

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-87B**

### **PROCEDURAL HISTORY**

On November 27, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student B) attending the Medical Lake 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 Student B's education.

On November 28, 2017, 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 December 21, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on December 22, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not reply.

On January 9, 2018, OSPI requested that the District provide additional information, and the District provided the requested information on January 11, 2018. OSPI forwarded the information to the Parent on January 11, 2018.

On January 22, 2018, OSPI requested that the District provide additional information, and the District provided the requested information on January 23, 2018. OSPI forwarded the information to the Parent on January 24, 2018.

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

### **OVERVIEW**

During the 2016-2017 school year, Student B attended a District elementary school and was eligible to receive special education services under the category of developmental delay. Throughout the 2016-2017 school year, Student B was restrained on multiple occasions, but staff did not properly document the restraints and inform the Parent. In November 2016, Student B was suspended for one school day. In January 2017, Student B was suspended for three school days and then not allowed to return to school until a risk assessment was completed. As a result, Student B was removed from school for thirteen school days. The District did not hold a manifestation determination meeting to address the change in placement or take steps to conduct a functional behavioral assessment, but provided Student B services on one of the days. In February 2017, Student B's individualized education program (IEP) team amended his annual IEP and changed his placement from a part-time general education setting to a full-time special education program. In August 2017, Student B's IEP team agreed to conduct a reevaluation of Student B, but did not take steps to obtain the Parent's consent or conduct the reevaluation. During the 2017-2018 school year, Student B continued to be restrained, but staff did not properly document the restraints or inform the Parent. In November 2017, the IEP team changed

Student B's placement to a part-time special education setting so that he would attend school on a shortened school day schedule.

The Parent alleged that the District failed to follow procedures for changing Student B's placement, and failed to follow procedures for responding to the Parent's request that Student B receive speech therapy and occupational therapy services. The Parent also alleged that the District failed to use restraint and/or isolation with Student B consistent with the requirements of WAC 392-172A-02110 during the 2016-2017 school year. The District denied that it failed to follow procedures for changing Student B's placement or failed to follow procedures for responding to the Parent's request that Student B receive speech and occupational therapy services. The District admitted that it failed to meet the reporting requirements of WAC 392-172A-02110.

### **SCOPE OF INVESTIGATION**

This decision references events which occurred prior to the investigation time period, which began on November 28, 2016. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

### **ISSUES**

1. Did the District follow procedures for changing Student B's placement?
2. Did the District follow procedures for responding to the Parent's request that Student B receive speech therapy and occupational therapy services?
3. Did the District use restraint and/or isolation with Student B consistent with the requirements of WAC 392-172A-02110 during the 2016-2017 school year?

### **LEGAL STANDARDS**

Disciplinary Removal that Results in a Change of Educational Placement: A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days; or, when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. 34 CFR §300.536; WAC 392-172A-05155. After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. WAC 392-172A-05145(2),(4). If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate educational services to enable the student to continue to participate in the general education

curriculum, although in another setting, and to progress curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. WAC 392-172A-05145(4).

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-05145(5).

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, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or, if a behavioral intervention plan already has been developed, review the behavioral intervention plan, 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 behavioral intervention plan. 34 CFR §300.530(f); WAC 392-172A-05145(6).

Change in Placement: One of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016). The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

Individualized Education Program (IEP) Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their

disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's individualized education program (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. 64 Fed. Reg. 48, 12479 (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 behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the

skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031 (effective January 29, 2016).

Emergency Response Protocols: If the parent and the school district determine that a student requires advanced educational planning, the parent and the district may develop emergency response protocols to be used in the case of emergencies that pose an imminent likelihood of serious harm, as defined in this section. Emergency response protocols, if developed, must be incorporated into a student's IEP. Emergency response protocols shall not be used as a substitute for the systematic use of a behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior. Emergency response protocols are subject to the conditions and limitations as follows: a) the student's parent provides consent, as defined in WAC 392-172A-01040, in advance, to the emergency response protocols to be adopted; b) the emergency response protocols specify the emergency conditions under which isolation, restraint, or restraint devices, if any, may be used; the type of isolation, restraint, and/or restraint devices, if any, may be used; and the staff members or contracted positions permitted to use isolation, restraint, or restraint devices with the student, updated annually, and identify any required training associated with the use of isolation, restraint, or restraint devices for each staff member or contracted position; c) and any other special precautions that must be taken. WAC 392-172A-02105.

Referral: Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. 34 CFR §300.301; WAC 392-172A-03005(1). A referral may be implied when a parent informs a school that a child may have special needs. *In the Matter of the Lake Washington School District*, 57 IDELR 27, OSPI Cause No. 2011-SE-0020X (WA SEA 2011). When a student suspected of having a disability is brought to the attention of school personnel, the district must document that referral. It must provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with parental input, will determine whether the student is a good candidate for evaluation. It must review the referral, and it must collect and examine existing school, medical, and other records. 34 CFR §300.301; WAC 392-172A-03005. The district must determine within 25 school days after receipt of the referral whether it will evaluate the student. The district must provide the parent with written notice of its decision. 34 CFR §300.301; WAC 392-172A-03005.

Child Find: School districts must conduct child find activities calculated to locate, evaluate, and identify all students who are in need of special education and related services, regardless of the severity of their disability. WAC 392-172A-02040(1).

Consent Not Required: Parental consent is also not required before the administration of a test or other evaluation that is administered to all students unless, before the administration of the test or evaluation, consent is required from the parents of all students. 34 CFR §300.300(d)(1)(ii); WAC 392-172A-03000(4)(a)(ii). The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility for special education and related services. 34 CFR §300.302; WAC 392-172A-03010.

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. 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.

Likelihood of Serious Harm: Likelihood of serious harm as defined in RCW 70.96B.010 means: (1) A substantial risk that: (a) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide, or inflict physical harm on oneself; (b) Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or (c) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or (2) The person has threatened the physical safety of another and has a history of one or more violent acts. WAC 392-172A-01109.

Restraint: Restraint as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of

movement. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to participate in activities safely. WAC 392-172A-01162.

Restraint Conditions: Restraint device shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of restraint as defined by RCW 28A.600.485 is subject to each of the following conditions: a) the restraint must be discontinued as soon as the likelihood of serious harm has dissipated; b) The restraint shall not interfere with the student's breathing; and c) any staff member or other adults using a restraint must be trained and certified by a qualified provider in the use of such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of restraint consistent with RCW 28A.600.485. WAC 392-172A-02110.

Isolation: Isolation as defined in RCW 28A.600.485 means: Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. WAC 392-172A-01107.

Follow-up and Reporting Requirements: School districts must follow the documentation and reporting requirements for any use of isolation consistent with RCW 28A.600.485. WAC 392-172A-02110. Following the release of a student from the use of restraint or isolation, the school must implement follow-up procedures. These procedures must include: reviewing the incident with the student and the parent or guardian to address the behavior that precipitated the restraint or isolation and the appropriateness of the response; and reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents. Any school employee, resource officer, or school security officer who uses isolation or restraint on a student during school-sponsored instruction or activities must inform the building administrator or building administrator's designee as soon as possible, and within two business days submit a written report of the incident to the district office. The written report must include, at a minimum, the following information: the date and time of the incident; the name and job title of the individual who administered the restraint or isolation; a description of the activity that led to the restraint or isolation; the type of restraint or isolation used on the student, including the duration; whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents. The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred. If the school or school district customarily provides the parent or guardian with school-related information in a language other

than English, the written report under this section must be provided to the parent or guardian in that language. RCW 28A.600.485.

## **FINDINGS OF FACT**

### **Background Facts**

1. In March 2015, the District determined that Student B, who was a preschooler, was initially eligible for special education under the category of developmental delay. The March 2015 evaluation report showed that Student B was assessed in the areas of social/emotional/adaptive, gross motor, fine motor, speech and language, and cognition, and was observed in his classroom. The evaluation report stated that Student B was in the average range in the areas of gross motor, fine motor, speech and language, and cognition and did not require services in those areas. In regard to the area of social/emotional/adaptive, the report stated that Student B fell in the at-risk range for depression, withdrawal, and attention problems, and the clinically significant range for hyperactivity and aggression. The classroom observation summary stated:

Initially, observation began with all sitting in circle time setting on their carpet cushions. The classroom teacher was providing directions and leading activities regarding counting. These activities engaged the students to participate not only verbally but also with their bodies (counting on fingers and making motions with their arms). During the lesson the classroom helper offered some individual classroom instruction for [Student B] and sat next to [Student B] during their classroom instruction. During the observation [Student B] actively engaged with the teacher and students (raising his hand, answering questions and even at one point participating as the weather person[]), [Student B] had no issues transitioning from one activity to another. During the observation he did not demonstrate any behaviors that had the potential to interfere with [his] learning or the learning of others.

The evaluation report recommended that Student B receive specially designed instruction in the area of emotional/social behavior.

### **2015-2016 School Year**

2. During the 2015-2016 school year, the Student attended kindergarten at a District elementary school and continued to be eligible to receive special education services.
3. On October 13, 2015, the District completed a functional behavioral assessment (FBA) of Student B. The FBA stated that Student B's "problem behaviors" included:
  - kicking
  - throwing objects at others
  - knocking things off tables, desks, etc.
  - climbing up shelves
  - running away
  - using inappropriate language and calling others names using profane language
  - crawling on floor
  - attempting to topple furniture
  - refusal
  - defiance
  - disrespect

The FBA stated that the behaviors occurred both in the classroom and common areas of the school and occurred more frequently in the afternoons. The behaviors were triggered when adult attention faded, during academic work, during written expression tasks without intense adult support, and when Student B was tired, perceived injustice, was overstimulated, held accountable for his behavior, and was escalated to a point that he could not self-regulate. The FBA stated that consequences for Student B's behavior were "removal from classroom" and "isolation", and that the following interventions had been tried with Student B: time out in hallway, star chart, notes home, and law enforcement response. The FBA stated Student B would benefit from:

- unconditional relationships/time with adults
- frequent physical breaks
- instruction in self-regulation
- frequent check in/check outs
- opportunity to be a learning coach and leader
- frequent nurturing comments/actions
- frequent reminders of appropriate behavior
- frequent praise for appropriate behavior

4. On October 26, 2015, Student B's individualized education program (IEP) team developed a "Behavior Support Plan" for Student B. The behavior support plan stated that the function of Student B's behavior was "to escape tasks demands (behavior tended to increase in intensity if [Student B] perceives a lack of rapport or trusting relationship)", and may also be a response to overstimulation in his environment. The support plan included the same information as the October 13 FBA regarding problem behaviors and triggering antecedents. The support plan stated that the goal was for Student B to learn how to take a break to self-regulate his behavior, so that he would be successful in the general education classroom. The support plan incorporated the recommendations from the October 13 FBA and included the following "antecedent manipulations":

- When direct adult attention fades
- Allow a short rest when he is tired
- Provide support for academic work
- Shorten written expression tasks and provide adult support
- Provide a calm area when he is overstimulated
- When held accountable for behavior
- Teach and provide a break card/stick
- Follow unpreferred tasks with preferred activity

The support plan also stated that "all adults working with [Student B] are responsible for implementing this behavior plan. These adults include teachers (special education general education, principal, and paraprofessionals). The special education teacher is responsible [for] tracking progress over time." Additionally, the support plan included a "crisis plan", which stated that if Student B engaged in behaviors that are dangerous to himself or others, the following would occur:

- School district discipline policy will be followed.
- Immediately notify school administration and/or security.

- Immediately remove students and staff from the classroom if they are at risk.
- Notify parents.
- If the situation warrants, the local police department will be notified.

5. On April 19, 2016, Student B's IEP team, including the Parent, developed his annual IEP. The April 2016 IEP included present levels of academic and functional performance, which stated: [Student B] performs well in the classroom with support. He is able to say please and thank you independently. He asks permission to touch or use other people's things about 65% of opportunities. He will respond positively to instructions and comply on at least 50% of opportunities. He responds well to positive reinforcement such as skittles, sticker charts, and adult praise.

[Student B] is not currently able to fulfill a full school day in the classroom with his same age peers. He is currently in the classroom for an average of 120 minutes per day (600 minutes per week). This time includes lunch, recess, and at least [ ] 60 minutes of classroom activities per day. When frustrated, angry, or upset [Student B] will say things such as "shut up", "stupid", "I hate this school". He also uses much profanity when he is upset. He has used physical contact such as hitting with a closed fist, kicking, grabbing others, and hitting with an open hand. When angry or upset he has a tendency to throw things and destroy others' propert[y].

The April 2016 IEP included eight annual goals in the area of social/emotional skills and stated that progress reporting toward the goals would be provided on a trimester basis (November, March, and June). One of the goals was:

- When given a difficult situation or conflict with a peer or adult Student B will make an appropriate choice to resolve a conflict such as taking a break, asking for help, or using his words, improving social/emotional skills from appropriately resolving conflict with peers and adults 3/10 trials to appropriately resolving conflict with peers and adults 8/10 trials.

The other seven goals focused on Student B successfully following rules, norms, social, and classroom expectations, and included much of the same language in each of the seven goals. However, the goals differed in the amount of time Student B would spend at school. The goals were as follows:

- When given an opportunity to join and interact in the general education setting for 750 minutes weekly – Student B will successfully follow the rules, norms, and social and classroom expectations improving social/emotional skills from following the rules, norms, and social and classroom expectations successfully for 80% of opportunities during 36% of the school day to following the rules, norms, social, and classroom expectations successfully for 80% of opportunities during 45% of the school day.
- When given an opportunity...for 900 minutes weekly – Student B will...following the rules, norms, and social and classroom expectations successfully for 80% of opportunities during 54% of the school day.
- When given an opportunity...for 1,050 minutes weekly – Student B will... following the rules, norms, and social and classroom expectations successfully for 80% of opportunities during 63% of the school day.

- When given an opportunity...for 1,200 minutes weekly – Student B will... following the rules, norms, and social and classroom expectations successfully for 80% of opportunities during 72% of the school day.
- When given an opportunity...for 1,350 minutes weekly – Student B will... following the rules, norms, and social and classroom expectations successfully for 80% of opportunities during 81% of the school day.
- When given an opportunity...for 1,515 minutes weekly – Student B will... following the rules, norms, and social and classroom expectations successfully for 80% of opportunities during 90% of the school day.
- When given an opportunity...for 1,655 minutes weekly – Student B will... following the rules, norms, and social and classroom expectations successfully for 80% of opportunities during 100% of the school day.

The April 2016 IEP stated that the Student attended school for 1,665 minutes per week and spent 36% of his school day in a special education setting. However, the IEP also stated:

[Student B] will receive specially designed instruction in Social Emotional Skills in the resource room for 1,065 minutes per week. He will graduate incrementally to the general education setting as he meets his social/emotional goals. His specially designed instructional minutes will be reduced as his minutes in the general education [setting] increase to 45%-54%, 54%-63%, 63%-72%, 72%-81%, 81%-90%, and then from 90%-100%. These changes will be reflected in the [least restrictive environment] LRE as [Student B] meets his social/emotional goals. As he transitions into the general education setting, he will have the same access to nonacademic and extracurricular activities as his/her same age peers.

The April 2016 IEP provided for the following specially designed instruction in a special education setting:

- Social/emotional – 1,065 minutes per week (April 19 – May 7, 2016)
- Social/emotional – 915 minutes per week (May 8 – May 28, 2016)
- Social/emotional – 765 minutes per week (May 29 – June 14, 2016)
- Social/emotional – 615 minutes per week (June 15 – September 24, 2016)
- Social/emotional – 465 minutes per week (September 25 – October 15, 2016)
- Social/emotional – 315 minutes per week (October 16 – November 5, 2016)
- Social/emotional – 150 minutes per week (November 6, 2016 – April 18, 2017)

The April 2016 IEP provided for multiple accommodations/modifications. The IEP stated that a behavioral intervention plan (BIP) had been developed for Student B and that it was attached to the IEP. Attached to the April 2016 IEP was Student B's October 26, 2015 behavior support plan. The IEP also included an emergency response protocol.

6. The April 19, 2016 emergency response protocol was not signed by the Parent, but was signed by the school principal. The protocol stated:

In all areas and all times in which the student engages in physical aggression that creates [sic] [imminent] danger to himself, staff, or other students [-] behaviors such as kicking objects, throwing objects at others, knocking things over/off desks, climbing up shelves, running away, crawling on the floor/under furniture, or attempting to topple furniture. Specifically the response team shall:

- 1) Follow school district discipline policy.
- 2) Immediately notify school administration and/or security.
- 3) Immediately remove students and staff from room.
- 4) Notify parents.
- 5) If situation warrants, [local police department] will be notified.

The protocol also stated that “all right response physical interventions” could be used and that all District staff who had been right response trained were permitted to use restraint with Student B.

7. On June 3, 2016, the District issued progress reporting regarding Student B’s progress toward his April 2016 IEP goals. The progress reporting stated:  
[Student B] has made a slight gain in the past 5 weeks in his classroom. He is currently participating actively for 146 minutes a day. This averages to 731 minutes per week. Activities and work include lunch, recess, reading, writing, art, computers, choice time, social skills, and even singing with his class. He has had more days this progress period where he would leave the room and building without permission. He has however made sufficient progress in verbally asking for a break. He most frequently asks for a break after recess.

#### **2016-2017 School Year**

8. During the 2016-2017 school year, Student B attended first grade at a District elementary school and his April 2016 IEP continued to be in place.
9. The District’s 2016-2017 school year began on August 31, 2016.
10. The District was on break on September 5, 2016.
11. On September 7, 2016, Student B was restrained by District staff. According to the District’s “Restraint/Isolation Restraint report” (restraint report), Student B came in from recess and refused to enter the classroom. He then ran into a conference room, crawled under a table, and then began to kick the table on its side. The special education teacher coaxed Student B out from under the table, and Student B began kicking the teacher and another staff member. Student B then ran from the room and threw himself on the floor, and staff used a two-person escort to get Student B off the floor and down the hall. The three then continued down the hall and Student B was given the opportunity to walk independently. Student B was “talked down” by staff and walked independently to his destination. The restraint report stated that the restraint lasted twenty minutes, but also stated that the “escort was not used for the whole duration of the escalation.” The restraint report included a section indicating whether additional resources were needed, but the section was not completed. The restraint report indicated that the Parent was contacted about the incident on September 8, 2016 by the special education teacher, but did not indicate whether the restraint report was mailed to the Parent.

12. On September 10, 2016, the District sent the Parent a meeting invitation for an IEP meeting to “review and determine the appropriate program placement, services, goals, and objectives” for Student B. The meeting was scheduled for September 14, 2016. The meeting invitation stated that the school principal and Student B’s special education teacher would attend the meeting.
13. On September 14, 2016, the District amended Student B’s April 2016 IEP. It is unclear from the District’s documentation if an IEP meeting also occurred that day, as the September 14 amendment is titled “IEP Amendment Without Reconvening the IEP Team.” The September 14 amendment stated that the Student would receive 1,050 minutes per week of specially designed instruction in a special education setting. The amendment also stated:

Due to [Student B’s] present levels of performance he will be transitioned into the RISE [special education] program. [Student B] will receive specially designed instruction in social emotional skills in the RISE program for 125 minutes a day for five days a week (1,050 minutes a week). [Student B] will participate in the general education curriculum for the balance of his instruction. [Student B] will continue working toward the goals attached to this amendment.

The amendment was not signed by the Parent or any District staff members.

14. Also on September 14, 2016, the District issued prior written notice, proposing to change Student B’s IEP. The notice did not state why the IEP was being amended, but stated that the purpose of the IEP meeting was to “develop and/or review and determine the appropriate program, placement, services, and goals and objectives”. The notice stated that the Parent had a telephone conference with staff.
15. On September 23, 2016, Student B was restrained by District staff. According to the District’s restraint report, Student B started hitting and kicking at two paraeducators, and then made a fist and twice hit the glass window in the classroom door at “full speed”. The staff then used a “one person sitting hold” and a two-man escort. The restraint report stated that the restraints lasted ten minutes. The restraint report also stated that the school nurse examined Student B’s hand and that one of the paraeducators injured her back when escorting Student B to the “ready room”. The restraint report included a section indicating whether additional resources were needed. The “yes” box in the additional resources section was checked and the comment noted that the Parent was contacted and an antecedent for the incident was identified. The restraint report also stated that the Parent was contacted about the incident on September 23, 2016 by the school psychologist, but did not indicate whether the restraint report was mailed to the Parent.
16. On September 26, 2016, Student B was restrained twice by District staff. According to the District’s restraint report, Student B was walking down the hall with his special education teacher and began to run away. As a result, the special education teacher “went into a single person escort”. Student B then began to “exhibit that he could walk independently” and was released. Also according to the restraint report, Student B ran into a classroom and began throwing books. He then attempted to remove his clothing and hit and kicked the special

education teacher. Staff then directed Student B to have safe hands and feet and keep his clothes on, and provided the Student with soft items (pillows, stuffed animals) to kick and hit instead of staff, but the Student continued to kick and hit staff. As a result, the special education teacher and paraeducator placed the Student in a two-person hold. The restraint report noted that the restraints lasted fifteen minutes. The restraint report did not indicate that the Parent was contacted about the restraints or that a copy of the restraint report was mailed to the Parent. The restraint report included a section indicating whether additional resources were needed, but the section was not completed.

17. Based on the District's documentation in this complaint, a meeting occurred on September 28, 2016 regarding Student B. It is unclear from the documentation who attended the meeting and what was discussed or decided.

18. On October 5, 2016, a meeting occurred. It is unclear from the documentation in this complaint, if the meeting was meant to be an IEP meeting. The Parent did not attend the meeting, and there is no documentation to show the Parent was invited to the meeting. Based on the meeting notes, the following people participated in them meeting:

- Student B's special education teacher
- Student B's general education teacher
- School counselor
- School psychologist
- Paraeducator
- School principal
- Another special education teacher
- Another District staff member

The meeting notes stated that the staff reviewed Student B's progress, and that Student B was spending mornings in the general education classroom and that the last seven mornings had been "fine". Student B had difficulty in the afternoon and had some difficulty interacting with another student. As a result, staff had separated the students. Staff discussed that Student B was "displaying more talk – using baby talk" and that he seemed to enjoy being "touched-patted". A staff member shared that she had held and rocked Student B, and that he relaxed. Staff also discussed that Student B struggled with transitions, unless it was a transition to a preferred task, and that Student B needed reinforcers.

19. On October 12, 2016, a meeting occurred. It is unclear from the documentation in this complaint, if the meeting was meant to be an IEP meeting. The Parent did not attend the meeting, and there is no documentation to show the Parent was invited to the meeting. Based on the meeting notes, the following people participated in them meeting:

- Student's special education teacher
- Student's general education teacher
- School counselor
- Paraeducator
- School principal
- Another special education teacher

The meeting notes stated that the staff reviewed Student B's progress and that Student B was "ok" in the classroom, but ran off during transitions. On October 10, 2016, Student B bit his special education teacher and had difficulty transitioning to lunch even with three reminders ahead of time. The group discussed that Student B had better behavior in the mornings, and

had trouble coming in from recess. When in the special education classroom, Student B liked to work at a group table and mathematics was his favorite subject, although Student B said he did not want to do mathematics. The group also discussed Student B receiving applied behavior (ABA) therapy and that Student B had a hard time behaviorally on Fridays. The meeting notes stated that the group planned to meet again on October 19, 2016.

20. The District's documentation in this complaint included notes regarding Student B, which are dated October 20, 2016. The notes indicated that the meeting occurred at 7:55 a.m., but do not state who attended the meeting. The notes stated that on October 19, 2016, Student B tried to leave the classroom when he was escalated, and then went to the corner and urinated on the wall. The school principal had contacted the Parent about the incident and the Parent had "brushed it off". The meeting notes stated that Student B had socially inappropriate behavior, was hitting, and avoiding work, and that when frustrated, he would hit. The notes also stated that Student B "struggle[d] verbally", did not like sharing a paraeducator, and liked being a role model. Student B also was called names by his brother (Student A), had "highly unusual behavior", and hit, kicked, scratched, and bit.

21. On November 2, 2016, a meeting occurred. It is unclear from the documentation in this complaint, if the meeting was meant to be an IEP meeting. The Parent did not attend the meeting, and there is no documentation to show the Parent was invited to the meeting. Based on the meeting notes, the following people participated in the meeting:

- Student B's special education teacher
- Student B's general education teacher
- School counselor
- District special education director (District director)
- Paraeducator
- Another District special education teacher

The meeting notes stated that from 8:30-10:30 a.m., Student B was in his general education classroom<sup>1</sup> and was working well. He struggled with transitions, but was motivated to be with peers. Student B receive shortened assignments, breaks, and a fidget toy, and there was a paraeducator in the classroom to provide support. The notes also stated that from 10:30-11:30 a.m., Student B received "RTI".<sup>2</sup>

22. On November 16, 2016, Student B was suspended from school. The District's documentation does not include additional information about why Student B was suspended.

23. On November 17, 2016, the Parent sent a letter to the elementary school principal, stating that she had concerns about the school's discipline of Student B and that she looked forward to a scheduled conference with the principal.

---

<sup>1</sup> The November 2, 2016 meeting notes do not specify general education classroom only "classroom", but based on the other documentation in this complaint, Student B spent two hours a day in his general education classroom.

<sup>2</sup> It is assumed that "RTI" is in reference to response to intervention services. RTI services are not the same as specially designed instruction and are generally available to all students.

24. Due to parent/teacher conferences and holidays, there was no school November 21-25, 2016.
25. On November 21, 2016, the Student's IEP team, including the Parent, met to discuss Student B. Based on the meeting notes, Student B's general education teacher did not attend the meeting. Based on the District's other documentation, at the meeting, the school psychologist provided the staff members with a copy of the observation notes and recommendations made by an independent consultant who had observed Student B the prior school year in October 2015. According to the meeting notes, the IEP team discussed Student B's behaviors of running, biting, destroying property, scratching, hitting, spitting, using inappropriate language, and punching things (self-injurious). The IEP team also discussed "programs" and other things that had been tried with Student B, "intervention plans", Student B's schedule, and issues he was having on the bus. Additionally, the team discussed that Student B qualified for private ABA therapy, but the Parent had declined the services because Student B would have to miss two hours of school, and discussed how the Parent could help support Student B when she did not see the same behaviors he exhibited at school, in the home. The team discussed resources available to the family, and the District director agreed to reach out to a private behavioral health clinic that provided wraparound intensive services (WISe). The team also agreed that staff would use positive interventions with Student B on the bus and the District would provide safety training for all staff, including bus staff.

**Timeline for this Complaint Begins on November 28, 2016**

26. Based on the District's documentation in this complaint, the District did not provide the Parent with progress reporting toward Student B's April 2016 IEP goals in November 2016, as indicated in his IEP.
27. On December 14, 2016, Student B was restrained by District staff. According to the District's restraint report, Student B was sitting at a table for a group activity and began verbalizing that the activity was "stupid" and telling other students to "shut up". Student B then began kicking the student next to him, and then threw an object at the special education teacher. Student B then spit on the teacher and swung his fist at her. The teacher then placed Student B in a "seated hold" until the school secretary arrived. Staff then let Student B go "and got him on the ground". Student B continued to kick, hit, and try to bite the staff while he was on the ground. Staff then put Student B in a two-person hold, which continued "off and on for about 20 minutes." Staff then let go of Student B and moved away, but he continued to crawl toward the special education teacher, screaming and swinging. The school psychologist then arrived and took over the de-escalation with Student B, who had crawled under a table. The restraint report included a section indicating whether additional resources were needed, but the section was not completed. The restraint report did not indicate that the Parent was contacted about the incident or that a copy of the restraint report was mailed to the Parent.
28. The District was on break December 19, 2016 through January 2, 2017.

29. On January 11, 2017, Student B was suspended from school for three (3) days. According to the suspension notice, the reason for the suspension was:  
[Student B] refused to work and was given a break but would not return to work and instruction. Student escalated and bit employee. Student de-escalated and was spoken to. Rejoined group and then attempted to bite another student. The para stopped him. [Student B] then punched the teacher in the back.
30. On January 12, 2017, Student B's IEP team, including the Parent, met to discuss his behaviors, interventions, and educational program. Based on the meeting notes, the IEP team discussed the behavior incident on January 11, 2017, and the Parent relayed that Student B never threw things or bit at home. The team discussed that Student B had previously been suspended in October<sup>3</sup> and November 2016, and that with the January 2017 suspension, he had been suspended for four (4) school days. Additionally, Student B had injured a total of eight staff members during the prior or current school year. The IEP team discussed putting Student B back into a classroom setting after an escalation and concerns about staff safety. It was also discussed that WISE was scheduled to meet with the family on January 11, 2017, but had canceled the meeting and the District director suggested having a risk assessment of Student B completed. The meeting notes stated that staff encouraged that Student B be present on January 18, 2017, when a behavior specialist from the University of Washington Autism Center (UW Autism Center) observed the RISE program.
31. Later on January 12, 2017, the District director emailed the Parent, school principal, school counselor, the Student's special education teacher, and two other District special education teachers. The District director stated that she had contacted the private behavioral health clinic about Student B and the clinic had suggested that Student B receive a risk assessment. The director stated that the elementary school's school psychologist would be contacting the private clinic and "filing a school report". The director also stated that she would call the Parent "and let her know this needs to be done before [Student B] can come back to school. This will help to inform us if our safety plan is precise." In response, the Parent stated that she had contacted the private clinic and hoped to meet with them "next weekend or next week."
32. Also on January 12, 2017, the District issued a prior written notice regarding the team meeting that occurred. The notice stated that the District was proposing to initiate "Other: team discussion around escalations, safety concerns, and disciplinary actions." The notice stated that during the 2016-2017 school year, Student B had been suspended for four (4) school days. The notice also stated:  
It was considered having a risk assessment completed for the student. The assessment was set up with [the private behavioral health clinic] and the school psychologist will complete the school report needed and mom will need to contact them in regards to completing the assessment. This will help inform us if our safety plan is precise.

---

<sup>3</sup> The Student's attendance record and discipline record do not indicate that Student B was suspended in October 2016.

33. The District was on break on Monday, January 16, 2017.
34. According to Student B's attendance record, Student B was absent January 17, 19, 20, 23-27, 30, and 31, 2017 per the Parent's request.
35. On January 18, 2017, the District was closed due to inclement weather.
36. Also on January 18, 2017<sup>4</sup>, Student B's special education teacher spoke with a behavior specialist from the UW Autism Center.<sup>5</sup> Based on the phone conversation, the behavior specialist made several recommendations for structuring the RISE program classroom and also recommended the following for Student B:
- Add pictures of staff he will be working with each day to the schedule in order to structure expectations
  - Train paraeducators as soon as possible to implement his BIP (including right response training)
  - Keep Student B in cool down room until he is fully returned to baseline and is compliant with simple instructions
  - Structure time in cool down room so Student B knows what is expected
  - Line windows in cool down room with shatter paper in case of emergency. Consider placing couch cushions or other soft objects in windows or covering with wooden boards.

The report stated that an observation of the classroom was scheduled on February 23, 2017.

37. On January 26, 2017, the school psychologist emailed the Student's special education teacher, the elementary school principal, District director, and District special education compliance supervisor. The school psychologist stated that on January 13, 2017<sup>6</sup>, Student B was suspended for two (2) days and that the District had asked for a risk assessment of Student B to be completed. The Parent then went on vacation and indicated that she would get a risk assessment when she returned. On January 25, 2017, the school psychologist contacted the Parent to ask about the status of the risk assessment, as the District wanted to make a plan to get Student B back in school. The Parent responded that the provider from the private behavioral health clinic had been too busy to come and do the risk assessment, as the clinic had issues that had a higher priority. The psychologist then asked the Parent if she was available to attend a meeting on January 26, 2017, and the Parent had indicated no. After contacting the Parent, the school psychologist called the private behavioral health clinic, who indicated that the Parent would only allow someone to come to the home on January 23, after 7 p.m. The clinic did not have someone available that evening, and had since attempted to contact the Parent on January 24 and 25, but the Parent had not returned their

---

<sup>4</sup> The University of Washington Autism Center report is dated January 18, 2016. This appears to be in error, as the other documentation in this complaint indicates the report is from January 2017.

<sup>5</sup> Based on the documentation in this complaint, the in-class observation was canceled due to the District being closed due to inclement weather on January 18, 2017.

<sup>6</sup> This statement is incorrect as Student B was suspended on January 11, 2017 for three (3) school days, which is documented in his District attendance record and the January 11, 2017 suspension notice.

calls. The school psychologist stated that as of that day (January 26), Student B had been out of school for eight (8) days, plus another one day from a prior suspension.<sup>7</sup> The psychologist stated that she was recommending to District administration that the District offer Student B specially designed instruction in his home or another location as soon as possible.

38. On January 27, 2017, Student B's special education teacher contacted the Parent, asking if the Parent could attend a meeting on January 30, 2017. The Parent agreed to attend the meeting by phone.

39. On January 30, 2017, Student B's IEP team, including the Parent, met to discuss Student B's placement. The Parent participated in the meeting via phone. Based on the meeting notes, the private behavioral health clinic completed a risk assessment of Student B on January 26, 2017, but the District did not yet have a copy of the risk assessment report. Due to this, the District planned to have another "re-entry" meeting after it obtained the results of the risk assessment. The IEP team discussed Student B receiving "in-home care"<sup>8</sup> services. The notes also stated that Student B's placement when he returned would be a full-time special education placement in the District's "RISE" program, and that a behavior specialist from the UW Autism Center would observe the RISE program on February 23, 2017.

40. Also on January 30, 2017, the District issued a prior written notice, proposing to initiate a "disciplinary action that is a change of placement" and determine a risk assessment. Under the section titled "Description of the proposed or refused action", the notice stated:

Introductions were made for the meeting. The parent was asked about a risk assessment completed by [the private behavioral health clinic]. According to the parent, the assessment was completed on Thursday 1/26/17. The school psychologist offered [the Parent] to sign a consent form for permission to communicate between [health clinic] in order to obtain the results of the assessment. Forms were emailed to [Parent].

The notice also stated that because Student B had been out of school from suspension for "4 days"<sup>9</sup>, the team proposed in home specially designed instruction in the area of social/emotional skills. "The student may return to school pending the results of the risk assessment and a re-entry meeting with the team."

41. Based on the District's documentation in this complaint, on January 31, 2017, Student B received in-home services from a District paraeducator for forty-five minutes.

42. Also on January 31, 2017, a social worker from the private behavioral health clinic faxed a letter to the school principal which stated that a risk assessment of Student B had been completed. The letter stated:

---

<sup>7</sup> Based on the District's documentation, on January 26, 2017, the Student had been out of school for ten (10) school days in January 2017, one (1) school day in November 2016, and possibly more days in October 2016.

<sup>8</sup> Based on the other documentation in this complaint, "in-home care" is the same as in-home District services.

<sup>9</sup> The January 30, 2017 prior written notice originally stated that Student B had been out of school from suspension for ten (10) days, but the "10 days" was crossed out, and "4 days" was hand-written over it.

An assessment was completed at which time they indicated that they had no intent to harm others in relation to the incident in which [Student B] has bitten staff. At this time, they have agreed to outpatient therapy which is facilitated by ABA Therapy and the WISE program. Further outpatient follow up and care will be offered to [Student B] and both he and mother were educated on current programs at [the behavioral health clinic] through their child and family division. [Student B's] parent was supportive of this decision.

At this time, it is our judgment that there is a lack of indicators for treatment other than what is recommended above; however, there is no guarantee that indicators or conditions may not change at any time. In an emergency situation, please contact the appropriate emergency authorities at your facility or law enforcement personnel.

Crisis response staff are available 24-hours a day, seven days a week, at [the behavioral health clinic].

43. On February 1, 2017, Student B's IEP team met to review the risk assessment report and establish a re-entry plan for Student B. Based on the meeting notes, the following people attended the meeting:
- Parent
  - District director
  - School counselor
  - Principal
  - Student B's special education teacher

The IEP team discussed that WISE was scheduled to provide wraparound services to the family and had done an initial intake on January 31, 2017. Student B was also on a waiting list to receive ABA therapy. The team also discussed that UW Autism Center was scheduled to observe the RISE classroom and do training with staff. School staff were also going to start using a social-emotional learning curriculum. The meeting notes stated that the District director was recommending wraparound services in all settings and "roll over into the home. Consistency across all settings." The notes also stated, "re-assessment for the student to determine the needs of academic goals. The team is going to work together to get therapies started for [Student B]". The IEP team then discussed changing Student B's placement to a full-time special education setting. The IEP team amended Student B's April 2016 IEP so that the Student would receive 1,665 minutes per week of social/emotional services in a special education setting and spend 0% of his school week in a general education setting. The February 2017 amendment stated that "the team is proposing to provide specially designed instruction for [Student B] for a total of 1,665 minutes per week in the RISE program. The RISE program is a program designed around students learning social emotional, adaptive, academic, and safety skills in a small group and 1:1 setting."

44. On February 23, 2017, behavior specialists from the UW Autism Center observed the RISE classroom, which was Student B's full-time placement. After the observation, the behavior specialist provided a report of recommendations for changing the structure of the classroom, providing staff training, and implementing a data collection system.

45. On February 24, 2017, Student B was restrained by District staff. According to the District's restraint report, Student B returned to his classroom after a short recess where he had hit another student several times on the playground. Student B was showing signs of being agitated and was offered a break in several areas of the room, but refused. Student B then punched two students who were walking past him and grabbed another student by the shoulders and shoved him into a desk. Staff then removed the other students from the classroom, and Student B started throwing chairs across the room. He then attempted to tip over a large table, but was restricted by the special education teacher. Next, Student B climbed on the table toward the special education teacher and "was removed". The special education teacher verbalized that Student B was not being safe and used a one-person escort to the "break room". Student B then began kicking the wall in the break room and then tried to kick the glass windows in the room. In response, staff told Student B if he continued to kick at the windows, he would be restrained. Student B then kicked at the window and the special education teacher placed him in a one-person seated hold. Student B then kicked his legs up and kicked the teacher in the head. A paraeducator then held Student B's feet and eventually another special education teacher held Student B's leg. Staff directed Student B to take deep breath and he would then be released. Student B continued to struggle and twist. Due to this, the special education teacher instructed staff to let go and move away, as she feared Student B would be injured. Student B then removed his shoes and threw them at the special education teacher, which were deflected. Staff then told Student B that if he could not have safe hands and feet, he would have to be restrained. Student B began kicking at his special education teacher and the paraeducator, and the other special education teacher then used a one-person hold with Student B. Staff then spoke softly with Student B, who became calm and compliant, put his shoes on, and ate lunch. The restraint report indicated the restraint lasted fifteen (15) minutes. The restraint report included a section indicating whether additional resources were needed. The "yes" box in the additional resources section was checked and included a comment, which stated "debrief with mom via phone call on 2/24/2017." The restraint report stated that the special education teacher contacted the Parent about the incident on February 24, 2017. The restraint report did not indicate that a copy of the restraint report was mailed to the Parent.

46. On March 6, 2017, Student B was restrained by District staff. According to the District's restraint report, the special education teacher removed a toy from Student B because he continued to bang the toy against a table. Student B then went into the bathroom, turned on the water, and started kicking the walls and slamming the door. A staff member then spoke with Student B to try and redirect him and also turned off the water. Student B then tried to run past the staff member, who asked where Student B was going. In response, Student B called the staff member an inappropriate name and hid behind the door. Student B then came out from behind the door and tried to run past the staff member. The staff member then directed Student B to take a break, but Student B refused. The special education teacher then "guided" Student B into the break room, and Student B began kicking the wall and picking at the wallpaper. He kicked a small hole in the wall, and a staff member removed him from the area. However, Student B then became "more violent", continuing to hit and kick the wall, causing a deeper, larger hole. A staff member then told Student B if he

continued to hit and kick the wall, he would have to be held. The special education teacher then moved Student B away from the wall and he kicked his leg up, striking the teacher in the head. A paraeducator and the school counselor then held Student B's feet. Student B then tried to hit his head against the special education teacher's leg, but missed, and hit his head on the floor. Student B then grabbed the special education teacher's shirt and in response, she made a joke, which helped Student B to calm down. The special education teacher released Student B's arms and continued to talk with Student B, and his legs were released. The restraint report indicated the restraint lasted ten (10) minutes. The restraint report included a section indicating whether additional resources were needed. The "yes" box in the additional resources section was checked and included a comment, which stated that the special education teacher called the Parent on March 6, 2017 and left a message. The restraint report did not indicate that a copy of the report was mailed to the Parent.

47. On March 7, 2017, Student B was suspended from school for one (1) school day. According to the suspension notice, the reason for the suspension was:

[Student B] was transitioning to lunch. He wanted to be first but was instructed to be 2<sup>nd</sup>. Student [B] then punched another student with a closed fist in the back. [Student B] was removed to the classroom.<sup>10</sup>

48. Also on March 7, 2017, the District issued progress reporting regarding Student B's progress toward his April 2016 IEP goals. The progress reporting stated:

[Student B] is making good progress with taking a break in the RISE program. On average he will take multiple breaks independently either in a designated break area or in the break room. There are times where he needs to be prompted to take a break and will comply. We will continue instruction and monitoring his progress.

49. On March 30, 2017, Student B was restrained by District staff. According to the District's restraint report, Student B "started to go after other students" and then two paraeducators placed Student B in a two-man seated hold. The restraint report indicated the restraint lasted twenty-five (25) minutes and that one of the paraeducators was bitten in the arm by the Student. The restraint report included a section indicating whether additional resources were needed, but nothing was written in the section. The restraint report did not indicate that the Parent was contacted regarding the incident or that a copy of the report was mailed to the Parent.

50. The District was on break April 3-7, 2017.

51. According to the District's restraint reports, staff restrained Student B nine (9) times from April 10-18, 2017.<sup>11</sup> The incidents are summarized below:

- April 10, 2017 – At 10:00 am Student B finished working at "a station" with the special education teacher and then came over to work on reading on a computer tablet with a

---

<sup>10</sup> It is unclear from the District's documentation in this complaint, if school staff restrained Student B in order to remove him to his classroom. The District's documentation does not include a restraint report from March 7, 2017.

<sup>11</sup> Student B also received five (5) disciplinary referrals during that time period.

paraeducator. Student B did not want to do the reading work and instead tried to play games on the tablet. Student B then refused to complete his work or give the tablet to staff. As a result, staff took the tablet from Student B, who then “bolted out the door” about four feet. Staff then escorted Student B into the “break room” where he tried to kick and remove his pants. Student B then refused to keep his pants up and tried biting, hitting, and kicking. Student B was then restrained by two staff members. The restraint report indicated the two-person seated hold restraint lasted fifteen (15) minutes and that one of the paraeducator’s was kicked in the face by Student B.

- April 10, 2017 – At 10:40 am Student B was transitioning to math time and was given the choice of taking a break or working. Student B then entered the “break room” and “exposed” himself to his special education teacher and a paraeducator. Student B was then restrained by the teacher and the paraeducator. The restraint report indicated the two-person seated hold restraint lasted ten (10) minutes.
- April 11, 2017 – Student B was being “unsafe climbing through bookshelves. Disrupting class and moved to break room. Kicking and punching both [the paraeducator and the special education teacher] and tried to rekick a hole in the wall.” The restraint report indicated the two-person seated restraint lasted eighteen (18) minutes.
- April 12, 2017 – Student B refused to work and refused to comply, and was hitting and kicking. Student B was then restrained by two paraeducators. The restraint report indicated the two-person seated restraint lasted twenty (20) minutes and that one of the paraeducators was injured when she was “kicked twice on the lower right shin bone while moving student to break room – also got hit in right hand.”
- April 13, 2017 – At 11:34 am Student B was throwing chairs, kicking, and punching. Student B was then restrained by two paraeducators. The restraint report indicated the two-person seated restraint lasted seven (7) minutes.
- April 13, 2017 – At 1:13 pm Student B threw a shoe at another student and was moved into the “break room”. Student B started punching and kicking. Student B was then restrained by two paraeducators. The restraint report indicated the two-person seated restraint lasted twenty-nine (29) minutes and that one of the paraeducators was scratched on the wrist.
- April 14, 2017 – Student B aggressively charged at two paraeducators swinging punches and kicking. Student B was then restrained by two paraeducators. The restraint report indicated the two-person seated restraint lasted one (1) hour thirty-eight (38) minutes.
- April 17, 2017 – Student B was “coming at” a paraeducator kicking and punching. Student B was then restrained by two paraeducators. The restraint report indicated the two-person seated restraint lasted ten (10) minutes.
- April 18, 2017 – Student B was throwing blocks and bins. When asked to pick up, he started hitting and kicking staff. Student B was then restrained by the special education teacher and a paraeducator. The restraint report indicated the two-person hold restraint lasted ten (10) minutes.

The nine restraint reports regarding the April 10-18 incidents included a section indicating whether additional resources were needed, but nothing was written in the section. The restraint reports did not indicate that the Parent was contacted regarding the incidents or that a copy of the reports were mailed to the Parent.

52. On Friday, April 14, 2017, Student B’s special education teacher emailed the Parent, stating that she wanted to set up a meeting to go over Student B’s new IEP or set up an alternative

meeting that worked for the Parent. The teacher asked that the Parent let her know as soon as possible, as “the documents” were due by Tuesday, April 18.

53. On April 17, 2017, the Parent responded, asking what days and times the special education teacher was available to meet. The teacher replied that she was available any time on April 18, or they could hold a conference call or she could send home a copy of the IEP for the Parent to review. The Parent later responded that she would pick up the IEP to review, and the teacher agreed to have it ready in the morning on April 18.

54. The District’s documentation in this complaint included an IEP, dated April 18, 2017, which is signed by Student B’s special education and general education teachers and the elementary school principal. The April 2017 IEP included present levels of educational performance, which stated:

[Student B] works well in a one on one setting. He follows a picture schedule accurately and adjusts well to change in the classroom routine. He is able to add and subtract up to 10 with the use of 100s charts and manipulatives. He will stay engaged at center for at least 10 minutes with the use of positive reinforcement. He responds well to teacher’s praise, attention, and earning rewards. He will take a break independently during non-preferred whole group activities. During, one on one academic tasks, [Student B] will exhibit non-compliant and violent behaviors such as inappropriate language, hitting, kicking, biting, throwing objects, crawling under tables, and running from the classroom.

The April 2017 IEP included two annual goals in the area of social/emotional skills. The goals were as follows:

- When given instruction on the components of anger, such as anger triggers, physiological signs of anger, and arousal cues or physical response. Student B will be able to:
  - Identify the things that make him angry (triggers)
  - Identify his reactions to anger (emotional & physical cues)
  - Provide/identify a modelImproving social/emotional skills from inability to identify triggers, responses, and provide a model (0%) to ability to identify triggers, responses, and provide a model (90%) as measured by student work and teacher data.
- When given a situation where he becomes agitated/upset/angry [Student B] will ask for a break using pictures, signs, or words, improving social/emotional skills in anger management from 80% use of a break strategy to 100% use of a break strategy as measured by student work & teacher data.

The IEP stated that the Student would spend 0% of his school day in a general education setting and provided for the following specially designed instruction in a special education setting:

- Social/emotional – 335 minutes 5 times weekly

The April 2017 IEP stated that Student B’s behavior impeded his learning and the learning of others and stated “See attached FBA and BIP.” Attached to the April 2017 IEP was Student B’s October 26, 2015 behavior response plan. The April 2017 stated that Student B did not have an emergency response protocol, but an emergency response protocol, dated

“4/19/2016 / 4-18-17”, was included with the District’s response to this complaint. The protocol is the same as the protocol developed on April 19, 2016, and is not signed by the Parent.

55. According to the District’s restraint reports, staff restrained Student B five (5) times from April 19-28, 2017.<sup>12</sup> The incidents are summarized below:

- April 19, 2017 – Student B began tearing up a class chart, asked for a break, and then hit another student in the back of the head. He then went into the break room and threw and kicked items. He also tried kicking and punching staff. Student B was then restrained by two paraeducators. The restraint report indicated the two-person seated restraint lasted thirteen (13) minutes and that one paraeducator was kicked in the shins.
- April 20, 2017 – Student B kicked another student in the head and kicked and punched staff. Student B was then restrained by one paraeducator. However, the restraint report indicates that a two-person hold restraint was used. The restraint lasted twenty (20) minutes.
- April 26, 2017 – Student B was in the break area throwing things at people. He was asked to stop and refused. He began hitting and kicking at the special education teacher. Student B was then restrained by the special education teacher. The restraint report indicated the one-person chair hold restraint lasted fifteen (15) minutes.
- April 28, 2017 – Based on the restraint report Student B was restrained twice on April 28, 2017, once for thirteen (13) minutes and once for eleven (11) minutes. The restraint report did not address two separate incidents but stated that Student B was pushing another student and paraeducators, and then was punching, kicking, and trying to bite. Student B was then restrained by two paraeducators using a two-person seated restraint.

The four restraint reports regarding the April 19-28 incidents included a section indicating whether additional resources were needed, but nothing was written in the section. The restraint reports did not indicate that the Parent was contacted regarding the incidents or that a copy of the reports were mailed to the Parent.

56. On May 1-2, 2017<sup>13</sup>, staff restrained Student B on four (4) occasions. The incidents are summarized below:

- May 1, 2017 – At 9:30 am Student B began kicking a bookshelf and chair. Staff then escorted Student B to the “break room” and Student B started kicking, punching, and biting. The restraint report indicated the two-person seated restraint lasted fifteen (15) minutes.
- May 1, 2017 – At 12:07 pm Student B went to dump his is lunch tray and started punching and kicking. Staff escorted Student B to the “break room” and he calmed down for a minute, but then began kicking, punching, and biting. The restraint report indicated the two-person seated restraint lasted fifteen (15) minutes.
- May 1, 2017 – At 12:55 pm Student B was in the “break room” and was trying to punch and kick two paraeducators. Student B was then restrained by the two paraeducators. The restraint report indicated the two-person seated restraint lasted ten (10) minutes.

---

<sup>12</sup> Student B also received five (5) disciplinary referrals during that time period.

<sup>13</sup> Student B also received five (5) disciplinary referrals during that time period.

- May 2, 2017 – Student B was throwing toys, kicking, punching, and biting. Student B was then restrained by two paraeducators. The restraint report indicated the two-person seated restraint lasted thirteen (13) minutes.

The four restraint reports regarding the May 1-2 incidents included a section indicating whether additional resources were needed, but nothing was written in the section. The restraint reports did not indicate that the Parent was contacted regarding the incidents or that a copy of the reports were mailed to the Parent.

57. On May 24, 2017, the District held an IEP team meeting for Student B’s brother, Student A. The Parent attended the meeting. Based on the meeting notes from the May 24 meeting, Student B was also discussed. In regard to Student B, the meeting notes stated, “bizarre school behaviors – urinating, stripping, extreme behaviors...found a place to do neuropsych testing that accepts his insurance. That will help determine how to help him.”<sup>14</sup>
58. On June 6, 2017, the District completed progress reporting regarding the annual goals in Student B’s April 2017 IEP. The progress reporting for his goal of identifying when he was angry stated that Student B had “made little progress identifying what makes him angry, upset, or agitated using words, pictures, or signs. We will continue instruction on this skill and monitor progress.” The progress reporting for his goal of asking for a break stated that Student B had made some progress toward the goal and would “utilize breaks when appropriate. He is beginning to verbalize the need for a break when upset, angry, or agitated. We will continue instruction on this goal and monitor progress.”
59. The District’s 2016-2017 school year ended on June 15, 2017.

### Summer 2017

60. On August 23, 2017, the District held an IEP team meeting for Student B’s brother, Student A. The Parent attended the meeting. Based on the meeting notes from the August 23 meeting, Student B was also discussed. In regard to Student B, the meeting notes stated:
- WISE reports that last year he was picked up on their case load. They have spent the summer getting to know [Student B] and he is truly different at home. He seeks out his brother. He has a good connection with [a paraeducator, his special education teacher, and the Parent]. He loved earning things at school and things that bother him include lights, noises, sounds. Headphones are a calming tool. Address changes in the BIP.
  - Get him looked at for [occupational therapy] OT, Speech, and Academic goals – Use AIMS for present level. Have OT address his sensory needs.
  - Teach him a sign for hug or touch.
  - Time out is a consequence for his actions – 10 minutes in his chair.
  - Change our response to his behaviors, don’t give him the attention he seeks.
  - WISE is going to talk to Student B about going back to school.

---

<sup>14</sup> There is no other documentation in this complaint regarding neuropsychological testing of Student B.

- Working on mindfulness and feelings of what is happening personally prior to behavior happening.

### **2017-2018 School Year**

61. The District's 2017-2018 school year began on August 30, 2017. At that time, Student B began attending second grade at the same District elementary school and his April 2017 IEP was in place.
62. The District was on break September 4, 2017.
63. On September 11, 2017, Student B received a disciplinary referral. According to the elementary school's referral form (referral form), Student B was screaming and crawling under tables during reading time. The referral form indicated that as a result of the behavior, Student B spent 45 minutes out of the classroom and staff had a conference with him.
64. On September 12, 2017, Student B received a disciplinary referral. According to the referral form, "During independent work, [Student B] went into the break room. On his way by he hit [another student], moments later he came out of the break room and threw his shoe across the room [at another student]." The referral form indicated that as a result of the behavior, Student B spent 15 minutes out of the classroom, lost a privilege, staff had a conference with Student B, and the Parent was contacted.
65. On September 13, 2017, Student B received two disciplinary referrals. According to one of the referral forms, around 9:40 a.m., Student B kicked a hole in the breakroom wall while he was taking a break. The referral form indicated that as a result of the behavior, staff had a conference with Student B and contacted the Parent. According to the other referral form, around 11:05 a.m., Student B refused to line up for lunch. He crawled under the table and flipped the chairs. The referral form indicated that as a result of the behavior, Student B had lunch in the classroom by himself and staff had a conference with him.
66. On September 18, 2017, Student B received two disciplinary referrals. According to one of the referral forms, around 9:00 a.m., Student B kicked another student in the back on his way to the break area. The referral form indicated that as a result of the behavior, staff contacted the WISE team, had a conference with Student B, and contacted the Parent. According to the other referral form, around 12:25 p.m., during transition from activities, Student B went into the breakroom and tried to slam the door. He then opened the door and kicked his teacher. The referral form indicated that as a result of the behavior, staff had a conference with Student B and contacted the Parent.
67. On September 19, 2017, staff restrained Student B on two (2) occasions. The incidents are summarized below:
  - At 9:00 am Student B kicked another student while he was walking to the break area.<sup>15</sup> He then swung his fist at the special education teacher and kicked at her. The special education

---

<sup>15</sup> Student B also received a disciplinary referral for this incident.

teacher then restrained Student B using a one-person hold “one arm standing”. The restraint report indicated the restraint lasted four (4) minutes.

- At 12:20 pm Student B was kicking the walls. Staff asked him to stop and he then kicked the special education teacher. Staff then restrained Student B. The restraint report indicated the two-person seated hold restraint lasted ten (10) minutes and that while staff moved furniture to create a safe space, a staff member stepped on Student B’s leg. The school nurse checked out Student B’s leg.

The restraint reports did not indicate that the Parent was contacted regarding the incidents or that a copy of the reports was mailed to the Parent.

68. On October 3, 2017, Student B received a disciplinary referral. According to the referral form, Student B “refused to follow the rules in gym, ran from staff & possibly left the building. Upon return to classroom, threw the phone against the wall and then started throwing and stomping on everything in the classroom. Vulgar language.” The referral form indicated that as a result of the behavior, Student B spent the rest of the afternoon out of the classroom with a paraeducator and lost the privilege of attending gym time the rest of the week.

69. On October 4, 2017, Student B received a disciplinary referral. According to the referral form, Student B was “scribbling on desks, breaking pencils, throwing papers, shoes, trying to knock over bookshelves, throwing books & flash cards, using foul language.”

70. On October 9, 2017, Student B received a disciplinary referral. According to the referral form, “on the way to the bus [Student B] tried to hit [another student], staff intervened & got between the two. Staff tried to ride bus home [with Student B] to protect everyone since he was flipped, but per office request we did not.”

71. On October 11, 2017, the IEP team met to discuss Student B. The Parent did not attend the meeting, and it is unclear from the documentation in this complaint if she was invited to or informed of the meeting. The following people participated in the meeting:

- Special education teacher
- Intern
- Principal
- WISE (three team members)
- School psychologist

Based on the meeting notes, the IEP team discussed that Student B preferred to be “alone and safe”, did not like to be touched, and had small interactions with peers during preferred activities like games and breaks. The IEP team discussed collecting data “on what happens beforehand” and using break cards, request cards, and picture cues with Student B. Additionally, the team discussed having an older student act as a role model for Student B with the idea of having a 4<sup>th</sup>/5<sup>th</sup> grade student be a reading buddy.

72. On October 25, 2017, Student B received a disciplinary referral. According to the referral form:

[Student B] was upset when Ipad time was over. He started looking through the cupboards for the Ipad, and when he couldn’t find it he got a hold of a new package of

staples. He threw the staples [at a staff member] and all over the room. [The staff member] was worried [Student B] would hurt himself & called for back up.

The referral form indicated that as a result of the behavior, staff contacted the WISE team, who responded, and Student B was not allowed to participate in outdoor recess.

73. On October 30, 2017, Student B received a disciplinary referral. According to the referral form, Student B “was being destructive to the classroom. Throwing pencils, trying to stab his pencil in the wall, kicking the walls, swearing.”

74. On October 31, 2017, Student B received four disciplinary referrals. According to the referral forms, the following occurred:

- Around 9:00 am – during an entry task Student B broke the box of crayons and repeatedly threw them across the room. He then tried to kick a staff member multiple times. Student B then threw a desk and tried to throw it again, but a staff member put her foot on it so he could not do so. Student B then tried to kick a bigger hole in the wall, and the staff member called for backup. Staff then helped Student B deescalate.
- Around 9:30 am – Student B laid on a table and refused to get off. He then started throwing things and knocking things over. Student B then flipped over a larger table and tried “launching it” with his feet. As a result of the behavior, Student B lost a privilege and the Parent was contacted.
- Around 10:00 am – Student B ripped his paper and threw it, threw a chair, knocked over a mirror, and tried to make bigger holes in the wall. He also kicked and punched a staff member for holding down a desk that Student B was trying to throw at a window. As a result of the behavior, Student B lost a privilege and the Parent was contacted.
- Around 11:00 am – Student was trying to put holes in the walls and pick the locks of the cabinets with a paper clip. Once the paper clip was taken away he destroyed the class – knocking over furniture, ripping everything off the walls, kicking and hitting a staff member. As a result of the behavior staff contacted WISE, the school resource office, and the Parent.

75. On November 1, 2017, Student B received a disciplinary referral. According to the referral form, just before Student B finished his entry task, he threw it in the garbage. He then broke his pencil, knocked over the trash and recycle bin, and started kicking and throwing the contents about. Student B then flipped the table and tried throwing a desk. He also repeatedly punched a staff member.

76. Also on November 1, 2017, Student B’s IEP team met to discuss his progress and behavior. The Parent attended the meeting via phone. Based on the meeting notes, the IEP team discussed Student B’s behaviors, which included kicking holes in walls, attacking staff a member, using inappropriate language, flipping tables, ripping things off walls, breaking crayons and pencils, etc. The IEP team also discussed that Student B was only receiving counseling during a boys groups through a private counseling service. The Parent reported Student B did not have behavior issues at home. The IEP team discussed that school work was a trigger for Student B’s behavior and the recommendation that Student B’s school day be shortened and that a private behavior specialist be brought in. Additionally, the IEP team discussed the incidents on October 31, 2017 and an updated safety plan for the Student B.

The meeting notes also stated “sensory services/screening”, but do not include more information about this topic. The IEP team then amended Student B’s April 2017 IEP in order to reflect a shortened school day. The amended IEP was signed only by the school principal and Student B’s special education teacher. The November 2017 amendment stated that the Student would now attend school for 840 minutes per week and receive the following specially designed instruction in a special education setting:

- Social/emotional – 180 minutes 4 times weekly
- Social/emotional – 120 minutes 1 time weekly

77. On November 3, 2017, Student B received a disciplinary referral. According to the referral form, Student B wanted to ride his bike home, but had to ride the bus. He then got mad, threw his helmet, and started cussing and calling a staff member names. He then got on the bus angry.
78. On November 6, 2017, the Parent signed consent for an independent consultant hired by the District to conduct an “FBA/BIP/independent observation” of Student B.
79. On November 8, 2017, the District completed progress reporting regarding the annual goals in Student B’s April 2017 IEP. The progress reporting for his goal of identifying when we was angry indicated that Student B had made no progress toward the goal and included the same comment as written on the June 6, 2016 progress reporting (see finding of fact no. 58). The progress reporting for his goal of asking for a break stated that Student B had made “insufficient progress” toward the goal and would “use words, signs, or pictures to initiate a break less than 80% of opportunities. He will take a break when prompted sometimes. We will continue instruction and monitor progress.”
80. On November 13, 2017, Student B received a disciplinary referral. According to the referral form, Student B was laying under a table when the special education teacher came into the room. Prior to that, Student B had thrown his work around and was not complying with staff. Student B was offered an alternative activity and transitioned to his work.
81. On November 16, 2017, Student B was restrained by District staff. According to the District’s restraint report, Student B was tearing things off the walls and kicking cabinets. Staff then restrained Student B using a three-person hold. When Student B exhibited steady calm breaths along with “safe hands and feet”, he was released. The restraint report stated that the restraint lasted fifty (50) minutes. The restraint report included a section indicating whether additional resources were needed, but the section was not completed. The restraint report did not indicate that the Parent was contacted regarding the incident or that a copy of the report was mailed to the Parent.
82. Also on November 16, 2017, Student B received two disciplinary referrals. According to one of the referral forms, around 12:30 p.m., Student B threw his work around the classroom and drew on the underside of the table, cabinet, and wall with a crayon. According to the other referral form, around 1:00 p.m., Student B ripped papers and pictures from the wall. He then

began kicking the walls, causing a dent, and kicking cabinets. The referral form indicated that as a result of the behavior, Student B lost a privilege and staff contacted the Parent.

83. On November 27, 2017, Student B received two disciplinary referrals. According to one of the referral forms, around 12:55 p.m., Student B threw his work around the room and flung a rubber band across the room. When the rubber band was removed, he began kicking, hitting, trying to bite, and remove his clothing. He also yelled and called staff names. According to the other referral form, around 1:10 p.m., Student B threw work and materials across the room, ripped paper, and tore plastic siding off the wall. He began kicking and hitting staff. The referral form indicated that as a result of the behavior Student B lost a privilege and staff contacted the Parent.
84. Also on November 27, 2017, Student B was restrained by District staff. According to the District's restraint report, Student B refused to do work, kicked furniture, and also kicked and hit staff members. The restraint report stated that the restraint lasted ten (10) minutes. The restraint report included a section indicating whether additional resources were recommended, but the section was not completed. The restraint report did not indicate that the Parent was contacted regarding the incident or that a copy of the report was mailed to the Parent.
85. Also on November 27, 2017, the Parent filed this complaint.
86. On December 6, 2017, Student B's IEP team met to review the results of the FBA conducted by the independent consultant. Based on the meeting notes, the Parent did not attend the meeting, but the District's other documentation shows that she was invited to the meeting. The meeting notes stated that the District director had contacted the speech language pathologist "to complete a screen on [Student B] and that is in place."
87. On December 12, 2017, Student B's IEP team, including the Parent, held a second meeting to review the results of the FBA conducted by the independent consultant and developed a BIP for Student B. Based on the District's December 12, 2017 prior written notice, the IEP team discussed the following:
- 2015 speech screen completed, current speech screen completed student is making the same errors however at 1.0 SD
  - It should be noted when the student turns eight after the holiday break "another screen eval can be completed and the likelihood he will qualify will be high."
  - District director also indicated OT will screen – consent obtained.
  - "When speech is eval is completed academics will be also be evaluated. And after the OT results."
88. Also on December 12, 2017, the Parent signed a "consent for screening" in the areas of speech/language and fine motor skills.

## CONCLUSIONS

**Issue 1: Procedures for Changing Student B's Placement** – The one-year timeline for this complaint begins on November 28, 2016; therefore, OSPI will not address any issues regarding the District changing Student B's placement prior to that date.

**Disciplinary Change of Placement** – A change in placement occurs when a student is removed from his 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.

Based on the documentation in this complaint, Student B was suspended for school for three school days on January 11, 2017, and then not allowed to return to school until a risk assessment was completed. As result, Student B was removed from school for thirteen consecutive school days (in addition to his prior one day suspension), which is a change in placement. When a school district determines that a student eligible for special education requires a risk assessment or any other assessment to evaluate a student's needs, the district, not the parents, is responsible for arranging for and paying for those assessments. Here, the District was remiss in asking the Parent to schedule the risk assessment, and it is unclear from the documentation if the District also required the Parent and/or Student B's insurance to cover the cost of the assessment. It is also noted that while Student B's behavior of hitting and biting a staff member was harmful, given his age of seven years old, this behavior does not seem to rise to the level of needing a risk assessment, as risk assessments are generally used to determine whether a student poses a risk of imposing serious bodily injury to himself or others.

After a student has been removed from his current placement for ten school days in the same school year, during any subsequent days of removal, the school district must provide services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate educational services. The District provided Student B services on the thirteenth day he was removed, but did not provide Student B with services on the eleventh and twelfth day as required.

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 must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. If the IEP team determines the conduct was a manifestation of the student's disability, the IEP team must either: conduct an 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. Here, the District did not hold a manifestation determination meeting within ten

school days of changing Student B's placement to determine whether Student B's behavior was a manifestation of his disability. Had it done so, there would not have been a question that Student B's behavior was a manifestation of his disability. The District also did not review Student B's FBA and behavior support plan. This is particularly concerning given that Student B's behavior support plan was clearly not effective to address his behavioral needs. While the District did attempt to arrange for a behavior specialist from the UW Autism Center to observe Student B on January 18, 2017, it also effectively suspended Student B from school on that day. Additionally, there is no documentation to show that the recommendations made by the behavior specialist were incorporated into Student B's IEP or a behavioral intervention plan.

**Non-Disciplinary Change of Placement** – A reevaluation must be completed before a significant change of placement is made. In determining whether a change in placement has occurred, the district must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements.

On February 1, 2017, the District changed Student B's placement from a part-time general education setting to a full-time special education setting, which was a significant change in placement. However, the District did not conduct the required reevaluation prior to doing so, even though Student B continually exhibited inappropriate and harmful behaviors and the IEP team had discussed concerns about his academic performance.

On November 1, 2017, the District changed Student B's placement from a full-time special education classroom to attending school only part of the school day, which is a significant change in placement. However, the District did not conduct the required reevaluation prior to doing so, even though Student B's IEP team agreed in August 2017 that assessments were needed in several areas, Student B continually exhibited inappropriate and harmful behaviors, resulting in him being restrained on multiple occasions, and had made little to no progress toward his IEP goals. It is also noted that reducing the amount of a student's school day should be based on data suggesting that a student does not have the stamina or capability to attend school for a full school day. Here, it unclear if the IEP team used data to determine that Student B was in need of a shortened school day, as the District's documentation in this complaint did not include copies of any data. The District failed to follow procedures for changing Student B's placement.

**Issue 2: Procedures for Responding to the Parent's Request that Student B Receive Speech Therapy and Occupational Therapy Services** – A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation.

Based on the documentation in this complaint, in August 2017, Student B's IEP team agreed that Student B may be in need of services in the areas of fine motor, speech and language, and academics, in addition to the area of social/emotional. However, the District took no steps to obtain the Parent's consent for a reevaluation and begin conducting a reevaluation. While the documentation indicates that the District may have conducted some "screenings" and obtained the Parent's consent for a "screening" on December 12, 2107, a screening is not the same as an evaluation. The District will conduct a comprehensive reevaluation of Student B in all areas of suspected disability.

**Issue 3: Use of Restraint and/or Isolation with Student B** – The District admitted in its response to this complaint that it failed to follow reporting procedures required under WAC 392-172A-02110 during the 2016-2017 school year, and as a result, District principals provided training for staff at the beginning of the 2017-2018 school year. However, the District's restraint reports and other documentation regarding Student B from the fall of 2017 also do not meet the requirements of WAC 392-172A-02100 (referencing RCW 28A.600.485) as there is no documentation to show all of the incidents were reviewed with the Parent and Student, that the Parent was contacted about each incident within twenty-four hours, or that the Parent was mailed copies of the restraint reports. Additionally, it is noted that many of the restraint reports from the 2016-2017 school year and the 2017-2018 school year suggest that Student B was also isolated, but the District's documentation does not properly reflect this. The District is reminded that isolation as defined in RCW 28A.600.485 means restricting the student alone within a room or any other form of enclosure, from which the student may not leave. If Student B's time in the "break room" met this definition, then the District must document the isolation.

The District's response to this complaint included a completed restraint and isolation form, dated December 13, 2017, which complies with the requirements of WAC 392-172A-02100 and illustrates that staff at Student B's elementary school understand the requirements of RCW 28A.600.485. Given that the District has also already provided training to District staff, the District is not required to provide additional training at this time. It is recommended that the District review its restraint and isolation reporting practices to further ensure that all District staff understand their responsibilities under RCW 28A.600.485 and the definitions of restraint, isolation, and restraint device, and that the District is documenting when restraint and isolation forms are mailed to parents.

### **CORRECTIVE ACTIONS**

By or before **February 23, 2018, March 26, 2018, and June 15, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT B SPECIFIC:**

1. By **February 16, 2018**, the District will amend Student B's attendance record to clearly reflect all of the days he was suspended during the 2016-2017 school year. By **February 23, 2018**, the District will provide OSPI with a copy of the amended attendance record and documentation that the Parent had been provided with a copy of the amended record.

2. OSPI recognizes that the District has taken many steps to develop a program that meets Student B's needs, including holding meetings and contracting with independent consultants. In order to help further facilitate the implementation of an appropriate program for Student B, the District will contract with a board certified behavior analyst (BCBA) to work with Student B's IEP team and Student B for fifty (50) hours. The BCBA will review Student B's records, including his most recent December 12, 2017 BIP, and observe Student B at school, and if necessary, at home. The BCBA will work directly with Student B's IEP team to further develop a BIP for Student B that meets his needs and provide on-site training, including modeling concepts in the classroom. The BCBA will also provide at least thirty (30) hours of direct support to Student B. By **February 23, 2018**, the District will provide OSPI with a copy of the contract for services with the BCBA. By **March 26, 2018**, the District will provide OSPI with a copy of Student B's BIP and documentation of any staff training and direct support provided to Student B. The documentation will include the dates and times the training and/or support occurred. By **June 15, 2018**, the District will provide OSPI with documentation of any other staff training and direct support provided to Student B. The documentation will include the dates and times the training and/or support occurred.
3. By **March 16, 2018**, the District will conduct a full and individual comprehensive reevaluation of Student B that addresses all areas of suspected disability. The reevaluation must include academic, speech language, fine motor, and behavior related assessments. In addition to assessments, the reevaluation will include a review of records, including Student B's medical records, prior reevaluation(s), FBAs, IEPs, and information provided by WISE providers, teachers, paraeducators, and the Parent. The evaluation report will thoroughly discuss Student B's needs and identify any needed specially designed instruction and related services.

By **March 21, 2018**, the District will hold an IEP meeting to review the results of Student B's reevaluation and develop a new IEP, including a BIP. If the IEP team, in working with the BCBA ordered above, has already agreed upon a BIP prior to March 21, 2018, the IEP team may incorporate that BIP into the new IEP. The IEP and BIP must align with the requirements of WAC 392-172A-03090 and 01301. By **March 26, 2018**, the District will submit 1) a copy of any meeting invitations; 2) a copy of the evaluation report; 3) a copy of the new IEP; 4) a copy of the BIP; and, 5) a copy of any related prior written notices.

#### **DISTRICT SPECIFIC:**

District specific corrective actions were ordered in SECC 17-87A.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

#### **RECOMMENDATIONS**

It is recommended that the District review the general education disciplinary regulations in WAC Chapter 392-400 regarding the definition of suspension and the requirements for the discipline of students in grades kindergarten through fourth grade.

Dated this \_\_\_\_ day of January, 2018

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

**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

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