the IEP meeting for the Parent to provide input;
  - A copy of the Student's IEP;

- Copies of Student progress data from the IEP, safety plan, behavior intervention plan, and the functional behavior assessment; and,
- Timely prior written notice?

## **LEGAL STANDARDS**

IEP Development: When developing each child's individualized education program (IEP), the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP team has decided that a BIP is appropriate, the IEP team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

Behavioral Intervention Plan (BIP): A 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.

Decisions about Educational Methodology: As a general rule, parents or students do not have the right to make decisions about methodology and educational philosophy. However, the district's discretion in selecting methodology does not relieve it of its obligation to at least consider the parents' recommended methodology. *In the Matter of Dieringer School District*, 114 LRP 17119, OSPI Cause No. 2014-SE-0005X (WA SEA March 14, 2014). So long as a district offers a program that can meet the student's individual needs and allows the student to make educational progress, it will meet its obligations under the IDEA. *Board of Education of the Hendrick Hudson Central*

*School District v. Rowley*, 458 U.S. 176, 208, 102 S. Ct. 3034, 3052, 73 L.Ed.2d 690 (1982); *D.T. and D.T. ex rel. N.T. v. Seattle Sch. Dist.*, 57 IDELR 249 (W.D. Wash. 2011).

Supports for School Personnel: An IEP must include a statement of the program modifications or supports for school personnel that will be provided to enable the student: to advance appropriately toward attaining the annual IEP goals; to be involved and progress in the general curriculum in accordance with present levels of educational performance and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children in the above activities. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d).

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the 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. IDEA, 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9<sup>th</sup> Cir. 2003). *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9<sup>th</sup> Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

Parent Participation in IEP Meetings: Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with 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. IDEA, 64 Fed. Reg. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. IDEA, 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The 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 because no change is necessary for the provision of FAPE, 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. IDEA (Appendix A to 34 CFR Part 300, Question 20).

Prior Written Notice: 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. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

After a meeting, the district must provide prior written notice to the parent of the decisions made as a result of the meeting. This is particularly important when there is disagreement between the parent and the district regarding IEP content. If the IEP content reflects a district decision that it will refuse to provide certain services to the student, or if the district refuses to make changes to the IEP as a result of the parent's requests, the district must likewise provide prior written notice to the parent of those decisions. 34 CFR §300.503; WAC 392-172A-05010.

Copy of IEP for Parents: A district must provide parents with a copy of their student's IEP, with any amendments, at no cost to the parents. 34 CFR §300.322(f); WAC 392-172A-03100(8).

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

## **FINDINGS OF FACT**

### **Background**

1. On October 1, 2020, the Parent filed this complaint, alleging the District failed to address the following:
  - "Measures were not put in place even after sharing the child's history of needs."
  - "Failure to act on IEP (individualized education program) requests in a timely manner—Principal continuously restricted time in IEP meetings, resulting in Parental Concerns not fully addressed."
  - "Team Leader regrouped parental concerns based on her perspective, limiting team members and parent from fully participating in the concerns parent noted."
  - "Requests for IEP progress data, Safety Plan, BIP (behavioral intervention plan), FBA (functional behavioral assessment) data and supporting input never received even after multiple attempts."

- "Signed copies of the amended IEP never received even after requested."
- "Child's multiple disabilities not taken into account and reflected to create SDI (specially designed instruction) at her level."
- "Denied requested trainings/coaching on FASD (Fetal Alcohol Spectrum Disorder), Trauma and others for staff."
- "PWN's (prior written notice) often late and missing information related to the meeting or was requested to be referenced."
- "Requests made via email requesting to know how school would keep child safe from eloping into streets often ignored I have worked in good faith with the team with little return."

### **2018-2019 School Year**

2. During the 2018-2019 school year, the Student was a second grader who attended a District elementary school and was eligible to receive special education and related services under the category of other health impairment.
3. On June 12, 2019, the District held a meeting to review the Student's IEP. The meeting included the Parent, two advocates, and a wraparound facilitator all from outside agencies. For the meeting, the Parent listed her biggest concerns regarding the Student:
  - "Math will not be mastered or generalized outside of the school setting."
  - "Her inability to understand body language and regulate her emotional reactions to frustration and anxiety is still a work-in-progress, and she requires ongoing specialized instruction."
  - "As she ages, the damage to her brain will be more noticeable in a general education classroom; her behaviors will continue to be closer to a child half her age."
  - "Frustration with curriculum demands will increase unexpected behaviors and elopements."

The Parent also listed eleven topics to be discussed at the meeting:

- Elopement despite BIP
- Reporting of restraint and isolation
- Confabulation is increasing
- Precision and accuracy in communication of daily activity
- Inconsistency of classroom behavior reporting
- Inconsistency of instructional cueing
- Loss of effective intervention/social stories
- Play plan does not appear to in effect anymore
- Bathroom issues
- Homework – plan for school/life balance
- Identify next year's teacher and prep for that transition

According to the Parent, the meeting's outcomes were as follows:

- "Re-instatement of Play Plan and Social Stories/Day Prep – DAILY"
- "IEP addition of No Homework (amendment to IEP)"
- "Scheduled, Executed with support for cleaning up, Bathroom breaks – at least 2x day"
- "Water on desk – and encouraged to drink often"
- "Next year's Teacher Identified and a contact/meeting set up for before school lets out"

- "Classroom math to be replaced with what is worked on in IP (Integrated Program) for consistency of learning and application"<sup>1</sup>
  - "More specific details in home communication i.e., instead of Great Job- Followed all directions without reminders or Needed reminder to start but then was fully engaged; Regarding recess – clear communication of any crisis/ problems and how they were resolved"
  - "Address the current BIP for additions or amendments"
  - "Plan for the Confabulation and how to determine if what she says is accurate or her best guess or other reason"
4. The Student's June 2019 IEP provided for annual goals in the areas of reading comprehension, written expression, math calculation, adaptive skills, and communication. The IEP mentioned the Student confabulated at times. The IEP included 23 accommodations and modifications that included cues to stay on task, no homework, and sensory strategies and tools. The IEP provided for the following specially designed instruction and related services:
- Speech/Language: 30 minutes, 3 times monthly (provided by a speech/language pathologist in a special education setting)
  - Reading Comprehension: 30 minutes, 5 times weekly (provided by a special education teacher in a special education setting)
  - Written Expression: 30 minutes, 5 times weekly (provided by a paraeducator in a special education setting)
  - Math Calculation: 30 minutes, 5 times weekly (provided by a special education teacher in a special education setting)
  - Social/Emotional: 30 minutes, 1 time weekly (provided by a paraeducator in a general education setting)
  - Adaptive Skills: 45 minutes, 4 times weekly (provided by a paraeducator in a general education setting)
  - Social/Emotional: 30 minutes, 4 times weekly (provided by a paraeducator in a general education setting)
  - Social/Emotional: 30 minutes, 4 times weekly (provided by a paraeducator in a general education setting)

Under supplementary aids and services, the Student would be provided occupational therapy for 20 minutes, one time monthly. The IEP stated no emergency response protocol for restraint or isolation was needed or included in the IEP.

5. The June 2019 IEP included a behavioral intervention plan (BIP) that addressed the Student "eloping," which was defined as leaving the classroom and noncompliance with requests. The data included showed the Student left the classroom an average of eight times a week in September 2018, and approximately six times a week in October 2018. The plan included teaching strategies, such as modeling and role play in a small group and antecedent strategies which were, among others, pre-teaching and re-teaching, sensory tools (headphones), and

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<sup>1</sup> According to the District, an "Integrated Program" is the same as a resource room.

“take breaks.” If the Student eloped to an unsafe area and refused to come to a safe area, the plan was to use the emergency response protocol.<sup>2</sup>

6. The emergency response protocol signed by the Parent on June 18, 2019 and the District on June 19, 2019 addressed the Student’s elopement to an unsafe area. The protocol was as follows:  
In the event an untrained Right Response staff member is present when [Student] elopes, the staff member should call for a Right Response trained staff member while keeping [Student] in view. Two-person escort to empty classroom/office (isolation) or break space.
7. The prior written notice, dated June 20, 2019, stated the meeting was in response to the Parent’s concerns and request to review the behavioral intervention plan, and “write an Emergency Response Protocol.” The list of what options were considered and rejected were as follows:
  - Add accommodation of no homework and visuals for math such as touch math.
  - Included information about confabulation in the present levels and parental concerns.
  - Go over the Behavior Invention Plan.
  - Write an Emergency Response Protocol.

### **2019-2020 School Year**

8. During the 2019-2020 school year, the Student attended an elementary school in the District and continued to be eligible for special education services under the category of other health impairment.
9. On August 29, 2019, the 2019-2020 school year began.
10. According to the District, the District took the following actions to address the Parent’s concerns about the Student’s behavior, but did not provide further detail:
  - August 20, 2019 – Parent concern meeting
  - September 24, 2019 – Wraparound meeting
  - October 1, 2019 – Internal BIP review
  - October 23, 2019 – Internal BIP review
11. On October 2, 2019, the Parent emailed the Student’s case manager, principal, and other District staff, requesting an IEP meeting. The items to be discussed were a speech assessment, medical plan addressing the bathroom to be in the IEP, 1:1 paraprofessional support, and review of the BIP.
12. On October 4, 2019, the principal responded to the Parent. The principal provided an update:
  - Speech assessment: The special education teacher was compiling the information needed.

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<sup>2</sup> The documentation regarding the emergency response protocol was confusing. The June 12, 2019 IEP stated no protocol was needed. The prior written notice on the same day stated that a protocol was refused. But the Parent and District signed a protocol on June 18 and 19, 2019, respectively.

- Medical plan: "This language should have been added as per directions I provided from the head nurse..."
  - 1:1 support: "We can discuss the need for this at the IEP meeting."
  - BIP review: The District discussed the BIP during the week. The case manager was going to review the BIP and emergency response protocol with staff. "There are some elements in the BIP that we felt could be more specific or align better to the prompt. We'd like to review that with you at the next meeting..."
13. On October 8, 2019, according to a District incident report, the Student cornered another student and "hissed" at the student and teacher when asked to go back to class.
14. On October 10, 2019, according to a District incident report, the Student slammed the bathroom door repeatedly and was opening and closing the privacy curtain and blind. Later, she left physical education class and sang in the lunchroom.
15. On October 11, 2019, the Parent emailed the principal, case manager, and other District staff, stating the following, in relevant part:
- The meetings on August 20 and September 10, 2019 did not address concerns about the BIP or the 1:1 paraeducator assistance.
  - The recess plan was removed from her IEP.
  - Student is struggling at recess and confabulating. Confabulation has increased which necessitates two staff to be with her.
  - Student has eloped more frequently.
  - Behavior during the time in the nurse's office which indicated the Student wanted to go home.
  - Behavior shown were not attention seeking, more likely task refusal and escalated by anxiety.
  - Wanted to know purpose of the office referrals (incident reports) and how they become part of the Student's records.
  - Student's GPS (global positioning satellite) showed the Student went directly to the playground after arriving suggesting no one went over the schedule with the Student.
  - A substitute paraeducator most likely was the Student's trigger for the difficulties.
  - Student told Parent that the paraeducator hit her on the back of the neck. The Parent did not know what is accurate and how much is her brain is filling in gaps.
  - Student was totally exhausted when she arrived home because of the energy she uses to do well at school.
  - "[Student] needs a play plan goal and para support placed back in her IEP. The reason is as follows – She has brain damage - this is not going to go away or repair itself. It takes years to teach most children with FASD social skills and expected responses. This year has demonstrated the need to reteach and help her navigate her social world. This can begin in a social skills friendship group – but to be able to generalize must then be built into other environments and with multiple peers."
  - "The inconsistency of staffing due to illness or other prevents [Student] from feeling safe and secure and prevented building a trusting relationship with a staff who can act as the external brain she needs."
  - "Providing her teacher that [paraeducator] staffing to assist with [Student] will benefit [Student] and her teacher and enable [Student] to be able to attend to academic learning better."
  - Need to review the Student's BIP. Staff must have a "cheat sheet" to ensure correct strategies are implemented.



- The Student needs a speech review and possibly an evaluation to update her goals. She needs to improve her academic and social language.
16. On October 29, 2019, according to District incident reports, the Student eloped to the front of the school and pretended to be a cat and crawled on the ground. The second incident occurred when the Student eloped from the building and ran to the bus loop. Three staff were required to convince the Student to return to the building.
  17. On October 30, 2019, according the emails between the Parent and the District, the Parent met with District staff. The Parent's email stated the meeting was about the Student's elopements, the medical plan being a part of the IEP, bus safety, the BIP not being updated, speech evaluation, home communication, and 1:1 paraeducator support.
  18. On October 31, 2019, the principal emailed the Parent, providing minutes of the October 30, 2019 meeting. The minutes of the meetings were as follows:
    - [Assistant director] corrected staff misconception that med plan mention in IEP needed to involve 'opening' the IEP.
      - Action: I'm also going to request they provide a prior written notice of the updated medical plan by end of next week at the latest.
      - Action: I already began to debrief with those involved. More to come.
    - We discussed eloping, work avoidance, your concerns that the BIP needs refinement and [staff member's] efforts to gather team members to finish that work.
      - Action: I'm going to ask [program specialist] and [case manager] to review and refine the [functional behavior assessment] FBA/BIP/ERP in November.
    - We discussed attendance. This included her teacher's concerns that days when she arrives, leaves for an appointment, then returns result in struggles to readapt and transition. We also discussed that she is approaching the amount that triggers an attendance contract.
      - Action: You were going to make an effort to schedule appointments outside of school time. I recall you said you might keep her home on mornings when she has late morning appointments, thus decreasing the amount of transitions and create a social story for those days.
    - We discussed program placement, pros/cons of increasing adult support, challenges of a variety of people providing that support.
      - Action: I will ask [program specialist] and [case manager] what they need to do a needs assessment to identify times when extra support would be needed. I can contribute by looking how to use building resources to meet it, or where there is a need to ask for more resources.
  19. On November 1, 2019, according to the District's "Isolation/Restraint Incident Form," the Student eloped from school and ran into the street where cars were passing. The Student was restrained because of the likelihood of imminent harm. According to the November 2018 BIP, the Student previously eloped only from one classroom to other areas in the building.
  20. On November 4, 2019, the Parent emailed the case manager, principal, and other District staff:
 

Good morning, I would like to follow up on [Student]'s latest elopement and unmet needs which include her safety.

- She appears to be escalating in behavior and inability to access [a free appropriate public education (FAPE)] and stay safe.
- Based on her unmet needs I feel she would benefit from a dedicated 1-1 but am curious if the team/district have another strategy or solution to this problem.
- Another proposal would be to have adult support and supervision for all transitions and times [Student] is not under the direct supervision of her classroom or IP teacher.
- Previous data demonstrates that support from a consistent para improves [Student's] success in accessing FAPE.

On another note – regarding [prior written notice] PWN – I believe best practice is that I receive this within about 5 days following any meeting to discuss, initiate, propose or refuse requests made in a meeting.

21. On November 5, 2019, according to a District incident report, the Student left class without permission and left the building. She ran away from adults and into the neighborhood.
22. On November 6, 2019, the District held an IEP meeting to change the Student's "Individual Health Plan."<sup>3</sup> After the Student eloped, the IEP team developed a short term "safety plan" for the Student that provided "extra adult and/or 1:1 coverage" and an adapted schedule that identified the different paraeducators to work with the Student. The prior written notice stated the Student's case manager would review the BIP to determine if it was still appropriate. The case manager would provide any proposed updates by November 25, 2019.
23. According to the Parent, the Parent did not attend the November 6, 2019 meeting and did not receive any notification of the meeting. The District's "Contact Attempt Report" form stated the Parent was contacted on November 6, 2020 by letter. The Parent stated the prior written notice appeared to reflect the results of a previous meeting on October 30, 2019.
24. On November 6, 2019, the Parent emailed the case manager, principal, and other District staff, stating the school called the Parent, informing her the Student had eloped from school. The Parent found the Student close to home. The Parent stated the Student eloped after two phone calls to her and the Parent's promise to eat lunch with her at school. In the Parent's reply to the complaint, she noted she did not receive a response from the District about her email.
25. On the same day, the Parent emailed the principal, teacher, and other District staff, stating this was the second elopement in three days and she wanted a firm plan to address the Student's safety.
26. On November 7, 2019, the principal responded to the Parent's second November 6, 2019 email: "What we have in place so far is additional adult supervision and support throughout the day. We are not able to provide it every moment and we will work this afternoon and tomorrow on ways to minimize transitions..."

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<sup>3</sup> OSPI requested a copy of the Individual Health Plan, but it was not received.

27. On November 7, 2019, the Student's BIP was reviewed. There were two prior written notices, both dated November 7, 2019. One prior written notice stated the District representative, Parent, special education teacher, program specialist, and inclusive education representative met to review the Student's BIP. The other prior written notice did not list the participants. For both meetings, the "Contact Attempt Record" stated that the Parent was contacted by phone and the Parent gave permission to proceed without meeting. Both prior written notices stated the following:

Description of the proposed or refused action:

After [Student] eloped last week, [Student] and [principal] made a "Safe Plan," for [Student]. At that point Mom and [principal] thought it best to take a look at the Behavior Plan and check for updates. That Safe Plan has been dropped into the Behavior Plan in the Elopement Section.

The reason we are proposing or refusing to take action is:

It had been a year (roughly) since the Behavior Plan had been written.

Description of any other options considered and rejected:

Not to look at the Behavior Plan...

The reasons we rejected those options were:

[Student] is a year older, we need to make sure we are meeting her needs at [school] and providing the best environment for her, while teaching her calming strategies and self-management skills.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

Data collected by teachers, the IP Room, office staff, and information provided by mom.

Any other factors that are relevant to the action:

Additionally, [case manager] will further review the Behavior Plan with [school] Staff in the next week, make additional updates and get those to mom on or before November 25th, 2019.

28. According to the Parent, she did not participate in the November 7, 2019 meeting.

29. On November 8, 2020, the principal emailed the Parent about the District's plan to address the Student's behavior:

Yesterday afternoon, [general education teacher] and I were able to outline the day for [Student]. I was hesitant to formalize it b/c 9 (because) we didn't know if we would still have our full staff in IP today. We do not have all of our staff today, but I just met with [case manager] and this can be implemented today. The plan is simply to provide a committed adult to be with her all day. We will provide them with a copy of [Student's] Safe Plan that we wrote together 11/1. Beyond that, the ERP is the best use of the resources we have to respond to an elopement. In the larger picture, the needs analysis is under way and the FBA/BIP are being reviewed.

30. On November 10, 2019, the principal emailed the Parent:

I have sent a plan to various staff about their roles supporting [Student] throughout the day. I am unable to cover all times but I am offering all that I can without taking services

away from other students. Would you like to set up a meeting to go over the plan?...[Case manager] and [program specialist] made the health plan changes and you should be getting a copy of the IEP from them. They have also reviewed the FBA and BIP. I am waiting for a copy which I can share with you.

31. On November 11, 2019, the Parent received a draft copy of an IEP, which would eventually be the February 11, 2020 IEP with notations of suggested changes.
32. As part of the Parent's reply, the Parent submitted the document "February 11, 2020 IEP draft revisions and agreed revisions." The document provided comments, suggestions, and disagreements with each section of the Student's IEP. These included adding detailed behaviors and interventions used in the past, a description of her day in the general education classroom, and providing a reference in the IEP to the behavior plan, crisis plan, and safety plan.
33. On November 13, 2019, the Parent emailed the case manager, principal, and other District staff about the Student's BIP. The Parent suggested 13 environmental preventative strategies, including a visual schedule, pre-teaching expectations through social stories and zones of regulation, and headphones for noise and over-stimulation. The Parent also proposed three levels of intervention strategies, including following the emergency response protocol.
34. On November 14, 2019, the Parent emailed the principal, the case manager, and other District staff, indicating she had met with District staff regarding the Student's BIP and her November 13, 2019 suggested changes. The Parent also made another request for a 1:1 paraeducator.
35. On the same day, the principal replied to the Parent, stating the program specialist and the case manager would review the Parent's suggestions for the BIP. Regarding the request for a 1:1 paraeducator, the principal stated, "I don't know if more support is warranted, but with or without extra [paraeducator] time IP staff needs [to] implement, and train staff on use of strategies and tools for BIP implementation."
36. Later the same day, the program specialist emailed the principal, the District board-certified behavior analyst (BCBA), and other District staff about determining the causes of the Student's elopement. The BCBA would be following up with the Student's instructional team and the program specialist and case manager would continue to work on the Student's schedule and her current support, including a special pass for the Student to track breaks from work.
37. On November 15, 2019, according to a District incident report, the Student refused to go to her bathroom break with the aide and the Parent.
38. On November 18, 2019, the Parent wrote to the District special education director about her concerns, which included, in part:
  - The BIP was not a clear document that identified each level of escalation and specific strategies for each level.
  - The Parent has made repeated requests for a designated 1:1 paraeducator assigned to the Student because of elopements, transitioning safely through the building, staying focused,

recognizing early signs dysregulation and agitation, providing support on the playground and social skills interventions, and assisting with bathroom needs, among other needs.

39. On November 27, 2019, the District stated the evaluation team met to propose a communication assessment. The prior written notice stated the same.
40. On December 3, 2019, the Parent emailed the BCBA and other District staff to request the draft for the BIP and the data. On the same day, the BCBA replied, stating he needed more time to gather more information about the Student's behaviors before making recommendations.
41. Also, on December 3, 2019, the Student's IEP team, including the Parent, met to review the results of the communication assessment. The IEP team determined the Student was also eligible for special education services under the category of language impairment and recommended speech/language services in the areas of oral expression, social language/cognition, and auditory comprehension.
42. Also, on December 3, 2019, an "Isolation/Restraint Incident Report" recorded that the Student eloped from school and ran into the street. The report did not state the Student was isolated or restrained.
43. On December 5, 2019, according to the documentation, the Parent and advocate met with the principal and BCBA about the Student's behaviors. On December 9, 2019, the Parent followed up by emailing the BCBA, principal, and other District staff, requesting an IEP meeting before the end of winter break. On December 10, 2019, the principal replied that she agreed with having an IEP meeting. She reported to the Parent that staff discussed having the paraeducator come with the Student to music class. In addition, the BCBA and the integrated program staff were meeting to continue to address the Student's behavior.
44. On December 12, 2019, the principal emailed the Parent that they were continuing to work on the BIP and providing as much "safety supervision" as possible, among other things. The principal stated, "I did some math and below represents the percentage of [Student's] day that she is in an environment with more than one adult, in many cases with one adult solely assigned to supervise her."<sup>4</sup>
45. On December 12, 2019, the Parent emailed the BCBA, asking him about his role in developing the program for the Student. The Parent also listed the following concerns:  
These are what I feel still need to be addressed.
  - 1) The data from the FBA is not current and may not fully or accurately identify the precipitating factors.
  - 2) In task refusal and/ or elopements and may not encompass all the behaviors interfering with her ability to access FAPE.

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<sup>4</sup> No percentage was given on the copy of the email provided to OSPI as part of this investigation.

- 3) My ongoing concern with the current BIP which was created from the FBA, is that it does not account for varying levels of refusal and or escalation- the response to each level would/should be different.
- 4) Data for each of these levels would indicate if the preventative or proactive and/or de-escalation measures were effective overall or, if in spite of them, she mostly continues to escalate, which would indicate a need to revisit the data and BIP.
- 5) The current BIP does not reflect the plan you are creating.
- 6) There are no goals around the lagging skills identified by behaviors in the BIP.
- 7) I would love for [Student] to someday have the skills needed to independently access tools which help her regain her sense of calm and allow her ability to participate in activities. But, until these become embedded into her as a routine action and automatic response she will continue to need another person to be watchful and notice then cue to use her book.

The Parent noted in her reply that the District did not respond to her email.

46. On December 13, 2019, according to a District incident report, the Student "occupied" the principal's office and shut down the computer.
47. Also, on December 13, 2019, the Parent emailed the special education director, principal, and other District staff, stating she wanted to see the observation report from the BCBA and provide input into the BIP.
48. On December 16, 2019, the Student eloped from campus and was running back and forth across the street. The Student was escorted back to school.
49. On December 19, 2019, according to a District incident report, the Student "had a hard time today, as student was pushing her and not being nice."
50. From December 23, 2019 through January 3, 2020, the District was on winter break.
51. On January 3, 2020, the principal replied to the Parent's December 13, 2019 email, stating:  
The work of [BCBA's] team will need to be completed so that anyone assigned to provide more support has specific training can be trained in the strategies to use [sic]. At this point, I have not received word of a decision and this may be why. You are a key player in the plan moving forward as the home/school connection has to be aligned. Any changes that are made to the BIP now or after all the observations and such, will be provided to you for input. I need to check meeting dates, but I believe one has been set up.
52. On January 7, 2020, the Parent wrote to the Student's team, listing her concerns. The Parent noted she had been asking since June 2019 to address a 1:1 paraeducator for the Student, revise the BIP, a recess plan, confabulation, and elopements and safety. The Parent also stated the speech evaluation had been completed and that it "shows that my child was not properly evaluated...and is in need of more goals to meet her needs."

The Parent listed additional areas of concern, as follows:

- The proposed meeting time for the IEP meeting scheduled for January 14, 2020 did not give enough time to review all the Student's annual goals.
- The Parent did not receive a copy of the BIP and did not participate in its revision.
- "I believe the inconsistency of para support this year along with multiple para's working with her has increased her anxiety, coupled with not having time to have built a relationship with any one of them..."
- The Student's private therapy was scheduled during the school day. Her absences do not reflect truancy and should be addressed in her IEP through her medical plan or accommodation.
- The Student's health is being affected by her refusal to go to the bathroom.
- The Student has always loved school and thrives on consistency and routine but she is experiencing anxiety now at school.

53. From January 23 to February 4, 2020, the Parent and the BCBA, principal, and other District staff exchanged seven emails regarding the following:

- Times available and a designated location for the Student to call the Parent
- Tips for prepping Student for unavailable times and point to fidelity sheet showing scripts for supporting her
- Means for integrating with point system (buy back unused phone calls at end of day)
- Sample of phone script
- Parent not receiving any calls for over a week
- Student did not want to call or was the phone disconnected
- Parent wanting to know what the function was of the elopements
- Phone protocol has two parts: a resource for the Student and a script for the Parent

54. According to the January 31, 2020 progress report, the Student made the following progress toward her annual goals: "sufficient progress being made to achieve goal within duration of IEP" on her reading comprehension goals (sequence events in a story, describing story elements, and answering questions), written expression (paragraph), math calculation (subtraction), social emotional (hidden rules), and communication (making smart guesses, expressing worries). The Student also mastered her other math calculation (addition) and social emotional (identify facial expressions) goals.

55. According to the District, the District contacted the Parent to schedule an IEP meeting on the following dates:

- |                     |                    |
|---------------------|--------------------|
| • December 16, 2019 | • January 15, 2020 |
| • December 19, 2019 | • January 23, 2020 |
| • December 20, 2019 | • January 28, 2020 |
| • January 9, 2020   | • January 29, 2020 |
| • January 10, 2020  |                    |

56. On January 24, 2020, a letter from the Student's pediatric nurse practitioner was sent to the District. The letter recommended a 1:1 paraeducator for the Student and requested that absences/tardiness due to medical appointments be excused. The letter noted the Student wears a GPS tracker to find her when she elopes.

57. On January 28, 2020, the Student's psychiatrist provided the following information, in part:

Over the course of her treatment we have attempted to address symptoms of irritability, impulsivity, inattentiveness, and hyperactivity via medication interventions, however there have been limitations to response/tolerability, and further her atypical neurodevelopment poses challenges requiring strong behavioral supports and interventions outside of medication. I am concerned to hear of the ongoing difficulties with disruptive behaviors and concerns for safety regarding elopement behavior occurring in the school setting. I would like to share my support and recommendation for incorporating behavioral supports and interventions informed by Applied Behavioral Analysis principals [sic] to help with positively shaping [Student's] behaviors for safety and increasing functioning in order to provide the necessary supervision and monitoring for safety and successful implementation of this plan, she may very well require a 1:1 paraeducator present given her current level of difficulties. Please feel free to contact me with additional questions or concerns.

There was no indication that the psychiatrist had contacted the school for input about the Student.

58. On February 3, 2020, according to a District incident report, the Student and another student were talking. When the student was asked to move, the Student left class.
59. On February 7, 2020, the Student ran off the playground into the parking lot. According to the "Isolation/Restraint Incident Form," the paraeducator was concerned about the Student leaving campus and restrained the Student because of the likelihood of imminent harm.
60. On February 11, 2020, the IEP team reviewed the Student's IEP, including the BIP, to address elopement. The IEP identified the Parent's concerns:  
Mom is concerned about [Student's] safety at school and a need for 1:1 adult supervision throughout the day. She worries about the inconsistent and changing adult supervision that [Student] has at school. Mom feels that [Student] needs an 'external brain' to help [Student] throughout the day. Please see attached Parent letter for continuation of parent concerns.

The IEP stated the Student's behavior impeded her learning and a behavioral interventionist was working on a plan of action for her behavioral needs. The general education teacher described the Student's behavior in class:

[Student] continues to struggle in the general education classroom. She works hard to keep up with the general education curriculum but often runs out of academic stamina to keep up with the 3rd grade curriculum that is presented. She needs constant reminders throughout the day to stay on task and push forward with her assignments. She requires a large amount of brain breaks throughout the day to keep up with the rigors of the general education setting. These breaks can take place in the classroom calming corner as well as the IP resource. [Student's] academic, social, and language deficits impact her ability to access her education in the general education classroom. She demonstrates a need for specifically designed instruction in the areas of reading, math, writing, social skills, and communication as [Student] cannot successfully access the general education curriculum without changes to the delivery, content, or methodology of instruction. Specifics will be listed under each category presented in this IEP.



The IEP, in effect from February 13, 2020 to February 10, 2021, continued to provide annual goals in the areas of reading comprehension, math calculation, written expression, communication, adaptive skills, and social/emotional behavior. The IEP included 27 accommodations/modifications:

- Allow extra time to observe when new activities are introduced
- Assigned seat/spot on floor away from door or exists
- Break tests over multiple sessions
- Consistent Vocabulary used for expectations and supports
- Cue to stay on task during tests
- Cueing and incentives to increase focus on eating lunch
- Daily communication Binder
- Designated spot in lunchroom to limit distractions
- Escort on/off bus
- Lots of Verbal Praise
- No homework
- Permission to call mom per BIP
- Post visual or picture/schedule
- Preferential seating during testing
- Preteach math games and provide to parent
- Proved frequent opportunities and prompts to drink water
- Provide reminders/prompts to use the bathroom
- Read Math and/or content directions/items verbatim on tests
- Read social story when atypical changes occur in the schedule
- Read Social story/place visual on desk when teacher/staff is absent
- Seating near the teacher
- Sensory Strategies and tools
- Sentence starters/models for sharing
- Small group testing
- Text-to-Speech
- Visual schedule to check off for each time block
- Visuals for math such as touch math

The Student's services were changed (in italics) as followed from the previous IEP:

- Speech/Language: 30 minutes, 6 times monthly (provided by a speech/language pathologist in a special education setting)
- Reading Comprehension: 30 minutes, 5 times weekly (provided by a special education teacher in a special education setting)
- Written Expression: 30 minutes, 5 times weekly (provided by a paraeducator in a special education setting)
- Math Calculation: 45 minutes, 5 times weekly (provided by a special education teacher in a special education setting)
- Adaptive Skills: 45 minutes, 5 times weekly (provided by a paraeducator in a general education setting)
- Social/Emotional: 30 minutes, 5 times weekly (provided by a paraeducator in a general education setting)
- Social/Emotional: 30 minutes, 5 times weekly (provided by a paraeducator in a *special* education setting)
- Occupational Therapy: 20 minutes 1 time *weekly* (provided by an occupational therapist in a general education setting)

The IEP stated the Student had an emergency response protocol.

61. The prior written notice, dated January 9, 2020, stated:

Description of the proposed or refused action:

Proposing to put new IEP in place supported by current and updated data shared at the meeting.

The reason we are proposing or refusing to take action is:

It is required to have an annual IEP once a year for students in special education. Current and updated data has been collected that reflect a need in change on parts of the IEP.

Description of any other options considered and rejected:

Considered moving [Student] to a more restricted environment with less time than her typically developing peers.

The reasons we rejected those options were:

This is being rejected because [Student] is making progress on her IEP goals in her current placement.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

All procedures were used, including parent input, teacher input, progress reports, informal observations, and assessments.

Any other factors that are relevant to the action:

Mom and wrap around team attended the meeting. Mom also provided letters and recommendations from outside doctors that work with [Student]. Temporary extra para support will be planned for 8 weeks to assist with implementation of new behavioral supports. A follow up meeting will be scheduled to cover agenda items requested by Mom. All questions and concerns were not addressed at this meeting. Mom has been given Notice of Procedural Safeguards for Special on Students and Their Families.

62. Regarding the review of the BIP, the District provided an additional prior written notice, dated January 9, 2020:<sup>5</sup>

Description of the proposed or refused action:

Parent is requesting update on Behavioral Intervention Plan.

The reason we are proposing or refusing to take action is:

Parent has concern about the BIP not having accurate information.

Description of any other options considered and rejected:

The team may consider the document a clear [BIP] with all necessary pieces.

The reasons we rejected those options were:

This is being rejected per parents request to update the BIP.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

Recent observations and data have created a need in changes for the [BIP].

Any other factors that are relevant to the action:

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<sup>5</sup> The IEP meeting was February 11, 2020, but both prior written notices were dated January 9, 2020. The dates of both prior written notices were most likely an error.

Parent is requesting draft and changes to the behavioral plan. Behavioral Interventionist will meet with parent to further discuss how this [BIP] will be implemented.

63. On February 25, 2020, according to the District, the District sent the IEP and the prior written notices to the Parent. In the District's response to the complaint regarding staff supports and specifically, 1:1 paraeducator support, the District stated:

The prior written notice was dated for January 9, 2020 but was confirmed as being sent to Parent and received by Parent on February 25, 2020. Temporary para support was agreed to be provided to assist with the behavioral supports and implementation of the Behavioral Intervention Plan discussed and agreed upon at the meeting. The target behaviors of the BIP are documented as elopement and non-compliance. The team agreed, as documented in the [prior written notice] from February 25, 2020, that a subsequent meeting would be scheduled to discuss the other items Parent had shared as concerns. This subsequent meeting was scheduled for April 23 and April 28, 2020. At that meeting, the team determined to increase paraeducator support from 150 minutes/week in the general education and 525 minutes/week in the special education setting to 935 minutes/week in the general education setting and 945 minutes/week in the special education setting, and OT services from 1 x 20 minutes/weekly to 2 x 20 minutes weekly. In considering the parent request for specific staff training it was determined the building wide existing professional development plan including trauma informed practices was sufficient to support the staff in addressing the student's behaviors.

64. On February 28, 2020, the "Isolation/Restraint Incident Form" stated the Student eloped and ran into a major street. As a result, the Student was restrained because of imminent harm. On the same day, the principal emailed the Parent, stating that the emergency response protocol was followed and "the strategy we are using to have more people report and 'enclose' her regionally so that she cannot leave a defined area, worked..."

65. Between March 9 and May 1, 2020, the Parent and the BCBA exchanged four emails regarding:

- The BIP draft that was derived from meetings with staff, BCBA observations, and Parent input.
- Parent concern about behavior due to being pulled out of school for appointments.
- The Student's medications.
- A reinforcement menu.

66. On March 9, 2020, according to a District incident report, the Student left the school after attending recess. The Parent assisted in getting the Student back to class.

67. On March 16, 2020, the District schools were closed due to COVID-19.

68. On April 13, 2020, the District commenced distance learning for all students. The Student began receiving remote instruction.

69. For purposes of the complaint, the Parent provided "My Intended Talking Points for IEP meetings April 23 and April 28." The talking points were a list of twenty requests that included:

- A designated 1:1 paraeducator
- Data from the BIP
- Allowing the Student to call the Parent

- A recess plan
- A plan to address confabulation and document incidents
- A fence to limit the Student's movement
- Documentation of when the Student received speech services and what they worked on
- Toileting and drinking goals
- A list of duties for the paraeducator
- A safety plan that addresses elopement
- Medical absences documented and excused
- Using the bathroom at school
- An occupational therapy assessment to determine a sensory diet
- Transition plan to the new speech/language pathologist
- An IEP reflecting all agreed upon changes
  - Medical information
  - Teacher statement
  - Reference to elopement and task refusals
  - Student strengths and weaknesses
  - Behavior goals reflected in the BIP
  - Progress notes from fall/winter
  - IEP does not mention goals not renewed
  - Regression in math calculation
  - Student has no understanding of number values
  - Student needs a goal to understand story problems
  - Staff training that was requested
  - No data or progress not to support IEP
  - Monthly progress reports/data reflecting all data points and sent in PDF format
  - Prior written notice has multiple errors
  - Prior written notice does not address all proposals and refusals
  - Prior written notice must clearly list all items changed or not addressed
  - Prior written notice must be sent five days from the date of the meeting

70. On April 23 and 28, 2020, the IEP team met to review the Student's IEP. The participants included three outside agency consultants on behalf of the Parent and Student. The proposed IEP revisions included the following:

- The current IEP will be updated with more occupational therapy services.
- The concerns around confabulation and impulsivity will added to team considerations. It will be stated that this is a result of the child's disability.
- Accommodations that will be added to the IEP are: restroom/water reminders throughout the school day and clear home/school communication of topics being covered that pertain to IEP goals and services.
- The addition of a recess goal similar to recess goal on previous IEP's to improve social skills and how to engage appropriately with peers.

The Student's services included additional 1:1 paraeducator support were as follows:

- Classified staff: 945 minutes 1 time weekly (provided by a paraeducator in a special education setting)
- Classified staff: 935 minutes 1 time weekly (provided by a paraeducator in a general education setting)

- Occupational Therapy: 20 minutes 2 times weekly (provided by an occupational therapist in a general education setting)

71. The prior written notice, dated April 29, 2020, stated:

Description of the proposed or refused action:

The team is proposing changes to the IEP based on two IEP meetings that took place on 4/23/20 and 4/28/20.

The meeting on 4/23/20 discussed the following items:

Parent is requesting increased full time paraeducator support to address all IEP needs, goals, and services. Parent is requesting changes and corrections to behavior intervention plan referring to attendance and medication changes. Parent disagrees with results provided on [speech] and [occupational therapy] assessments/evaluations. Parent wants to ensure that there is a continuation of building connections between the [speech therapist] and their child. Parent is requesting more [occupational therapy] services than what is being provided.

The meeting on 4/28/20 discussed the following items:

Parent wanted to review the present Emergency Protocol Plan, and would like a copy to be sent home. Parent wants to ensure that she is part of the process in implementation of the new behavior management system, and would like a copy of materials being used. Parent is requesting the concerns around confabulation and impulsivity be part of parents concerns and behavior section on team considerations. Parent wants to make sure that the team is clear that this a result of her child's disability. Parent and IEP team discussed adding restroom/water reminders throughout the school day and clear home/school communication of topics being covered in the accommodations section of the IEP. Parent and IEP Team also discussed the addition of a recess goal similar to recess goal on previous IEP's to improve social skills and how to engage appropriately with peers. Parent is requesting staff training on 'cueing'. This is presently not required by the district but can be considered following the data and progress with goals and services. Parent is concerned about truancy related to medical appointments for medical needs. District representative will follow up with student support services.

The reason we are proposing or refusing to take action is:

Parent had concerns that were not addressed in a previous IEP Review meeting that took place on 2/11/20.

Description of any other options considered and rejected:

Parent wanted to add IEP goals based around the restroom and drinking water. Parent wanted to increase the frequency of progress reports being sent home. Parent wanted an accommodation based around absences and truancy related to medical needs and appointments.

The reasons we rejected those options were:

These items were rejected and considered in different forms. Parent wanted to add IEP goals based around the restroom and drinking water. These will be placed as accommodations. Home communication system in accommodations. Parent wanted an accommodation based around absences and truancy related to medical needs and appointments. District Representative will follow up with student support services.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

A list of parental concerns, current IEP and evaluations, observations (formal and informal), Behavioral Interventions plans, and Emergency response protocol documents.

Any other factors that are relevant to the action:

The purpose of these two meetings were used to discuss parent concerns that were not addressed at an IEP review meeting that took place on 2/11/20. Due to the school closure, Mom will receive this [prior written notice] as well as a model draft of the IEP amendment. Once correct protocol can be put in place to access school documents and move forward with appropriate technology, parent will be sent a formal IEP online version of the IEP document.

72. In response to the Parent's request for staff training, the District stated an existing professional development plan that included trauma-informed practices were appropriate to support the staff to meet the Student's needs.

73. Sometime in May 2020, according to the District, the Parent requested an IEP meeting to address the unresolved agenda items from the April 2020 IEP meetings. The District rejected the request for a meeting. The prior written notice, dated May 26, 2020, stated:

Description of the proposed or refused action:

Mom is requesting IEP meeting for unresolved agenda items from IEP meetings on April 23rd and 28th.

The reason we are proposing or refusing to take action is:

All information discussed in meetings on April 23rd and April 28th were reflected in IEP and PWN.

Description of any other options considered and rejected:

Scheduling another IEP team meeting was considered but rejected at this time.

The reasons we rejected those options were:

The team is not reconvening as the proposed agenda items have already been reviewed by the team. Once the school year resumes and we assess the needs that [Student] may have in the beginning of the school year, we can propose a check in meeting to address any items of concern or needs.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

Previous meeting documents, PWN's, and update IEP.

Any other factors that are relevant to the action:

[Prior written notice] is being sent in response for parent meeting request. The team will not reconvene as all agenda items were thoroughly discussed at all previous meetings. The team is proposing monthly 60 minute check in meetings to address any questions or concerns that may come up throughout the school year. In reference to concerns surrounding staff training, it is important to note: At the current time, our building wide existing professional development plan includes trauma informed practices.

74. On June 15, 2020, the District issued a report on the Student's progress toward her annual goals during the spring 2020 school closures. All goals, except speech/language, stated "Emerging skill demonstrated but may not achieve annual goal within duration of IEP." The speech/language goal stated: "Not been provided instruction on this goal."
75. On June 26, 2020, the principal sent the Parent an invitation to a meeting on September 4, 2020, to discuss "itinerant schedules" for the Student to meet her teacher and behavior support paraeducator.
76. On August 21, 2020, the principal emailed the Parent, cancelling the meeting because there was no master schedule for all students or daily schedule for the Student developed at the time.
77. On August 31, 2020, the Parent emailed the principal, special education director, and other District staff to request an IEP meeting "to complete [Student's] current IEP, Safety Plan, and BIP..."
78. On September 4, 2020, the principal replied:  
I want to provide updates and a clarification. One update is that key staff working with [Student] will be trained next week on the behavior system [BCBA's] team developed last school year. You might recall the training was cut short when school closed, but with a new teacher and staff, more training was needed. Next week I'm hoping to confirm interviews for dedicated paraeducator support. Efforts over the summer did not result in suitable support. Teachers will be sharing any shifts in their daily/weekly schedules on Tuesday as some of those are being refined now that we have almost two days of Remote Learning completed. I want to clarify that the IEP is complete as is the BIP and Safety Plan. All documents were shared with you last school year. We are now focused on implementation.
79. On September 11, 2020, the Parent replied, in part:  
In our last meeting, it was noted that [BCBA] had not finished his draft, even though we had talked, and met, several times since school started in 2019. We also communicated following the April 28th meeting that there were unresolved issues. It was at that time, we decided together, that we would revisit prior to school resuming when we knew how the District would be operating due to COVID-19. In reviewing my journal and emails, I have not received a final, signed, copy for any of the items you mention. Please forward them to me by close of business Monday, September 14th.
80. In addition to the above emails, from September 4 to 21, 2020, the District, Parent, and Student's wraparound coordinator exchanged emails to schedule a wraparound meeting for the Student. According to the District, the wraparound meeting occurred on September 21, 2020, but no details of the meeting were provided.
81. On October 1, 2020, OSPI received this complaint.

## CONCLUSIONS

**Issue 1: Developing the IEP** – The complaint alleged the District failed to appropriately address the Student's needs in the individualized education program (IEP). The complaint alleged the IEP did not adequately address the Student's problem with elopement and meeting the needs resulting from her multiple disabilities.

When developing a student's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.

Here, the Student's June 2019, February 2020, and April 2020 IEPs provided for goals in the areas of reading comprehension, math calculation, written expression, communication, adaptive skills, and social/emotional behavior. The specially designed instruction and the accommodations provided in the Student's IEP addressed the goals and the Student's other needs. The District also developed a behavioral intervention plan (BIP) and a safety plan to address the Student's elopement and failure to respond to adult requests. The Parent repeatedly made requests to the IEP team, primarily to address elopement, but also raised concerns, such as confabulation, classroom math, toileting, and drinking water.

### Elopement

In response to the elopements, the District took a number of steps to curtail the elopements that included the BIP, safety plan, specially designed instruction in the area of social/emotional behavior, involvement of the board-certified behavior analyst (BCBA), emergency response protocol (ERP), and providing accommodations to prevent the elopements. The documentation showed the District met internally on November 6, 2019, November 7, 2019, and with the Parent on January 7, 2020, and February 11, 2020 to address the problem. Despite the District's effort to address the Student's elopement, the Student eloped five times, creating a dangerous risk to the Student each time. The Parent requested a dedicated 1:1 paraeducator for the Student to supervise her throughout the day. But the District put off the Parent's request by not immediately scheduling an IEP meeting to address the Student's November 1, 2019 elopement. After eloping again on November 5, 2019 into traffic, the District still did not convene the IEP team to address the immediate danger. In response to the Parent's request for a 1:1 paraeducator, and the principal first told the Parent a dedicated 1:1 paraeducator was not available throughout the school day, and then later said the District had a plan to provide a committed adult to be with the Student all day. Two days later, the principal stated she could not provide the supervision at all times, but was providing as much as she could without taking away services from other students.

The Parent's concern about the first elopement from school on November 1, 2020 was legitimate because it created a real danger to the Student; then the Student subsequently eloped four additional times where there was a potential for danger to the Student. Elopement into busy streets represented a significant escalation of the Student's behavior (previously the Student eloped but stayed within the school building). The first elopement and certainly the subsequent incidents should have triggered an immediate IEP meeting to discuss the Parent's concerns and



the Student's changed behavior. In response to the Parent's request for a 1:1 paraeducator to supervise the Student throughout the day, the IEP team should have addressed the request, not the principal. The IEP team was not necessarily required to provide a 1:1 paraeducator if acceptable alternatives could be found to ensure the Student's safety. But, the IEP team needed to take affirmative steps to deal with the immediacy of the risk and make the decisions about the Student's supports and services, which the IEP team did not do. With the COVID-19 school facility closure during spring 2020, the risk of elopement from the school building disappeared. But because the District failed to hold a timely IEP meeting to address elopement and address the need for a 1:1 paraeducator in November 2019, a violation is found. The Student's IEP team will be required to meet to address elopement and the need for 1:1 paraeducator to support the Student.

### Multiple Disabilities

The Parent alleged the Student's multiple disabilities were not taken into account and reflected in the IEP and specially designed instruction. Specifically, the Parent repeatedly requested that the IEP team address concerns about confabulation, classroom math, toileting, and drinking water. For confabulation, the Parent wanted the District to keep data and develop a plan to address the concern. The District noted the Parent's concern and referred to the confabulation in the Student's June 2019 IEP and the April 29, 2020 IEP amendment, stating confabulation would be added to team considerations along with designating it was a result of the Student's disability. The April 2020 IEP amendment added restroom/water reminders throughout the day as an accommodation for the Student. Regarding classroom math, the Parent wanted to ensure that the Student would receive the same specially designed instruction in the general education math class as in the special education classroom. The IEP included specially designed instruction in math 30 minutes, five times a week provided by a special education teacher according the Student's June 2019 IEP, and increased to 45 minutes, five times a week in the February 2020 IEP. It should also be noted that the January progress report stated the Student has mastered the annual math goal. The IEP team addressed each of the Parent's concerns in different ways: accommodations, specially designed instruction, and noting concerns in the IEP and prior written notice. Not all needs are required to be addressed by specially designed instruction and the documentation showed the District addressed the Student's multiple disabilities. Based on the documentation, there was insufficient evidence to establish a violation.

**Issue 2: Support for School Personnel** – The complaint alleged the District failed to offer appropriate supports for school personnel. The complaint stated the District refused to provide specific training for fetal alcohol spectrum disorder (FASD) and trauma. An IEP must include a statement of supports for school personnel that are necessary for the student to advance appropriately toward attaining the annual IEP goals including, training to staff.

Here, the Student's June 2019, February 2020, and April 2020 IEPs did not identify a need for any support for school personnel. The Parent stated the District needed to provide training to staff regarding FASD, trauma, and other topics to understand the Student sufficiently to provide appropriate supports. In response to the Parent's request for training, the Student's IEP team needed to determine whether the FASD training was required for the Student be able to make

satisfactory progress toward the IEP goals. In the prior written notice, dated February 2020, the District stated the FASD training was not necessarily required for staff and that the District provided building-wide training about trauma-informed practices. Thus, as the IEP team determined no additional training was required and the District provided building-wide professional development, no violation is found.

The Parent also made other requests to train staff. For example, according to the April 2020 prior written notice, the Parent requested training for staff on "cueing," but the District refused, stating this could be considered following additional data and information about the Student. Since there was no documentation, indicating a need for this training other than the Parent's recommendation that the staff specifically required FASD, cueing, or other training topics, the District was not required to provide the specific training to staff. No violation is found.

**Issue 3: Parent Input** – The complaint alleged the District failed to give the Parent an opportunity to provide decisions made about the Student's program. The complaint alleged the District failed to give the Parent sufficient time in IEP meetings to discuss her concerns, a copy of the Student's IEP, copies of the Student's progress data, and timely prior written notice.

#### Sufficient IEP Meeting Time

The Parent stated the IEP meetings did not provide the Parent with sufficient time to provide input into the IEP team's decisions and limited team members and the Parent from fully discussing her concerns. A district is required to provide a parent with the opportunity to participate in meetings and provide input into the decisions about the student.

Here, the Parent would email the District before IEP meetings an extensive list of concerns that she wanted the IEP team to discuss; however, the Parent alleged the District limited the length of the IEP meetings, which did not give her sufficient time to address all her concerns. The documentation showed that through emails, informal meetings, and IEP meetings, the IEP team was informed about the Parent's concerns. It was up to the IEP team to determine what needed to be discussed to ensure the Student had an appropriate educational program. The Parent did have input into the IEP team decisions, but because the team did not always agree with the Parent, the Parent wanted more time to discuss her concerns. But consideration of parent input does not require 100% agreement. The documentation showed the Parent had an opportunity to participate and provide input into the IEP team decisions, and that many of the Parent's concerns and suggestions were incorporated into the Student's IEP. No violation is found.

#### Copy of the IEP

The Parent stated she never received signed copies of IEP amendments, even after she requested them. A district must provide a parent with a copy of the IEP. Here, the District conducted IEP meetings in June 2019, February 2020, and April 2020. In response to the complaint, the District stated the Parent received a copy of the February 2020 IEP, but did not confirm the Parent received copies of the June 2019 and April 2020 IEPs. According to emails, the Parent sometimes received draft copies of the IEP, but it was not clear that the Parent received the final copy.

In addition, the District stated the Parent received the February 11, 2020 IEP and associated prior written notice on February 25, 2020. The implementation date of the IEP was February 13, 2020, which meant the IEP was implemented before the Parent received a copy of the IEP and prior written notice. Without some agreement from the Parent to implement the IEP sooner, the Parent should have received the IEP before implementation to give the Parent enough time to consider whether the Parent agreed with the IEP. Based on the lack of documentation that the Parent received a copy of all the IEPs and the lag in receiving the February IEP, a violation is found. As part of corrective action, the District must provide the Student's IEP team with written guidance to ensure the Parent receives a copy of the IEP in a timely manner.

#### Copies of Data

The Parent alleged the District failed to respond to her requests for behavioral data from the IEP progress reports, safety plan, BIP, and functional behavioral assessment (FBA). An IEP must include a statement how a student's progress will be measured and when the progress will be reported to the parent. The Student's IEPs stated that progress would be reported to the Parent each semester. The District provided documentation of the semester progress reports, which were sent to the Parent. However, the Parent wanted the raw data upon which the progress reports, FBA, BIP, and safety plan were based. Since the IEPs did not indicate that the Parent needed the raw data to fully participate in decisions and the Parent did not provide an explanation why the Parent required the raw data to fully participate, the District was not required to provide the data to the Parent as part of the progress reports and IEP implementation. No violation is found.

#### Prior Written Notice

The Parent alleged the prior written notices provided to the Parent were often late and missing information related to the meeting or information regarding the Parent's requests. Prior written notice ensures the parent is aware of the decisions made by the IEP team. The documentation showed that the District provided prior written notice of decisions made by the District, but that the prior written notices inconsistently addressed all of the meeting topics or Parent requests. For example, the Parent requested an IEP meeting because of unresolved issues at the April 2020 IEP meetings. The District provided a prior written notice that refused the IEP meeting request because all agenda items were discussed at the previous meetings. But in another example, the District failed to provide prior written notice with regard to the Parent's repeated requests for 1:1 paraeducator assistance for the Student. The Parent made numerous requests over time, but the District did not provide a prior written notice that addressed the request, which it should have as 1:1 paraeducator support should have been discussed by the Student's IEP team. The District was not required to provide a prior written notice for each Parent request every time a request was made or provide more than one notice to repeated requests. However, the prior written notice should accurately document the requests made, discussed, and approved or refused at IEP meetings. It should be noted that in some situations where there is little documentation of decisions, the prior written notice is crucial in determining what decisions were made and why. Here, the District did not provide notice as required in some instances. A violation is found. For the corrective action, the District will need to provide the Student's IEP team with written guidance about when prior written notices are required and the content.

## CORRECTIVE ACTIONS

By or before **January 15, 2021** and **February 12, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

### **STUDENT SPECIFIC:**

Before in-person services begin for the Student, the IEP team is required to convene to address the Student's propensity to elope from school. The IEP team must consider all options, including a designated 1:1 paraeducator assigned to the Student throughout the school day, to ensure the Student's safety.

The District must notify OSPI as soon as possible but no later than two weeks before the District provides in-person services to the Student at school. OSPI will then provide the timeline to convene the IEP meeting and other requirements.

### **DISTRICT SPECIFIC:**

By **January 29, 2021**, the District will provide written guidance to the Student's IEP team about making decisions through the IEP team and providing prior written notice. OSPI must approve the guidance. The guidance should address the concerns raised in this complaint and include examples.

By **January 15, 2021**, the District will submit a draft of the written guidance to OSPI for review. By January 22, 2021, OSPI will either approve the guidance or provide suggestions.

By **February 12, 2021**, the District will provide verification that the Student's IEP team received the written guidance.

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, 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.)