

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-07

PROCEDURAL HISTORY

On January 25, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the Parent (Parent) of a student (Student) attending the Battle Ground School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On January 28, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On February 19, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on February 20, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On March 11, 2019, the OSPI investigator conducted a phone interview of the District's executive director of special services.

On March 11, 2019, the OSPI investigator determined that additional information would be helpful to the investigation and contacted the District. On March 11, 2019 and March 12, 2019, OSPI received the requested information from the District. OSPI forwarded it to the Parent on March 12, 2019.

On March 12, 2019, the OSPI investigator determined that additional information would be helpful to the investigation and contacted the District. On March 12, 2019 and March 14, 2019, OSPI received the requested information from the District. OSPI forwarded it to the Parent on March 14, 2019.

On March 14, 2019, the OSPI investigator determined that additional information would be helpful to the investigation and contacted the District. On March 15, 2019, OSPI received the requested information from the District and forwarded it to the Parent that same day.

OSPI did not receive a reply from the Parent.

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

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on January 26, 2018. 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 programs (IEPs), including specially designed instruction, since January 26, 2018?
2. Did the District use isolation consistent with the requirements of WAC 392-172A-02110, since January 26, 2018?
3. Did the District follow procedures for responding to the Parent's request that the Student be provided with additional adult support?
4. Did the District follow procedures for ensuring that the Student was able to participate in recess periods to the maximum extent appropriate to the needs of the Student per WAC 392-172A-02065?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. A school district must 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, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Difference Between Accommodations and Modifications: Accommodations: a) do not fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; b) provide equal access to learning and equal opportunity to demonstrate what is learned; and c) grading and credit is the same as typical students. Modifications: a) do fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; b) provide a student with meaningful and productive learning experiences based on individual needs and abilities; and c) grading and credit are different.

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.

Parent Participation in IEP Development and IEP Meetings: Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in

discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

IDEA specifically provides that parents of children with disabilities have an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to their child. WAC 392-172A-05000(1)(a). Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child. WAC 392-172A-05001(2)(a).

The IEP team work toward consensus on IEP content, but if team members are unable to reach consensus it remains the district's responsibility to ensure that the IEP includes the special education and related services that are necessary to provide the student with a free appropriate public education. An IEP may therefore be properly developed under IDEA procedural requirements, yet still not provide the student all of the services that the parent believes are necessary components of the student's educational program.

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.

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

A student's IEP team has the responsibility to determine the student's LRE, and must consider the following factors when making the determination: the educational benefits to the student of a

placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9th Cir. 1994).

FINDINGS OF FACT

2017-2018 School Year

1. The Student was enrolled in the District for the first time in March of 2018. At that time, the Student was in kindergarten, attended a District elementary school, and was not eligible for special education.
2. On May 23, 2018, the Student was referred for an initial special education evaluation.
3. On June 7, 2018, the District provided the Parent with prior written notice, which stated, in part: "We are proposing to evaluate [Student] for special education services...[Student] is behind grade level academically and is having significant behavior concerns."
4. The District's final day of school for the 2017-2018 school year was June 18, 2018.

2018-2019 School Year

5. The District's 2018-2019 school year began on September 17, 2018.
6. In September 2018, the Student had two minor behavior incidents and one major behavior incident. According to a "Discipline Chart" included with the District's response and explained by the District's executive director of special services (executive director), a "minor referral"¹ is "an incident that poses a minor disruption to the learning environment or an isolated incident, not chronic," and a major offense "is a behavior of extreme intensity, a chronic behavior that causes a major disruption to the learning environment, illegal behavior, or a threat of physical safety."
7. In October 2018, the Student had seven minor behavior incidents and four major behavior incidents.
8. Beginning on October 12, 2018, the District limited the Student to the blacktop portion of the playground area during recess. As explained by the District:
[Student] was limited to the blacktop area after multiple other interventions were tried. Interventions included social stories and social skill instruction surrounding safe recess

¹ According to the District, major offenses "are managed by administrators... [they] could result in a disciplinary action such as [a] suspensions [or] something such as problem-solving or conferencing." Minor offences "are managed by the staff member that observed the behavior (i.e. classroom teacher or recess aide.")

behavior. Social stories and recess behavior reminders were provided just prior to recess times. The Parent was called and notified of the assigned recess zone on October 12th. She was told that [Student] would remain in a zone until he was able to demonstrate safe behavior.

[Student] had demonstrated unsafe behavior such as punching, tackling, and pushing other students. After moving [Student] to the blacktop he was able to be more closely monitored by a recess assistant. By assigning [Student] to a zone at recess, the physical aggression was reduced.

The decision to assign [Student] to the blacktop area during recess was made by building administration.

9. On October 15, 2018, the District completed an initial evaluation of the Student. Based on the results of the evaluation, the Student was found eligible for special education under the category of developmental delay. The October 2018 reevaluation report recommended that the Student receive specially designed instruction in reading, written language, math, and behavior/social.
10. On October 15, 2018, the District provided the Parent prior written notice, which read, in part: "We are proposing to qualify [Student] for special education under the category of specific learning disability."²
11. On October 15, 2018, the Student's IEP team developed an IEP for the Student with an implementation date of October 15, 2018. The October 2018 IEP included annual goals in the areas of reading, math, written language, and behavior/social.

The October 2018 IEP provided the Student with the following specially designed instruction in a special education setting:

- Written language—30 minutes 5 times a week (to be provided by a special education teacher)
- Math—30 minutes 5 times a week (to be provided by a special education teacher)
- Reading—30 minutes 5 times a week (to be provided by a special education teacher)
- Behavior/social—15 minutes 5 times a week (to be provided by a special education teacher)

The October 2018 IEP provided the Student with the following accommodations in all education settings:

- Allow breaks (during work, between tasks, during testing, etc.)—daily
- Preferential seating—daily
- Repeat/model—daily
- Visual schedule—daily

12. As of October 15, 2018, the Student's schedule was as follows:

² Upon knowledge and belief, the October 15, 2018 prior written notice's reference to the Student qualifying under the category of specific learning disability is inaccurate. The October 2018 evaluation report stated that the Student qualified under the category of developmental delay. Subsequently-created IEP documents also state that the Student's disability is developmental delay.

- 9:10-9:30: [general education classroom]
- 9:30-9:45: behavior—resource room
- 9:45-10:40: [general education classroom]
- 10:40-11:10: math—resource room
- 11:10-11:25: [general education classroom]
- 11:25-12:05: Lunch/Recess
- 12:05-1:10: [general education classroom]
- 1:10-1:40: reading—resource room
- 1:40-2:00: Recess
- 2:00-2:30: writing—resource room
- 2:30-2:45: [general education classroom]
- 2:45-3:25: Specialists (Art, Music, PE)
- 3:25-3:40: [general education classroom]

13. In November 2018, the Student had eight minor behavior incidents and four major behavior incidents.
14. On November 9, 2018, the Student’s IEP team amended the Student’s October 2018 IEP to add the following modification while the Student was on the bus: “Setting: Harness-daily.”
15. Also on November 9, 2018, the District issued the Parent a prior written notice, which read, in part: “We are proposing to change [Student’s] IEP to include a harness for the times he is on the special education bus...[Student’s] behavior is not safe during the bus ride and a harness will help keep him in his seat...[Student] will be much safer in a harness.” According to the District’s response, the District then amended the October 2018 IEP to reflect the Parent’s request to add the bus harness.
16. On November 30, 2018, District sent the Parent a “Notice of Short-Term Suspension” to inform the Parent that the Student received a one-day, out-of-school suspension because the Student “ran away from the principal and assistant principal, and ran around the building. He also threw [a] chair, [and] hit and kicked the assistant principal.”
17. According to the District’s response, on November 30, 2018: a) the Parent informed the executive director that she believed the Student required additional adult support; and 2) the executive director referred the Parent “back to the IEP team.”
18. In December 2018, the Student had zero minor behavior incidents and two major behavior incidents.
19. On December 3, 2018, an IEP meeting was held to finalize a functional behavioral assessment (FBA) report,³ and to discuss the Parent’s request that the Student receive additional adult

³ According to the District’s response, the District was of the understanding that a behavioral intervention plan (BIP) had also been created for the Student on December 3, 2018—the last portion of the December 3, 2018 FBA included a section entitled, “Recommendations to the IEP Team.” According to the District, “the school psychologist who developed [the December 2018 FBA] was under the impression that the [recommendations section of the December 2018 FBA] would suffice as a BIP. [The District’s] typical practice is to use a format [that is actually called a BIP]. When [the executive director of special services] brought this to the attention of the school psychologist, he made sure to use the [proper format on January 16, 2019].” See below.

support. The IEP team ultimately decided to reject the Parent's request to add additional adult support.

20. On December 12, 2018, the District issued the Parent a prior written notice that read, in part: "Description of proposed action: adding more behavior minutes for [Student]...The reason we are proposing or refusing to take action is: [Student] needs more behavior support...[Student] is not being successful in the general education classroom." The prior written notice did not mention the Parent's request for additional adult support or the IEP team's rejection of the Parent's request.

21. On December 12, 2018, the Student's IEP team amended the Student's November 2018 amended IEP to increase the number of minutes of specially designed instruction that the Student received in a special education setting in behavior/social to the following:

- Behavior/social—118 minutes 5 times a week (to be provided by a special education teacher)

The Student's December 2018 amended IEP was to start on December 13, 2018.

22. Beginning on December 13, 2018, the Student's schedule was as follows:

- 9:10-10:40: Behavior⁴
- 10:40-11:10: Math groups in Resource Room
- 11:10—11:25: [General education teacher's] classroom
- 11:25—12:05: Lunch/recess
- 12:05—12:15: Behavior in Resource Room
- 12:15—12:52: [General education teacher]
- 12:52—1:10: Behavior in Resource Room
- 1:10—1:40: Reading Group in Resource Room
- 1:40—2:00: Recess
- 2:00-2:30: Writing Group in Resource Room
- 2:30—2:45: [General education teacher's] classroom
- 2:45—3:25: Specialists⁵
- 3:25—3:40: [General education teacher's] classroom

23. The District was on winter break from December 24, 2018 through January 1, 2019.

24. During January 2019, the Student had one minor behavior incident and five major behavior incidents.

25. On January 16, 2019, the District sent the Parent prior written notice that read, in part: We are proposing to change [Student's] IEP to include a 1:1 and not include an emergency response protocol...The previous two interventions⁶ have not shown to be effective, and

⁴ According to the District, the Student received his instruction in behavior in the resource room.

⁵ According to the District, "specialists" refers to "general education classes such as PE, art, and music."

⁶ According to the District, the phrase "previous two interventions" here refers to: the provision of behavior specially designed instruction in October of 2018 and the increase in behavior specially designed instruction minutes on December 12, 2018.

we have seen an increase in behavior that is concerning. [Student] has had to be restrained on a few occasions and an emergency response protocol will help explain the process and who is involved. [Parent] did not sign consent on the emergency response protocol, so it is not in effect for this IEP.

26. On January 16, 2019, the Student's IEP team created a behavioral intervention plan (BIP) for the Student.

The January 2019 BIP identified the following target behaviors for the Student: a) keeping hands and feet to self; b) maintaining appropriate personal space; c) use expected voice levels; and, d) remaining in his location when upset.

The January 2019 BIP included the following strategies:

- Checking in with Student at beginning of day to check his emotional level.
- Make sure Student has snacks throughout the day. If he is hungry, give him a snack and time to eat it.
- Give him warnings prior to transitioning to an activity that he doesn't like.
- Give him a choice between two expected tasks.
- Give him a separate place to work if he is having trouble interacting with other students.
- Allow him to take breaks from academic tasks if he is getting frustrated.
- Give him social stories about personal space and keeping hands and feet to self.
- He will be given reminders about voice level and a chart to know what level his voice should be at throughout the day.
- He will be praised for remaining where he is when he is upset and taught that running away from teachers makes the problem bigger instead of smaller.
- He will be taught how to identify between small and big problems and appropriate reactions to both.
- If he runs away from a staff member he will not be chased unless he runs out of the building.
- He will be taught how to use a reset spot to calm down and praised for appropriate use of it.
- He will be given preferred activities for showing expected behavior for a designated period of time.

27. On January 16, 2019, the Student's IEP team amended the Student's December 2018 amended IEP to add the following supplementary aid and service in a *general education setting* starting on January 16, 2019: "1:1 assistant—350 minutes 5 times a week (to be provided by a special education assistant)."

28. In its response, the District provided information about the one-on-one paraeducator and stated that "From January 17, 2019 to January 30, 2019, the [1:1] position was filled by a paraprofessional already in the building." The District further explained that the position "was subbed from January 30, 2019 to February 27, 2019" and that there "was only one day that it went unfilled." The District stated that a permanent hire for the 1:1 position "started on February 28, 2019."

29. On January 23, 2019, the Student received a one-day, in-school suspension.

According to notes made by the principal, the Student received this suspension for two reasons: first, on January 18, 2019, the Student "inappropriately touched [another] student in line coming into class;" and second, on January 22, 2019, the Student "[ran] at and hit, punch[ed] and kick[ed] [the assistant principal]. He stood on a table and tried to take the mirror off the wall. He was given several reminders to get off for his safety [but there was] no compliance."

The principal's notes also included the following statement: "I called [Parent] to tell her that we were imposing a one day in-school suspension for physical contact...[Parent] became upset and accused us of isolating him. We assured her that someone would be with him during the [in-school suspension], while explaining that [Parent] hung up on us mid-[sentence]."

According to the District, for the January 23, 2019 in-school suspension:

The Student was placed in the quiet learning room, which is a multipurpose room that is right next to the main office. The Student was not in the room by himself during any part of the day. The primary person who was there with him was [the] special education teacher. When [the special education teacher] needed a break, another staff member took her place before she left. This was either [the] assistant principal or principal, depending on who was available. While [Student] was in the room, he received instruction from his special education teacher on reading, writing, math, and behavior. [Student] was also given lots of unfinished work from his file so that he could catch up with his other class members...The Student was never alone, he left the room for restroom breaks and walks.

30. On February 7, 2019, the District issued the Parent a prior written notice that read, in part:

We are proposing to add an accommodation, change the wording on the emergency response protocol and revise the [BIP] to include more information. The accommodation added addresses the need for [Student's] 1:1 assistant to be within line of sight of [Student] during recess. The emergency response protocol now addresses how long [Student] will be restrained and when [Student's] Parent will be notified. The [BIP] was changed to include how to respond to his unexpected behavior when it arises, sets two positive behavior goals for him to focus on for the day and a daily point sheet to reward him for expected behavior throughout the day that will go home to increase communication between school and home.

...

[Student] has struggled with physical aggression at recess and therefore, he has been restricted to a specific area of the playground. This has allowed him to still have access to recess and closer supervision of the recess supervisor(s). The team feels that it is time for him to have [the] opportunity to go to other areas of the playground and the accommodation sets him up for recess. [Parent] had reservations regarding the previously developed [emergency response protocol]. The revised and added wording provides clarity to how staff will respond in an emergency situation. The team feels that the added strategies to [Student's] behavior plan will increase his ability to be successful.

...

The team clarified with the [Parent] that a 1:1 assistant was added to [Student's] IEP on 1/16/19. The position has been posted. Until someone is hired for the position, there will be a substitute(s). The team also clarified with the [Parent] the different between isolation

and in-house suspension. In-house suspension is a disciplinary action. Isolation, as an emergency response and as defined in WAC 392-172A-02110, has not been used with [Student].

31. On February 7, 2019, the Student's IEP team amended the Student's January 2018 amended IEP to provide the Student with the following accommodation during recess: "1:1 will maintain line of sight of Student while at recess."

32. The documentation provided in this complaint included an emergency response protocol (ERP) for the Student, dated February 14, 2019. This ERP is signed by the Parent and a District representative. In pertinent part, it read:

[Student] will be placed in a restraint only when all other de-escalation techniques have failed⁷ and when there is an imminent likelihood of harm to himself or others. This would be situations like: climbing on a table and jumping up and down, climbing on bookshelves, throwing items, hitting or kicking with body or objects and running out of the building.

...

[Student] typically only requires 1-2 minutes of restraint before he calms down. He has not yet required a second restraint after the first one. Once [Student] is released from the restraint he typically does a good job of calming down and following adult directions. [Student] will be released from the restraint as soon as the likelihood of serious harm has dissipated. If [Student] has not calmed down after 5 minutes of restraint, [Parent] will be called to figure out next steps. [Parent] will also be notified by phone within 30 minutes of physical restraint notifying her that a restraint did happen. At that time, a full report of what happened is not necessary, we are just notifying her that it did happen. The protocol will still be followed for completing the district paperwork associated with a restraint.

33. On February 7, 2019, the Student's IEP team amended the Student's January 2019 BIP. The Student's IEP team added the following three strategies to the BIP:

- [Student] will be given 2 positive behavior goals for the day. This could include things like helping other students, completing work, staying in line, and keeping hands and feet to himself.
- [Student] will be allowed to read to kindergarteners in his previous teacher's class in the morning. He will be given a daily point sheet that will go home to increase communication between home and school.
- When [Student] shows behaviors that are unexpected, the support team will be called via radio. [The school psychologist] will be the point person to work with him.

34. In a phone interview with the OSPI investigator, the executive director stated that, during the relevant time period, the Student has never been isolated as defined in the WAC 392-172A-02110.

⁷ According to the District, this is a reference to the "techniques described in the [January 2019] BIP. Also, our District uses [a] Nonviolent Crisis Intervention which focuses on the management of disruptive, assaultive, or out of control behavior. Within the approach are a number of nonverbal and verbal techniques that de-escalate a student—techniques such as positioning yourself in a supportive stance to empathic listening."

In this phone interview, however, the executive director did state that there were several occasions in which the Student was removed from the classroom for safety and de-escalation purposes. According to the District:

When the Student [was] removed from the classroom [in these instances], he typically goes to the resource room with the special education teacher or one of the principal's offices. In that new location, [Student] is first deescalated and then the event is processed. When he is able to complete some work, he is taken back to his original location. [The Student would typically be out of the classroom] anywhere from five to thirty minutes. Since [the] last IEP meeting on February 7, 2019, [Student] has not been in either principal's office.

35. The District's response included the following statement from one of the Student's 2018-2019 special education teachers: "I have provided specially designed instruction to [Student] since 10/16/2018. I have also provided the accommodations and modification as written in his IEP."
36. In a phone interview with OSPI's investigator, the executive director stated: "I do not believe there were any times that the Parent expressed concerns with isolation outside of the...January 23, 2019 in-school suspension."

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged that the Student's individualized education programs (IEPs) were not properly implemented during the 2018-2019 school year. Here, an initial IEP was created for the Student on October 15, 2018. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

October 15, 2018 through December 12, 2018: The Student's schedule indicated that from October 15, 2018 through December 12, 2018, the Student received specially designed instruction as indicated in his October 2018 IEP. The Student's 2018-2019 special education teacher stated she provided specially designed instruction, accommodations, and modifications per the Student's IEP. The Parent provided no other information about why she believed the IEP was not implemented. Therefore, the Student's October 2018 IEP was materially implemented during this time period.

December 13, 2018 through January 15, 2019: On December 12, 2018, the Student's October 2018 IEP was amended to increase the amount of specially designed instruction the Student received in behavior and his schedule was altered to enable him to receive the increased minutes in behavior. The Student's special education teacher stated she provided specially designed instruction, accommodations, and modifications per the Student's IEP during this time. Therefore, the Student's December 2018 amended IEP was materially implemented during this time period.

January 16, 2019 through early February 2019: On January 16, 2019, the Student's IEP was amended to include the provision of a 1:1 paraeducator for the Student for 350 minutes, 5 times

a week. Documentation provided by the District shows that, between January 16, 2019 and February 28, 2019 (the day a permanent 1:1 paraeducator was hired by the District), the Student was deprived of a 1:1 paraeducator for one day. The District's failure to implement the Student's BIP on the day the Student was not provided a 1:1 paraeducator resulted in a minor discrepancy between the services provided to the Student and those required by the Student's IEP. The Student was not found to have been denied a free appropriate public education (FAPE) as a result of the failure to implement the BIP for one day, and therefore, no violation is found.

Also on January 16, 2019, the Student's IEP team developed a BIP for the Student. On February 7, 2019, the Student's IEP team updated the Student's BIP to include more information, established two positive behavior goals, and implemented a daily point sheet. The executive director stated that there were several occasions during the relevant time period during which the Student was removed from the classroom for safety and de-escalation purposes. Documentation provided by the District in its response showed that during these occasions, the Student utilized the resource room, worked with staff to process the disrupting event, and was given an opportunity to independently complete work. This represents a utilization of the following strategies in the January 2019 BIP: a) Give Student a separate place to work if he is having trouble interacting with other students; and b) Student will be taught to use a reset spot to calm down. Therefore, the District materially implemented the January 2019 BIP.

In light of the foregoing, the District properly implemented the Student's IEPs in existence during the 2018-2019 school year.

Issue 2: Isolation – The Parent alleged that the Student was improperly isolated during his January 23, 2019 in-school suspension. Isolation 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.

The Student served his January 23, 2019 suspension in the quiet learning room. According to the District, "the Student was not in the room by himself during any part of the day;" the special education teacher, principal, or assistant principal was always present with the Student in the room. The Student was also permitted to leave the room for restroom breaks and walks. As the Student was not alone or in an enclosure that he could not leave, the in-school suspension does not meet the definition of isolation and does not represent a violation of IDEA.

Issue 3: District's Response to Parental Request for Additional Adult Support – The Parent alleged that the District did not properly respond to her November 30, 2018 request that the Student be provided with additional adult support.

Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special

education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting.

The IEP team work toward consensus on IEP content, but if team members are unable to reach consensus, it remains the district's responsibility to ensure that the IEP includes the special education and related services that are necessary to provide the student with a free appropriate public education. An IEP may therefore be properly developed under IDEA procedural requirements, yet still not provide the student all of the services that the parent believes are necessary components of the student's educational program.

Prior written notice ensures that the parent is aware of the decisions a district has made regarding 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, and why. 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 describe any other options the district considered, and it must explain its reasons for rejecting those options.

Here, the Parent's request for additional adult support was discussed at an IEP meeting on December 3, 2018. According to the District's response, the Parent's request was "rejected". The District admitted that it did not follow procedures regarding its obligation to provide the Parent a prior written notice that "reflect[ed] this conversation and why [the request] was rejected." Without being provided prior written notice, the Parent's right to participate in the IEP development process was improperly limited. The District therefore failed to follow procedures for providing the Parent with prior written notice after its meeting on December 3, 2018.

However, on January 16, 2019, the Student's IEP was amended to include 350 minutes of 1:1 assistance, 5 days a week. Thus, the District's failure to provide prior written notice in December 2018 did not impact the Student's access to a FAPE and was corrected by the District.

Issue 4: Participation in Recess to Maximum Extent Possible – The Parent alleged that the Student was not permitted to participate in recess periods to the maximum extent appropriate, given the needs of the Student. School districts shall ensure that the provision of services to each student eligible for special education shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling, or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

A student's IEP team has the responsibility to determine the student's least restrictive environment (LRE), and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom.

Here, from October 12, 2018 through February 7, 2019, the Student was limited to the blacktop during recess. According to the District, this decision was made because: a) the Student "had demonstrated unsafe behavior [during recess], such as punching, tackling, and pushing;" and b) by limiting the Student to the blacktop, the Student "was able to be more closely monitored by a recess assistant." This decision was made before the Student was found eligible for special education; according to the District, this decision "was made by building administration" on October 12, 2018. Therefore, the IDEA would not apply to this particular decision.

However, there is no documentation that shows that, when an IEP was created for the Student on October 15, 2018, that the Student's IEP team had a specific conversation regarding: a) the maximum extent the Student's needs would permit him to participate in recess; and b) if the District could provide the Student with any accommodations or supplementary aids and services that would permit the Student to participate in recess to a greater extent. For example, OSPI notes that, with the addition of a "line of sight" accommodation during recess on February 7, 2019, the District felt that the Student could access the entirety of the playground area. Therefore, the District will be required to provide select staff members with written guidance on the application of least restrictive environment requirements to nonacademic settings.

CORRECTIVE ACTIONS

By or before **April 3, 2019** and **April 22, 2019**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By **April 19, 2019**, the District will ensure that all special education administrators, the principal, the assistant principal, and special education certified staff, including educational staff associates (ESAs), at the Student's 2018-2019 school receive written guidance regarding the requirements of WAC 392-172A-02065 (least restrictive environment requirements apply to nonacademic settings). ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. The guidance will include examples.

By **April 3, 2019**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by April 5, 2019.

By **April 22, 2019**, the District will submit documentation that all required staff received the guidance. This will include a roster of the following personnel at the Student's 2018-2019 school: special education administrators, the principal, the assistant principal, and special-education certified staff, including educational staff associates (ESAs). This roster will allow OSPI to verify that all required staff members received the guidance.

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

Dated this ____ day of March, 2019

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.)