

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-27

PROCEDURAL HISTORY

On March 19, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On March 20, 2018, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On April 5, 2018, the District requested an extension of time to respond to the complaint. OSPI granted the request and extended the timeline to April 18, 2018 for the District to respond.

On April 18, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on April 19, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On May 1, 2018, the Parent requested an extension of time to reply to the District's response. OSPI granted the request and extended the timeline to May 4, 2018 for the Parent to reply.

Also on May 1, 2018, OSPI requested clarifying information from the District. On May 3, 2018, OSPI interviewed the District attorney via telephone.

On May 3, 2018, OSPI requested additional information from the District. On May 9, 2018, the District provided additional information and OSPI forwarded it to the Parent on May 10, 2018.

On May 4, 7, and 8, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on May 8, 2018.

On May 11 and 14, 2018, the Parent provided additional information and OSPI forwarded it to the District on May 14, 2018.

On May 17, 2018, the Parent provided additional information and OSPI forwarded it to the District on the same day.

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

OVERVIEW

During the 2016-2017 school year, the Student attended a District school and was found eligible for special education services. In January 2017, the Student's individualized education program

(IEP) team met to develop the Student's initial IEP, but the Parent did not sign consent for the initial provision of special education services. The Parent requested and the District paid for an independent educational evaluation (IEE) in the spring of 2017. During the 2017-2018 school year, the Student attended a different school in the District, and in the fall of 2017, was reevaluated. In November 2017, the Student's initial IEP was largely finalized, although due to continued disagreements, the Parent did not sign consent for the provision of services until January 30, 2018. Among other things, the Student's IEP provided for weekly counseling as a related service.

Initially, the District and Parent believed that the Student's counseling could be provided by the school's school-based health center, which was operated by a health care provider. From December 2017 until the end of February 2018, there were ongoing miscommunications between the Parent, the school team/District, and the health care provider about what services the counselor could provide and the difference between IEP directed and private counseling. At the end of February, the District informed the Parent that the counselor could not provide counseling per an IEP. In March 2018, the District identified a different counselor to provide the Student's IEP-counseling minutes and notified the family that the Student could begin counseling, but the Parent stated she would not meet the new counselor or consent to the new counselor's services. As of March 27, 2018, the District stated that it had a counselor ready to serve the Student, and that if the Parent would not allow the Student to work with the new counselor, the Parent could identify a counselor who could provide the IEP services.

Around January 29, 2018, the Parent requested that the District conduct a functional behavioral assessment (FBA) and the case manager stated that the FBA would be initiated after the Parent consented to the provision of special education services. Throughout February, the Parent emailed the case manager information regarding the Student's behaviors at home. District emails indicated that the case manager was collecting information that could be used by whomever conducted the FBA and the case manager asked the Parent to provide information about the Student's reluctance to go to school. Between February 8 and 28, 2018, the Parent requested multiple times that the District provide a consent form so the Parent could consent to the FBA. On March 1, 2018, the District provided and the Parent signed consent for the FBA.

The Parent alleged that the District failed to provide the Student with the related services and accommodations listed in his IEP. Specifically, the Parent alleged that the District failed to provide the Student with counseling and accommodations during testing for the District's advanced learning opportunities program. The Parent also alleged that the District conducted an FBA without Parent consent. The District denied all allegations.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation time period, which began on March 20, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUES

1. Did the District follow procedures for implementing the Student's individualized education program (IEP) in place during the 2017-2018 school year, including providing the related services and testing accommodations listed in the Student's IEP?
2. Did the District follow procedures for conducting a functional behavioral assessment (FBA) during the 2017-2018 school year?

LEGAL STANDARDS

Consent for Initial Provision of Services: A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student. The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student. If the parent of a student fails to respond to a request for or refuses to consent to the initial provision of special education and related services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student. If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district: Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the school district requests consent; and is not required to convene an IEP team meeting or develop an IEP. 34 CFR §300.300(b)(3); WAC 392-172A-03000(2)(d). Parental consent is for the initial provision of special education and related services generally, not for a particular service or services. Individuals with Disabilities Education Act (IDEA), 73 Fed. Reg. 73,007, 73,011 (December 1, 2008) (comment to 34 CFR § 300.300).

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 and if the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why: the student cannot participate in the regular assessment and the particular alternate assessment selected is appropriate for the student; (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 Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, case manager, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

Entitlement to Receive Related Services: Each eligible student is entitled not only to receive special education, but also to such related services as are required to assist the child to benefit from that special education. Related services must be listed in the student's IEP. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d).

Related Services: Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 CFR §300.34(a); WAC 392-172A-01155(1).

Choice of Personnel: As a general rule, districts have discretion in personnel decisions, such as staffing assignments or hiring. *Gellerman v. Calaveras Unified Sch. Dist.*, 37 IDELR 125 (9th Cir. 2002); *see also, In the Matter of the Clover Park School District*, OSPI Cause No. 2004-SE-0072 (WA SEA 2004); *In re Los Altos Elementary School District*, 38 IDELR 111 (CA SEA 2002); *In re Freeport School District*, 34 IDELR 104 (IL SEA 2000). To show a denial of a free appropriate public education, it must be shown that the staff member was unqualified. *Letter to Anonymous*, 49 IDELR 44 (OSEP 2007).

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

An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4). Once the need for a reevaluation is identified, a district must act "without undue delay and within a reasonable period of time;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008). The IDEA does not specify who is qualified to conduct an FBA, for example there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

FINDINGS OF FACT

Background Facts

1. During the 2016-2017 school year, the Student attended school in the District and received accommodations under a Section 504 plan.
2. In the fall of 2016, the Student was referred for a special education evaluation and the District evaluated the Student. The initial evaluation included assessments in the areas of study/organizational skills and written language and a review of existing information in the areas of adaptive/life skills, communication, motor skills, social/behavior skills.
3. On December 15, 2016, the Student's evaluation group met and determined that the Student was eligible for special education services under the category of other health impairment. The Parent participated in the meeting by phone and the Student's father attended the meeting in-person. The evaluation report stated the Student's diagnosis of attention deficit hyperactivity disorder (ADHD) had a significant impact on his school and academic performance, and recommended that the Student receive specially designed instruction in the area of study/organizational skills. The Parent disagreed with the evaluation, requested an independent educational evaluation (IEE), for which the District agreed to pay.

4. On January 30 and March 10, 2017, the Student's individualized education program (IEP) team met to develop the Student's IEP. Neither the Parent nor the Student's father attended the first meeting. The Parent attended the second meeting. The Parent did not provide consent for the initial provision of special education services and indicated that she wanted to wait until they got the results of the IEE.¹
5. On May 24, 2017, the District's evaluation group, including the Parent and Student's father, met to review the final IEE report. The IEE report stated that the Student had challenges related to executive functioning, that a diagnosis of written expression disorder was warranted, and that an additional diagnosis related to anxiety was warranted. The report stated that the "findings appear to be consistent with the findings of the recent [District] evaluation, and support [the Student's] qualification for special education services in the category of Health Impaired." The report recommended that the Student's IEP team review the report to aid in determining the effectiveness of interventions, made recommendations for the Student's IEP goals, stated that the listed accommodations appeared to be supported, and recommended that the Student receive mental health counseling.
6. The District's 2016-2017 school year ended on June 23, 2017.
7. According to the Parent's reply to the District's response to this complaint, on September 1, 2017, the District sent the Parent a draft IEP that included thirty (30) minutes of counseling a week as a related service, and on September 5, 2017, the Parent met with the District regarding the proposed IEP and requested more information regarding the counseling services.

2017-2018 School Year

8. At the beginning of the 2017-2018 school year, the Student began attending a District middle school, but because the Parent had not yet provided consent for the initial provision of special education, the Student was not provided services under an IEP.
9. The District's 2017-2018 school year began on September 6, 2017.
10. On September 14, 2017, the Parent agreed to and signed consent for the Student to be reevaluated. The reevaluation included assessments in the area of fine motor/occupational skills and the District reviewed existing data, including the Student's May 2017 IEE.
11. According to the District's response to this complaint, during the 2017-2018 school year, the District had a partnership with a health care provider (provider 1) that operated a school-based mental health center at the Student's middle school. Provider 1 offered mental health and counseling services to all students, regardless of their eligibility for special education.

¹ This fact references the decision in special education citizen complaint (SECC) 17-54, which was filed by the Parent on July 3, 2017 regarding the Student's initial evaluation. A decision in SECC 17-54 was issued on September 1, 2017.

12. On September 8, 2017, a mental health counselor and care coordinator at the Student's middle school emailed the principal and referred the Student to a private counselor (counselor 1) that worked for provider 1 at the middle school.
13. On September 12, 2017, the Parent emailed a District school psychologist and a District occupational therapist and stated that she met counselor 1 and felt that counselor 1 did not "have background in all of [the Student's] diagnoses or medication."
14. On October 13 and 16, 2017, the Student's evaluation group met, with the Parent participating by phone, to review the results of the Student's reevaluation and found that the Student continued to be eligible for special education and related services, but changed the eligibility category to multiple disabilities. The evaluation report stated that the Student's diagnoses adversely impacted the Student's "capacity to interpret nonverbal cues from his environment and others around him, interact socially with peers, regulate his emotions, follow directives from adults, ignore classroom distractions, manage time effectively, and plan and maintain his organization relative to writing." The evaluation report recommended that the Student receive specially designed instruction in the areas of social/behavior, written language, and organizational/study skills, and that fine motor/OT supports should be included in the Student's IEP as accommodations. The evaluation report also attached and incorporated the recommendations from the IEE, including the recommendation that the Student receive mental health counseling. However, the evaluation report did not specifically state on the recommendations page that the Student needed to receive counseling as a related service.
15. On October 24, 2017, the Student's IEP team met and continued to develop the Student's initial IEP. The IEP team also discussed requesting an assistive technology evaluation for the Student and asking the evaluator who had conducted the Student's IEE for recommendations regarding counselors that could provide the Student services.
16. According to documentation provided by the District, the IEE evaluator reported to the District that he believed the Parent wanted a psychiatric nurse or a psychiatrist, because the Parent indicated that she wanted someone to manage the Student's mental health and medications. The IEE evaluator stated that this was not realistic in a school setting and that a team approach would be more feasible and effective. The IEE evaluator stated that the Student should see a counselor on a regular basis at school and that this person could work with a nurse and the Student's physician to monitor medication changes.
17. On November 14, 2017, the Student's IEP team, including the Parent, again met and reviewed the Student's draft initial IEP. The notes from the meeting stated that next steps included reviewing accommodations, finishing goals, and reviewing service and counseling minutes.
18. The District was on break November 23 and 24, 2017.

19. On November 27, 2017, the Student's IEP team, including the Parent, met a third time, and continued developing the Student's IEP. The Student's IEP was largely finalized on November 27, although the Parent had not yet signed consent for the initial provision of services.
20. The Student's proposed IEP included two annual goals in the area of study/organization skills, three annual goals in the area of social/behavior, and two annual goals in written expression. The IEP listed the following accommodations and modifications:
- **Weekly:** Access to follow-up practice time, frequent review of skills learned
 - **Daily:** Access to typing, visual daily schedule, non-written responses, break assignments into smaller parts, non-graded daily practice logs, modified late start schedule, grade based on content, homework not graded, missing assessments/assignments noted as missing (not zero), pencil grip, preferential seating, notes/study guides, sensory breaks, shortened assignments, check for understanding, graphic organizer
 - **Setting (Daily/Testing):** Modify/repeat/model directions, preferential seating, individual or small group instruction, study outlines/guides/graphic organizers
 - **Timing/Scheduling (Daily/Testing):** Prior notice of tests/quizzes/large assignments, extra time, modify schedule
 - **OT Support:** 500 minutes per year

The IEP stated that the Student would participate in State assessments with accommodations and provided the following specially designed instruction and related services from January 30, 2018 to January 29, 2019:

- **Written Language:** 60 minutes per week, general education setting
 - **Social/Behavior:** 237 minutes per week, special education setting
 - **Study/Organizational Skills:** 237 minutes per week, special education setting (concurrent)
 - **Counseling Services:** 30 minutes two times per week, special education setting (related service)
21. According to the District's response to this complaint, the District originally believed that counselor 1 would be able to provide the Student with IEP counseling services. According to the Parent's reply, the Parent did not feel like counselor 1 was a good option for the Student, but wanted the Student to receive mental health services.
22. On November 28, 2017, the Parent emailed one of the District's directors of special education (director 1) about several issues and also stated that she invited counselor 1 to attend the next IEP meeting, which was scheduled for December 11, 2017.
23. On December 4, 2017, the Student's IEP case manager emailed the Parent, another District director of special education (director 2), and the middle school principal and attached a copy of the Student's draft IEP to review before the next IEP meeting. The case manager stated that he had added an emotional recognition goal to the IEP, but that he wanted to talk to counselor 1 because she would be the best person to work with the Student on that goal.
24. On December 7, 2017, the Parent emailed counselor 1 and provided information about the Student, the IEP meetings the Parent and District had already held that school year, potential

therapy methods to use with the Student, and concerns about the District paying for counseling services.

25. On December 11, 2017, prior to the IEP meeting, a series of conversations occurred over email:

- Counselor 1 emailed the Parent and stated that she did not know if she could attend the IEP meeting that day because she had not yet received “consent...to provide counseling services.”
- The Parent email director 1 that she just found out that counselor 1 may not be able to attend the meeting unless “billing is figured out” and that “We have made it clear from the very beginning that the mental health counseling cannot come out of our benefits. [The District] needs to be responsible for the bill. [The Student’s] issues are caused by lack of [District] support, failed child find obligation and continues with no FAPE.”
- Director 1 emailed director 2 and stated that there was a billing issue and that the counselor had not attended the IEP meeting.
- Director 2 emailed director 1 and stated that if counseling were listed on an IEP, the District “would and can cover counseling expense and expenses related to the IEP process.”

26. On December 11, 2017, the Student’s IEP team met and reviewed the latest version of the draft IEP. The team discussed the IEP goals, accommodations, and the Student’s progress in his classes.

27. On December 12, 2017, the Parent emailed counselor 1 and stated that director 1 was looking into the billing issue. Counselor 1 forwarded the Parent’s email to her supervisor and the supervisor responded:

I would want clarification about what the district is asking...Are they asking for you to provide IEP mandated counseling services? Or are they actually agreeing to pay for private counseling? IF they conclude that they will indeed pay for private counseling, and IF you deem this student as able to join your caseload, I will then follow up with someone in our billing department...

Counselor 1 responded: “No, school and parent keeps inviting me to IEP meetings, but I can’t go as parents have not signed the consent form and hence I’m not yet his service provider. I see [private counseling] as family’s wish.”

28. Based on the documentation in this complaint, provider 1 has a policy that its school-based health care providers cannot provide counseling services that are listed on a student’s IEP. However, provider 1 can provide “private” services to students eligible for special education, just as it can provide “private” services to students not eligible for special education.

29. On December 19, 2017, counselor 1 emailed the Parent and asked if she had heard anything back from director 1 about billing through the District. The Parent responded that she had not, but would check with director 1 again.

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

31. On January 2, 2018, the Student's father emailed the Student's IEP case manager (and cc'd director 1, the principal, and counselor 1) and asked if there was "any new information on coverage of counseling for [the Student]?"
32. In response to the father's email on January 2, 2018, the IEP case manager emailed director 1 and director 2 that counseling services could start as soon as an IEP was in place.
33. On January 4, 2018, the Parent emailed the case manager and director 1 and asked for the following:
- Timeline for receiving assistive technology;
 - "Date or what need to happen for BIP (was it?) – behavioral assessment";
 - "Dates for an IEP – we need this in the calendar now"; and,
 - Confirmation that counselor 1 and the math teacher can attend the IEP meeting.
34. On January 9, 2018, the Student participated in testing for the District's advanced learning opportunities program. Prior to the start of the testing, the principal emailed the test administrator a list of the Student's 504 plan accommodations.²
35. On January 16, 2018, the Parent emailed the case manager and director 1, and cc'd counselor 1, regarding the Student's anxiety about attending school. Counselor 1 responded and recommended that the Parent connect the Student with mental health services, stated that her caseload was currently full, and provided a list of local mental health service locations.
36. On January 19, 2018, the Parent emailed the OT and counselor 1 regarding accommodations for the Student's sensory needs and concerns about social skills. The Parent stated that the District had approved the Student's counseling and asked counselor 1 to keep the Student in mind if her schedule opened up. Counselor 1 responded and asked if the Parent's concern about "using insurance benefits" had been addressed. The Parent responded that the District had agreed to pay for counseling and that she anticipated that counseling would start as soon as she consented to the IEP.
37. Also on January 19, 2018, counselor 1 emailed her supervisor and stated that she received an email from the Parent regarding District approval for counseling. Counselor 1 wrote that the Parent still needed to sign a consent form and that the following things needed to happen "1. Make sure [provider 1] service is not district-provided IEP service; 2. Consent form signed; 3. Review existing IEP; 4. Review case with you and strategize." The supervisor responded and stated that counselor 1 needed to clarify whether the approved counseling services were going to be provided by the District based on the Student's IEP and expressed concern that the Parent did not seem to understand that there would be a wait before the Student could be seen based on counselor 1's caseload.
38. On January 24, 2018, according to the District's response, the Student's case manager met with counselor 1 and her supervisor, who informed the case manager that counselor 1 would

² The Parent stated in her reply that the test administrator was not informed of the Student's accommodations. This is directly contradicted by the email from the principal on January 9, 2018, listing the Student's 504 accommodations.

not be able to provide counseling services under an IEP. According to the District, in response to this information, the principal contacted an administrative manager at provider 1 to discuss the situation. Based on his discussion with provider 1, the principal believed that provider 1 had agreed to allow counselor 1 to provide the Student's counseling services, despite provider 1's policy that its counselors could not provide IEP counseling minutes.

39. On January 25, 2018, counselor 1 forwarded an email from the Parent regarding the Student's IEP to her supervisor, and the supervisor responded that the IEP team needed to make clear to the Parent that counselor 1's "services cannot be part of the IEP" and that counselor 1 would need to let the Parent know the "amount of services you could provide (IEP apparently says 2x week for 30 minutes each visit)."
40. On January 26, 2018, the Parent emailed director 1 and the Student's case manager and stated that she wanted the District to update the prior written notice.³ Among other requests, the Parent stated:
- Data supporting BIP denial to be stated in PWN
 - Address the Student's social integration to prevent rising anxiety, worsen asthma and ADHD symptoms, and to address bullying
 - Address what causes the Student's school refusal as evidenced by worsened attendance record of missing classes, being tardy to school or during class transition as well as frequent visits to the school nurse's office
41. According to the Parent's reply, sometime on or around January 29, 2018, the Parent requested, via phone, that the District conduct a functional behavioral assessment (FBA) of the Student.
42. On January 29, 2018, the Parent emailed the principal, the case manager, and director 1 regarding the challenges the Student had in getting to school on time. In response, the case manager stated that the FBA was "part of an IEP and [would be] initiated after IEP services have been consented to."
43. On January 30, 2018, the Parent signed consent for the initial provision of special education services and then requested an IEP meeting to amend the Student's January 2018 IEP. The District began implementing the Student's IEP that same day.
44. According to the District's documentation in response to this complaint, after the Parent consented to the provision of services, the case manager began collecting information emailed by the Parent (e.g., the January 29, 2018 email) that could be used by whomever would conduct the FBA.
45. On January 31, 2018, counselor 1 and her supervisor communicated via email about asking the Parent to remove counselor 1 from emails until the Parent signed consent for counselor 1 to see the Student as a "[provider 1] patient (NOT an IEP student)." The supervisor and counselor 1 discussed that neither of them knew whether or not the Parent had been

³ The Parent did not specify which prior written notice she wanted the District to update.

informed that counselor 1 could not provide services under the IEP. Counselor 1 stated that she would ask the case manager whether the Parent had been notified about her “no-role in IEP.”

46. Also on January 31, 2018, the case manager emailed director 1, director 2, the District’s regional program specialist, and the OT. The case manager stated that he had never set up counseling for a student and needed assistance, and asked if they could get assistive technology set up now that the Parent signed consent for IEP services. The case manager stated that the Student was already using a motivator device and had a tablet.
47. On February 1, 2018, the Student participated in additional testing for the District’s advanced learning opportunities program with the same test administrator. According to the District’s response to this complaint, there was “no evidence to suggest that the Student did not have access to the accommodations provided for in his [January 2018] IEP.” The test administrator reported that everything went well and the Student qualified for the highly capable programming.
48. On February 5, 2018, several email conversations occurred, which are summarized as follows:
- Counselor 1 emailed the Parent and stated that she would possibly be able to begin services by the last week of February. The Parent responded, copied director 1, and stated that she had already signed and “turned in all the paperwork” and asked director 1 to confirm that the District would pay for counseling. The Parent also wrote that “we have known for a while now that counseling will part of [the Student’s] IEP, financed by [the District], it stuns me that [the Student] got onto mental health counselor’s wait list just now.” The Parent asked how the Student would get counseling until the counselor’s schedule opened up and how the Student would be compensated for missed counseling hours. Director 1 responded and stated that the school would take care of the billing question and that the school team would set up and was working towards setting up services.
 - The Parent emailed the IEP case manager and asked when counseling would begin, and the case manager responded that he was working on getting the counseling set up. The Parent replied that she did not understand why the counseling was not yet set up because the IEP team had known counseling would be part of the IEP for months.
 - The Parent emailed counselor 1 that she had consented to counseling on January 30, 2018.⁴ The Parent stated that counseling was part of the Student’s IEP and then asked if anyone had contacted counselor 1 about scheduling sessions with the Student.
 - Counselor 1 emailed the Parent and stated that she had previously informed the Parent that her caseload was full on January 16, 2018 and that she had provided the contact information for other mental health service providers. The counselor stated, “My understanding is counseling for [the Student] is not part of the IEP. My supervisor has met with [the case manager] on 1/24 about this.” The counselor copied the case manager and her supervisor on

⁴ The Parent signed consent for the initial provision of special education services and the Student’s IEP provided him with sixty (60) minutes a week of counseling. The Parent had not yet signed provider 1’s consent form for private counseling services.

the email. The case manager responded to the email chain: "Counseling for [the Student] is on the IEP. 30 minutes 2 times a week."⁵

- The IEP case manager emailed the Parent and the Student's other teachers and stated "I could use your help collecting information on [the Student] in non-structured time. If he is on time to your class, or is leaving at the same times as his peers..." The case manager stated that he was looking for "anecdotes" but would eventually be "looking to collect some data on his peer to peer interactions."

49. On February 6, 2018, the Parent emailed director 1 and stated that she felt counselor 1 was not qualified because counselor 1 could not adjust the Student's medication and that the Parent felt pressured to start the Student's counseling "with the school based mental health counselor." The Parent also stated that she wanted counseling year round.

50. On February 6, 2018, counselor 1's supervisor emailed the case manager the following:

I am wondering how we can best communicate with [the Parent] that the services on [the Student's IEP]...are separate and apart from [counselor 1's] services to students through [provider 1's] school based health clinic? I would like [counselor 1] to be removed from her communications with the IEP team. As we said before, [the Parent] is welcome to access counseling services through [counselor 1]...just as any other student at [the school] can access her counseling services. They would need to sign a consent form, and a release of information...[Provider 1's] protocols do call for billing insurance, and if [the Parent] would not like for this to happen, they would need to speak to someone in the billing department. I am doubtful as to whether their request could be accommodated. My understanding that [the District] is responsible for the counseling that is required per his IEP, and that the District has personnel in place for providing students with counseling minutes mandated by their IEP. [Provider 1's] school based health care providers are not to be named as responsible parties on IEPs, but can provide care to students with IEPs.

51. Later on February 6, 2018, the case manager emailed the principal and director 1 and asked for assistance sorting out the Student's counseling. Director 1 responded and asked if they needed "some avenues for setting this up." Director 1 also stated that because the IEP was signed, it was now on the school team to arrange counseling and communicate the plan to the Parent.

52. Also on February 6, 2018, the Parent, case manager, principal, and director 1 exchanged emails concerning the FBA:

- The Parent emailed case manager and asked for "details on when and how will FBA be done? Has it been initiated as promised? When will we have data available for review?"
- The case manager emailed the principal and director 1 and asked for their thoughts because the Parent "does not believe that I am qualified to do the FBA (for the behavior of being late to school)." The case manager stated that the Parent requested that a psychologist perform the FBA.

⁵ It is likely that counselor 1 meant that *her* counseling was not part of the IEP, not that counseling in general was not part of the IEP. However, counselor 1's email and the case manager's response may have perpetuated the confusion regarding whether counselor 1 was able to provide the Student's IEP counseling minutes.

53. On February 7, 2018, the case manager emailed the Parent to let her know that the OT had observed the Student and gave the case manager some tools for the Student.
54. Also on February 7, 2018, the Parent emailed counselor 1 several times, and copied director 1. The Parent sent two emails about behaviors that the Student was exhibiting and forwarded director 1's February 5, 2018 email (that stated that the school would take care of the billing question). The Parent also sent counselor 1 an email, stating that she did not understand how the District was going to deliver the counseling services if the counselor was "booked since you were their only 'choice' to counseling for our son. They didn't seem to come up with another solution or put [the Student] on your wait list." The Parent sent another email to counselor 1, stating that counseling was on the Student's IEP and if that was "not enough" for provider 1, then "we need to ask [the District] to allow the IEP team to find another provider and then [the District] will be responsible for contracting with them and transporting [the Student] to and from counseling." The counselor forwarded all of the emails to her supervisor.
55. Later on February 7, 2018, the Parent emailed director 1, director 2, the case manager, the principal, and counselor 1 and stated that she had just spoken with the counselor about setting up an appointment. The Parent stated that counselor 1 was not aware of the District "being financially responsible for [the Student's] counseling." The Parent asked someone to confirm that the District would pay for the counseling and stated that it had been two weeks since she consented to the Student's IEP and that services were not being delivered.
56. On February 8, 2018, counselor 1 emailed the case manager, the principal, director 1, and director 2, stating that the Student would begin counseling after mid-winter break and pending the District contacting the [provider 1's] billing department. Director 1 wrote back that she called provider 1 and would be following up.
57. On February 8, 2018, director 1 responded to one of the Parent's February 7, 2018 emails to counselor 1 and stated that she would coordinate counseling services for the Student during the summer. She also responded to the Parent's question about the FBA and stated that case managers were qualified to conduct FBAs, so the case manager could move forward with gathering the behavior data. Director 1 stated that she thought they should give the Student some time in counseling to work on the challenges with getting to school on time, and if that did not work, there were other resources they could connect the Parent with. In response, the Parent stated, "you mention counseling services for the summer, which is great, but can you please confirm counseling services for right now, so [the Student] can get started?" The Parent asked what "kind of training and specific credentials does [the case manager] have in the area of FBAs?" and indicated that she was happy to sign consent for the FBA.
58. Also on February 8, 2018, the Parent emailed director 1 and stated that according to the case manager, he and the principal were "talking with all their partners to find appropriate service for [the Student]" and that she had received no information until that point that they were "working to find someone else instead of [counselor 1]." The Parent stated that she believed this needed to be a team decision and that the Parent should be involved in deciding who the

Student's counselor would be. The Parent also stated that counselor 1 should be seeing the Student in the mean time and that the District should be covering the cost of the counseling.

59. Later on February 8, 2018, the Parent emailed counselor 1 a copy of the Student's January 2018 IEP. The Parent stated that there were amendments she still wanted to make to the IEP and that the IEP had not yet been fully implemented.⁶
60. Finally, on February 8, 2018, the Student's case manager emailed the Parent that the Student's assistive technology would be dropped off the following week. He also addressed some of the Parent's concerns about implementing the IEP and stated that he was able to line up some of the specialists, but could not actually "start anything until there was an IEP in place" and that the school "could not hold a spot for the [Student] in counseling, reserve technology or dedicate people to observe him until there was an IEP, signed." The case manager stated that counseling is provided to "students in need" at the school and that the providers, not the District, require "information and signatures in order to provide these services." The Parent responded and stated that the IEP team had known since the fall that the Student would need counseling. The Parent stated that counselor 1 had informed her that the Student could not receive counseling for free and that the Parent would sign consent "as soon as [the District] finally sorts the billing with [provider 1] as a provider." The Parent stated that she believed that the school "did not need to wait for us to sign the IEP to put [the Student] on the wait list" and that the District "knew that our intention was to consent to the IEP and the counseling was a big part of why we agreed to sign the IEP that clearly did not address supporting all of [the Student's] areas of concern." The Parent stated that, according to counselor 1, there had been no action on the part of the District to set up billing or counseling.
61. On February 9, 2018, the Parent emailed director 1 and repeated her concerns that counseling services had not been implemented yet.
62. On February 12, 2018, the Parent emailed director 1 and asked what "credentials and training are required at [the District] for staff to do FBA." Director 1 responded and stated that FBA training is offered to case managers throughout the school year and during the summer. Director 1 also stated, "FBAs do not require the skill set of a clinical psychologist – in fact, this would be a barrier to accomplishing FBAs in school settings. Therefore, special [education] teachers, principals, paraprofessionals, counselors, parents, and general [education] teachers can conduct an FBA."
63. Also on February 12, 2018, the Parent emailed director 1 again to confirm that counseling would be covered by the District.
64. On February 13, 2018, the Parent emailed the Student's case manager and director 1, asking for the raw data collected for the FBA, and asked when the Parent would get the results of the FBA.

⁶ Besides counseling, the Parent did not indicate what parts of the IEP she believed were not being implemented.

65. On February 14, 2018, the Student's case manager responded to the Parent's February 13, 2018 email, requesting data with some information about the Student's attendance. The case manager asked the Parent to provide documentation on "what is happening in the evening and at home prior to an absence or tardy" and stated that this is something a counselor could work on with the Student. The case manager also gave an update on the Student's assistive technology and stated that counseling was set to start after mid-winter break. The parent responded with additional questions about the FBA. Additionally, the Parent asked the case manager to send a separate email to counselor 1, with the Parent and the Student's father copied, confirming coverage.

66. On February 15, 2018, the Parent forwarded the case manager's February 14, 2018 email to counselor 1 to confirm that counseling was scheduled. Later, the case manager also emailed counselor 1 that the Student should start counseling as soon as possible and that the principal had "worked out the behind the scenes details."

67. On February 16, 2018, counselor 1 emailed the case manager, principal, and Parent, asking for an update on statements from the Parent's February 8 and 9, 2018 emails that read:

- [Provider 1] is separate from the school district and cannot provide mental health counseling that is part of our son's IEP on [the District's] behalf.
- If we could get the billing department of [provider 1] to get confirmation.

The case manager responded and asked the principal if these questions could be addressed. Later in the day, the principal responded and stated that "everything is worked out for [the Student] to start counseling with [the counselor] after break."

68. Also on February 16, 2018, provider 1's administrator emailed the principal and clarified that counselor 1 could not provide counseling services listed on an IEP, but could provide private counseling to students with IEPs.

69. The District was on break February 19-23, 2018.

70. On February 22, 2018, the Parent emailed director 1 and the case manager and requested a consent form so that the Parent could sign consent for the FBA. The Parent also stated that "We consented to special education placement on 1/30 and from what [the case manager] has been saying since then, the FBA is being conducted. It is strange that we were not asked to sign an evaluation consent form prior to FBA initiation."

71. On February 23, 2018, the Parent resent her February 22, 2018 email about the FBA and included a link to the State special education regulation on consent.

72. On February 23, 2018, the Parent emailed counselor 1 and asked if she had received confirmation from provider 1's billing department that the billing question was resolved. The Parent also asked if counselor 1 had been invited to the Student's IEP meeting that was scheduled for February 27, 2018, and provided information about the Student's social skills

and behavior. Counselor 1 forwarded the Parent's email to her supervisor and asked if she should begin services.

73. On February 27, 2018, counselor 1's supervisor emailed the principal and stated, "there seems to be longstanding and significant confusion about the role that [counselor 1], [provider 1's] mental health therapist, can play in serving [the Student.]" The supervisor stated that the provider 1's policy did not allow for its services to be part of an IEP. The supervisor also stated that she assumed the District would then name someone on the IEP as responsible for whatever counseling services are listed as part of the IEP, and that that person would be the "one working on the IEP stated goals and serving the student for the required number of minutes." The supervisor stated that counselor 1 could provide "ADDITIONAL (unrelated to the IEP) services to this student," but that the Student would need to access these services as any other student would. The supervisor stated that the Parent seemed to be reluctant to sign the consent form because then the Parent's insurance would be billed. The supervisor went on to state that the District was "under no obligation to pay for these services, particularly since the district will be providing the IEP required services," but that if the District chose to pay for the services, the provider would need written documentation of the arrangement. The principal responded and stated that when he and the supervisor had previously spoken "it seemed as if a solution could be found that would create an opportunity for a child to be served" and asked if they could meet to discuss.⁷ The supervisor responded that she would be happy to meet to discuss the principal's concerns.

74. Also on February 27, 2018, the principal emailed director 1 and asked for assistance. After some discussion over email, director 1 responded the principal should:

Share that [the] protocol for [provider 1] mental health services is that they have a signed "disclosure" or consent form specific to [the counselor's] counseling services. If she won't sign (and have them subsequently bill the family's insurance, which has already been explained to them), then he will go to the school counselor for services. There is no denial of services, just different avenues regarding providers and their protocols.

The principal responded that there was no "school counselor" who could provide services.

75. On February 27, 2018, the Student's IEP team met and amended the Student's IEP (February 2018 IEP amendment). The principal informed the Parent of the misunderstanding with provider 1 and that counselor 1 would not be able to provide IEP counseling. According to documentation provided by the District, the principal discussed the option of having the school-based psychologist provide counseling services, but the Parent rejected this offer and emails from the school psychologist indicated that he believed he would not necessarily be a good fit unless issues such as workload were resolved. The IEP team also amended two of the Student's annual goals and added an accommodation (access to sensory fidgets). Additionally, counselor 1 attended the IEP meeting in order to have the Parent sign a consent

⁷ The principal is likely referencing his conversation with provider 1's administrative manager on or around January 24, 2018, after which the principal believed that he had worked out a way for counselor 1 to provide counseling services under the Student's IEP. However, this is contradicted by the administrative manager's email on February 16, 2018, which stated that counselor 1 could not provide IEP-based counseling.

form for private services, which according to documentation provided by the District, the Parent signed.

76. On February 28, 2018, the Parent emailed various IEP team members following up on the IEP meeting. The emails are summarized below:

- The Parent emailed the principal that “hopefully the FBA will soon be finished” and also that “the supposedly already initiated FBA is just like any other evaluation and requires parent consent and explanation of this evaluation.” The Parent asked again for a consent form to sign. The Parent also wrote that there was nothing “in the regulations preventing a school district from contracting for outside services. I verified this with OSPI today.”
- The Parent emailed director 1 and expressed frustration that the “arranged mental health counselor coverage, which was supposedly already arranged two weeks ago by [the principal], cannot happen.” The Parent stated that “what happened in yesterday’s IEP meeting regarding the already agreed upon counseling is shocking. Suddenly, [the counselor] cannot provide counseling because it is on [the Student’s] IEP.” The Parent stated that the school psychologist was not the appropriate person to provide counseling. The Parent said that she had not seen any data or evidence that the Student was making progress, even though the Student’s teachers stated he was making progress, but also said that the Student’s writing was improving and that he was making progress in his English language arts class.
- The Parent emailed director 1 again and stated that on February 16, 2018, the principal told them that everything was set for the Student to begin counseling with the counselor and that the Parent had been told “repeatedly that the staff is ‘working very hard’ on setting up counseling.” The Parent wrote that the “sudden realization that this will not be possible, as per the school principal yesterday does not match up.”

77. On March 1, 2018, the Parent emailed the principal and asked for the school psychologist’s credentials.

78. Also on March 1, 2018, the case manager emailed the Parent and stated that he had brought the FBA consent form to the IEP meeting on February 27, 2018, but that the team did not have a chance to discuss the FBA. The case manager stated that he “had planned to confer with the counselor regarding the FBA and collecting data, however, as you well know, those plans changed rather suddenly yesterday. When I have more details I will email you the assessment consent form.” The Parent responded and stated that the case manager could email them the form, but also that “We still need an explanation, but we need to move on with this, we have lost a month (minus week of mid-winter break) since the supposed FBA initiation.”

79. Later on March 1, 2018, the Parent emailed director 1 and stated that she had not received the FBA consent form. Director 1 emailed the case manager and asked him to email the consent form to the Parent that day. The case manager responded to director 1 and stated that he would send the consent form, but that he had concerns about the scope of the FBA and the fact that he intended for the FBA data collection to be conducted by a mental health professional. The case manager wrote that the school “staff have no evidence of school based anxiety so I am unable to collect data from his teachers” and that the Student had not yet met with a counselor.

80. Finally, on March 1, 2018, the Parent sent multiple emails to the Student's case manager about the Student's behaviors and school anxiety. In response, the case manager emailed the Parent an FBA consent form to sign, which the Parent signed and emailed back the same day.
81. On March 2, 2018, the Parent emailed the school psychologist and asked to schedule a meeting to discuss his background, credentials, training, experience, and expertise in medication. In response, the school psychologist forwarded the Parent's email to a District special education supervisor, the District southwest regional supervisor, the principal, a school psychologist at a different District middle school, the case manager, and a school psychologist at a District elementary school. The school psychologist stated that there were several issues that needed to be resolved before he communicated with the family. Additionally, the school psychologist⁸ stated that the Student's October 2017 reevaluation report did not identify a need for counseling as a related services and its addition on the IEP was inappropriate.
82. According to the District, as a result of the school psychologist's belief that the Student's January 2018 IEP inappropriately included counseling, and due to the discrepancy with the October 2017 reevaluation report's recommendation page, the school psychologist removed the counseling service from an open electronic draft of the February 27 IEP amendment to the Student's January 2018 IEP stored in the District's computer system. The Student's case manager then noticed the mistake and reported it. As a result, the District believed a District employee corrected the error. However, the counseling services were not actually reinserted in the Student's IEP stored in the computer system, which resulted in the services being omitted from the February 2018 IEP amendment and an IEP amended later in March. The District stated that the "IEP team and the parents believed that the counseling services were in the February 27, 2018 and March 27, 2018 IEP [amendments], and the District continued to offer the services to the Student."
83. According to documentation provided by the District, on March 5, 2018, the Parent met with counselor 1 regarding the provision of private, non-IEP counseling services for the Student.
84. On March 5, 2018, the case manager emailed the Parent in response to the Parent's request for another IEP meeting and stated that, until they could meet again, the Student was being served as written in the Student's IEP.
85. On March 6, 2018, the Parent emailed the case manager and asked when counseling would be set up. The Parent stated that she wanted to meet with the school psychologist and that she wanted his background information.

⁸ The school psychologist is not the same school psychologist that completed the Student's October 2017 reevaluation report.

86. On March 7, 2018, the Parent, case manager, and assistant principal emailed back and forth about several incidents that the Student was involved in at school and the Parent's safety concerns. The Parent stated that this information should be considered in the FBA.
87. On March 7, 2018, the Parent emailed director 1 and stated that the Student's IEP was not meeting his needs.⁹
88. According to the documentation provided by the District, the Student met with counselor 1 on March 7, 2018 for private, non-IEP counseling.
89. Also on March 7, 2018, the District's regional supervisor contacted a mental health provider [provider 2] about the possibility of providing the Student with counseling services.
90. On March 9, 2018, director 1 emailed the Parent and stated that the District was gathering information on possible counselors to provide the Student's IEP counseling services. Director 1 also let the Parent know that the principal would contact the Parent regarding a new counselor and dates for another IEP meeting.
91. According to the District's documentation, on March 11, 2018, the Student's language arts teacher accidentally identified the Student's missing work with zeros in the gradebook.¹⁰ The language arts teacher addressed and corrected the grade as soon as it was brought to his attention. In emails about the issue to the Parent and director 1, the case manager confirmed that the mistake had been fixed and that all of the Student's accommodations were being followed every day.
92. On March 12, 2018, the Parent emailed the case manager about behavior the Student exhibited in the morning while getting ready for school. The case manager responded that the Parent's reports were helpful and that he would be "collecting them to work with the counselor in creating an FBA." In response, the Parent asked who the possible counselor was and whether a counselor was necessary to come to a conclusion in the FBA.
93. On March 13, 2018, the Parent emailed director 1 a series of concerns about the Student's education, including:
- That the Student was not being served or fully supported.
 - That counseling was on the Student's IEP and has not been provided.
 - That the Student's teachers are supposed to "pair oral instruction with written instruction" and that the Student had not received any written instructions.¹¹

⁹ Based on documentation provided in this complaint, it is likely that the Parent meant the IEP was insufficient and needed to be amended, not that the IEP was not being implemented.

¹⁰ The Student's IEP stated that "missing assessments/assignments are to be left blank in the grade book" and that "missing assignments should not be graded zero, only noted as missing."

¹¹ According to documentation provided in this complaint, the Student's 504 plan included an accommodation that required staff to "pair written instructions with oral instructions." However, the Student's IEP did not include an accommodation that specifically stated that all instructions would be oral and written. The Student's IEP did provide

- That the FBA was initiated before the Parent signed a written consent form; that the timeline for the FBA was improperly extended by delaying getting Parent consent; and that the accuracy of the data being collected was flawed.
- That “related services approved are not being delivered and many are still missing.”¹²

94. On March 14, 2018, the Parent emailed the Student’s case manager and director 1 about the Student’s behavior, social skills, and challenges getting the Student to wake up, get ready, and go to school. The Parent stated that the Student needed more social skills support and that the IEP counseling had still not been arranged. The Parent also forwarded the email to counselor 1, stated that she had sent reports to the Student’s case manager about the Student’s behaviors at home, and provided counselor 1 with information about the Student’s missed classes and instances of being tardy.

95. Also on March 14, 2018, the Parent emailed director 1 again and requested an IEE for the FBA because the Parent did not believe that the case manager was qualified to conduct the FBA. The Parent stated that the FBA needed to focus on more than the fact that the Student was missing classes, and should include an evaluation of the Student’s social skills, social interactions, and cognitive functioning. The Parent wanted the FBA to address her concerns that the Student was being bullied. The Parent also wrote that the Student was not making progress in “study/organizational skills, social skills or behavior,” that the Student’s IEP was not being followed because the Student had not received “instruction in writing ever that we would see, which in his case is like he received no instruction at all,” and because the Student was not using his assistive technology (i.e., his tablet) or being provided with a visual schedule.

96. By March 16, 2018, the District had arranged for a licensed social work associate (counselor 2) with a focus in mental health in the school setting to provide the Student with IEP counseling services. The District invited counselor 2 to the next IEP meeting. The District also notified the Parent that a new counselor had been arranged and invited the Parent to an IEP meeting.

97. On March 20, 2018, the Parent emailed the principal about scheduling the IEP meeting and asked for counselor 2’s contact information, background, and credentials. The principal responded and provided the Parent with a link to counselor 2’s employer’s (provider 2) website.

98. On March 21, 2018, the Parent emailed the principal, director 1, and director 2 that counselor 2 was not a good fit because she did not have the skills, experience, or appropriate background to work with the Student. The Parent asked if it would be better if the Parent tried to find a “suitable professional.” The principal responded and stated that counselor 2 was selected as “the best option based on all of the conversations about this and in

him with accommodations, such as a visual daily schedule; copies of notes and/or study guides; allowing the Student to repeat back instructions to ensure understanding; and modified, repeated, or modeled directions.

¹² Other than counseling, it is not clear what other related services the Parent believed were missing.

collaboration with our central [District] special education colleagues.” The Parent responded that she would not meet with counselor 2 and that she would start looking for an “adequate therapist [herself] since this seems to be a challenge for [the District].”

99. On March 26, 2018, the principal responded further to his email conversation with the Parent on March 21, 2018. The principal clarified that families “do not select who will be the service provider of the minutes on the IEP—that is the role of the school.” The principal stated that the District felt that counselor 2 was a good fit and that she would be attending the IEP meeting the next day. The Parent responded and reiterated the proposed IEP counselor was unacceptable because she was “inexperienced and does not have enough or appropriate training.”
100. Later on March 26, 2018, the Parent emailed director 1 and stated that it was not appropriate for the principal to invite counselor 2 to the IEP meeting. The Parent stated that counselor 2 was not qualified and that the Parent would not consent to her services. The Parent also stated that if counselor 2 came to the IEP meeting, the Parent would leave. The Parent emailed director 1 later that same day and stated that the Student needed a counselor who had “the skills to get [the Student] ready for the transition of lowering doses of his medication.”
101. On March 27, 2018, the Student’s IEP team, including the Parent, met to review the Student’s progress. The team also again amended the Student’s January 2018 IEP by revising a goal, adding a goal, and removing a goal from the IEP. Counselor 2 did not attend the meeting.
102. On April 2, 2018, director 1 emailed the Parent and reiterated that, as of March 27, 2018, the District had a counselor ready to serve the Student. Director 1 stated that because the Parent stated that she would not allow the Student to work with counselor 2, that the Parent “could identify a counselor who could serve the IEP minutes.” The Parent responded that she did not agree to the IEP.
103. The District was on break April 9-13, 2018.
104. On April 23, 2018, according to the Parent’s reply, the Parent provided the District the name of an “appropriately trained and experienced provider for counseling services, recommended by the [Student’s] pediatrician.” According to the Parent and the District, director 1 attempted to contact the counselor by phone, but that the counselor has not responded. The Parent also stated that she has contacted the counselor, but has not yet heard back. According to the District, counselor 2 remains ready to serve the Student.
105. On April 26, 2018, the timeline to complete the Student’s FBA ended. According to the District’s response to this complaint, the District “determined that an FBA to address the school-anxiety the Parents state the Student exhibits in the home environment cannot be done without the involvement of the Student’s counselor. The FBA therefore cannot be completed until the Student is receiving the counseling services identified in his IEP.” The

District stated that it may not be able to comply with the timeline because the Parent has not yet allowed the Student to receive counseling services from the District's selected provider.

CONCLUSIONS

Issue 1 – IEP Implementation: The Parent alleged that the District failed to implement the Student's individualized education program (IEP) during the 2017-2018 school year, and specifically that the District failed to provide the Student with counseling and accommodations. Once a parent consents to the initial provision of special education services, a district is responsible for making a free appropriate public education (FAPE) available to a student, through an IEP; and, the district must ensure that it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. A student's IEP must contain a statement of the special education services and related services to be provided to the student and the modifications and accommodations that will be provided to enable the student to advance appropriately toward attaining IEP goals, and be educated and participate with other students. A student is entitled to receive related services that are required to assist the student to benefit from the special education services. As a general rule, districts have discretion in personnel decisions, such as staff assignments or hiring, which includes related service providers.

Related Services (Counseling)

On January 30, 2018, the Parent signed consent for the initial provision of special education services, and the District was required to begin implementing the Student's January 2018 IEP, which provided the Student with thirty minutes of counseling as a related service, twice a week. However, the District did not have a person in place to begin providing the Student's counseling services at that time, due to confusion about who would provide the services. Initially, the District believed that counselor 1 from the school's partner health center (provider) could provide the IEP counseling minutes. However, per the provider's policy, counselor 1 could not provide IEP counseling services, which was communicated to the District and the Parent, but the parties misunderstood. After notifying the Parent of the misunderstanding, the District attempted to assign a school psychologist to provide the Student's counseling services. The Parent felt that the school psychologist was not qualified to provide counseling and there is some indication that the school psychologist himself did not think it would be a good fit. The District then identified another mental health provider (counselor 2) to provide the Student with his IEP counseling minutes. The Parent objected to counselor 2 because she felt counselor 2 did not have the skills, experience, or background to work with the Student. The District stated that as of March 27, 2018, it had a counselor ready to serve the Student. On April 2, 2018, the District reiterated that it had a counselor ready to work with the Student, but that because the Parent would not allow the Student to work with counselor 2, the Parent could identify a counselor who could provide the IEP mandated counseling. On April 23, 2018, the Parent provided the District with the name of a counselor she felt was appropriately trained and experienced. Both the District and the Parent have attempted to contact the suggested counselor, but have not heard back.

The District admitted that it was not initially able to engage a service provider to deliver the Student's counseling as stated in his IEP and offered to provide the Student with compensatory counseling services for the times a service provider was not available. OSPI agrees that the District failed to provide the Student's IEP counseling minutes, and notes that this failure seems to have stemmed from a series of significant misunderstandings, an ongoing lack of communication between all involved individuals, and a lack of a clear process for engaging private providers to deliver related services. The Student's January 2018 IEP provided for two, thirty (30)-minute counseling sessions or sixty (60) minutes of counseling per week. From January 30, 2018 through March 27, 2018, there were seven (7) weeks of school. During that time period, the Student should have received seven hours of counseling. The District will provide the Student with seven (7) hours of compensatory counseling. As of March 27, 2018, the District was ready to provide services; however, the Parent would not allow the Student to see the new counselor. The District has discretion over staff assignments, including related service providers, and therefore is not required to compensatory services for the time period after March 27, 2018. It is also noted that the District has made an attempt to resolve the Parent's concerns about counselor 2, by allowing the Parent to provide the name of a counselor she feels is appropriate to work with the Student and by attempting to contact that counselor, which is not required under the IDEA.

The District will also develop a policy and procedures for adding, identifying, and including private (non-District) service providers in IEPs.

Accommodations

On January 9, 2018, prior to the implementation of the Student's IEP on January 30, the Student participated in testing for the District's advanced learning opportunities program and the principal emailed the test administrator a list of the Student's 504 plan accommodations. On January 30, 2018, the District implemented the Student's IEP, which provided the Student with a series of accommodations. On February 1, 2018, the Student participated in additional testing for the advanced learning opportunities program with the same test administrator. According to the District's response to this complaint, the Student was provided with his accommodations, the testing went well, and the Student qualified for highly capable programming. On March 11, 2018, the Student's language arts teacher mistakenly identified the Student's missing work with zeros in the gradebook, despite the Student's IEP providing him with the accommodation that "missing assessments/assignments are to be left blank in the grade book." The language arts teacher addressed and corrected the grade as soon as it was brought to his attention, and the case manager confirmed that all of the Student's accommodations were being provided. On March 13, 2018, the Parent emailed director 1 a concern that the Student was not receiving any written instructions and that the Student's teachers had never provided the Student any written instructions. The Parent also stated that the Student was not being provided with a visual daily schedule and was not using his assistive technology (i.e., his tablet). The Student's IEP provided him with accommodations such as a visual daily schedule, copies of notes and study guides, allowing the Student to repeat back instructions to ensure understanding, and

modified/repeated/modeled directions. The Student's IEP did not specifically provide him with an accommodation that all instructions be written and oral.

The District's documentation in this complaint indicates that it provided the Student with substantially all of the accommodations listed in his IEP. Additionally, during the first testing session for the advanced learning opportunities program, the Student was provided accommodations under his 504 plan, because his IEP had not yet been implemented. The District substantiated that it implemented the Student's IEP accommodations.

Issue 2 – Functional Behavioral Assessment: The Parent also alleged that the District failed to follow procedures for conducting a functional behavioral assessment (FBA) during the 2017-2018 school year. An FBA focuses on identifying the function or purpose behind a student's behavior and is generally understood to be an individualized evaluation of the student. As with other evaluations, to conduct an FBA, the district must obtain the parents' prior consent and complete the FBA within thirty-five (35) school days after the district received consent. Once the need for a reevaluation is identified, a district must act without undue delay and within a reasonable period of time. Federal and State special education regulations do not specify who is qualified to conduct an FBA; therefore, it is a district's responsibility to select staff.

At the beginning of January 2018, the Parent asked about a behavioral intervention plan (BIP) or behavioral assessment; however, the Parent did not specifically request a functional behavioral assessment (FBA) until January 29, 2018. The District informed the Parent that an FBA was part of an IEP and would be initiated after the Parent consented to the provision of special education services, which occurred on January 30, 2018. During February 2018, the Parent emailed the District several times with information about the Student's school refusal behaviors and anxiety about going to school, and the District indicated that it was collecting information and behavior data that could be used by whoever conducted the FBA. The Parent and the District then had ongoing discussions about who was conducting and qualified to conduct the FBA; when the FBA would be completed; and whether there was data to review. On February 8, 2018, the Parent indicated that she could sign consent for an FBA, and on February 22, 23, and 28, 2018, the Parent again requested that the District provide a consent form. On March 1, 2018, the District provided and the Parent signed consent for the FBA. However, at this point, the Student's case manager expressed concerns about the scope of the FBA and the fact that he intended for the FBA data collection to be conducted by a mental health professional. According to the District, it anticipated not being able to complete the FBA within the required timeline (by April 26, 2018, thirty-five school days from March 1, 2018) because the FBA could not be completed until the Student was receiving counseling services and the Student had not yet received counseling.

The District sought and received the Parent's consent for the FBA eighteen (18) school days after the Parent requested an FBA. While an eighteen school day delay in getting signed consent is not necessarily unreasonable, the Parent indicated a potential need for behavioral supports at the beginning of January 2018 when she asked about a BIP or a behavioral assessment. Whether a parent requests that the District provide supports, services, or conduct assessments, the District is required to take steps to respond within a reasonable amount of time, and either agree

to the request or provide a parent with prior written notices, documenting why the District is refusing the request. Waiting two months to address the Parent's request for behavioral supports was not a reasonable amount of time. Additionally, an FBA is not part of an IEP or a BIP. An FBA is an assessment that can be used to inform an IEP team's decisions about a student's need for behavior services or a BIP. Given that the Parent specifically asked for an FBA consent form to sign at least four times, which demonstrates the request for assessment, OSPI believes that the District should have either obtained the Parent's written, signed consent for the FBA earlier than March 1, 2018, or provided the Parent with prior written notice, stating the reason it did not think an FBA was appropriate at that time. The District did not substantiate that it followed the procedures for responding to and/or conducting an FBA and the District will be required to conduct training on the topic.

CORRECTIVE ACTIONS

By or before **June 15, 2018, June 29, 2018, July 13, 2018, August 31, 2018, September 14, 2018,** and **October 5, 2018,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **June 8, 2018,** the District will meet with the Parent to develop a schedule for a total of seven (7) hours of counseling. The District will determine the personnel to provide the counseling services, as per district policies. If the Parent disagrees with the District's selection of a counselor, the District is not required to provide additional options as it is within the District's discretion to select the service provider. Services will occur outside of the District's school day and may be accessed over the summer months. If the provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **September 7, 2018.** The District will provide OSPI with documentation of the schedule for services by or before **June 15, 2018.**

The District must provide OSPI with documentation by **July 13, 2018,** of the compensatory services provided to the Student. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student. By or before **September 14, 2018,** the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District must either provide transportation necessary for the Student to access these services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with documentation by **September 14, 2018.**

DISTRICT SPECIFIC:

1. By **September 7, 2018**, the District will provide training regarding the procedures for responding to a parent's request for a functional behavioral assessment (FBA) and the procedures for conducting an FBA. The training will be for all District special education administrators and the following staff at the Student's current school: all special education certificated staff, including education staff associates (ESAs), school principals, and assistant principals. The trainer will not be an employee of the District. The training will also include examples.

By **June 15, 2018**, the District will notify OSPI of the name of the outside trainer, and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By **June 29, 2018**, the District will submit a draft of the training materials to OSPI for review. OSPI will approve the materials or provide comments by July 6, 2018 and additional dates for review, if needed.

By **September 14, 2018**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) an official human resources roster of all District special education administrators and all special education certificated staff, including education staff associates (ESAs), school principals, and assistant principals at the Student's school, so OSPI can verify that all required staff participated in the training.

2. The District will develop a policy and procedures regarding private, non-District service providers (e.g., counselors) providing services stated on IEPs. The procedures should address when a private service provider is needed, how to identify a private provider, and the process for setting up and implementing private services. By **June 29, 2018**, the District will submit a draft of the policy and procedures. OSPI will approve the policy and procedures or provide comments by July 13, 2018 and provide additional dates for review, if needed.

By **August 31, 2018**, the District will provide OSPI with documentation showing that the policy and procedures have been provided to all District special education administrators and all building principals. This will include an official human resources roster of all required staff members, so OSPI can cross reference the list with the actual recipients.

By **September 28, 2018**, all District principals will review the policy and procedures with all building certificated special education staff, including educational staff associates (ESA). ESAs include school psychologists, physical therapists, speech language pathologists, school counselors, school nurses, and other services providers. By **October 5, 2018**, the District will provide OSPI with documentation that the principals have reviewed the policy and procedures with all required staff. The documentation will include an official human resources roster of all principals, so OSPI can cross reference the list with the actual recipients.

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

RECOMMENDATION

Given that there is no indication that the District completed the Student's FBA, OSPI recommends that the District complete the Student's FBA regardless of the status of the Student's IEP counseling. If the District is unable to complete the FBA, the District should communicate with the Parent regarding next steps.

Dated this ____ day of May, 2018

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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