

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-34

PROCEDURAL HISTORY

On May 6, 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 North Kitsap 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 May 7, 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 May 29, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 6, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on June 7, 2019.

On June 24 and 26, 2019, OSPI requested additional information from the District and received that information on June 27, 2019. OSPI forwarded the additional information to the Parent on June 28, 2019.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on May 7, 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 period.

Additionally, in her complaint and reply, the Parent raised several concerns that are outside the scope of a special education citizen complaint investigation. These concerns included the District's failure to hold a "risks and needs assessment between the second and fifth absences" as required by RCW 28A.225.020; the fact that the Student's 504 team never met to create a plan to address and eliminate behaviors related to truancy; and that the Student was discriminated against because he was bullied by staff. Some facts regarding these concerns are included where necessary for context and continuity; however, as OSPI does not have authority through the special education citizen complaint process to enforce RCW 28A.225.020 or Section 504 of the Rehabilitation Act of 1974, these references are not intended to identify additional issues or potential violations, nor does this decision make a conclusion regarding these allegations.

ISSUES

1. Did the District follow procedures for conducting the Student's initial evaluation, including considering information about the Student's absences and school refusal?
2. Did the District follow procedures for developing the Student's initial individualized education program (IEP)?
3. Did the District follow procedures for ensuring Parent participation in the initial evaluation and IEP development?
4. Did the District follow procedures for implementing the Student's IEP?
5. Did the District follow procedures for considering the Parent's requested placements, including a homebound placement?
6. Did the District follow procedures for addressing the Parent's concerns about and the Student's anxiety, absences/truancy, and school refusals behavior?

LEGAL STANDARDS

Initial Evaluation – Specific Requirements & Standards: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must provide prior written notice to the parents of a student, in accordance with WAC 392-172A-05010, which describes any evaluation procedures the district proposes to conduct. A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not they are commonly linked to the disability category in which the student has been classified. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. The evaluation must comply with the IDEA's procedural requirements and complete the evaluation within thirty-five school days from receipt of consent. 34 CFR §300.304; WAC 392-172A-03020.

The evaluation must include information provided by the parents that may assist in determining whether the student is eligible to receive special education services, and if so the content of the student's individualized education program (IEP), including information related to enabling the student to be involved in and progress in the general education curriculum. No single test or measure may be used as the sole criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student. School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. Additionally, districts must ensure that the assessments and evaluation materials they use are selected and administered so as not to be discriminatory on a racial or cultural basis. Assessments must be provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so. 34 CFR §300.304; WAC 392-172A-03020.

Eligibility Under IDEA: A student eligible for special education means a student who has been evaluated and determined to need special education because he or she has a disability in one of the following eligibility categories: intellectual disability, a hearing impairment, a speech or language impairment, a visual impairment, an emotional behavioral disability, an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or, for students aged three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations. 34 CFR §300.8(a)(1); WAC 392-172A-01035(1)(a). A student must not be determined to be eligible for special education services if the determinant factor is: 1) lack of appropriate instruction in reading, based upon the state's grade level standards; 2) lack of appropriate instruction in math; or, 3) limited English proficiency. WAC 392-172A-03040. A child with a disability may seek to qualify for special education benefits under more than one eligibility category. *E.M. by E.M. and E.M. v. Pajaro Valley Unified Sch. Dist.*, 114 LRP 31486 (9th Cir. 2014). A student's eligibility category does not determine services. *In the Matter of Issaquah School District*, 103 LRP 27273, OSPI Cause No. 2002-SE-0030 (WA SEA 2002).

Parent Participation in Meetings: Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting disabled students' rights and providing each disabled student with a FAPE. The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the IEP process. The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of a free appropriate public education (FAPE) to the student. 34 CFR §300.501(b); WAC 392-172A-05000(2)(a).

A school district must ensure that one or both of the parents of a student eligible for special education are afforded the opportunity to participate in meetings, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. 34 CFR § 300.322; WAC 392-172A-03100.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. 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).

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority "vote." If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Individuals with Disabilities Act (IDEA), 64 Fed. Reg. 12473-74 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

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

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

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. 34 CFR 300.503; WAC 392-172A-05010.

Initial IEP: For an initial IEP, a school district must ensure that: (a) the school district holds a meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and (b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP. 34 CFR §300.323; WAC 392-172A-03105.

Placement: When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: the student's IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; the placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he or she needs. 34 CFR §300.116; WAC 392-172A-02060.

Continuum of Alternative Placement Options: Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must: include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement. 34 CFR §300.115; WAC 392-172A-02055. Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. WAC 392-172A-01175.

FINDINGS OF FACT

2017-2018 School Year

1. During the 2017-2018 school year, the Student attended a District middle school and was not eligible for special education services.
2. The District's 2017-2018 school year began on September 7, 2017.
3. In October 2017, the Student's teachers assessed the Student using the "National Institute for Children's Health Quality Vanderbilt Assessment Scale" (used for diagnosing attention deficient hyperactivity disorder or ADHD). One teacher noted, "I have concerns with

dysgraphia type issues. Difficulty writing, forming letters. He often has his head down on desk complaining of headache or fatigue.”

The Timeline for This Complaint Began on May 7, 2018

4. Between May 8 and 10, 2018, the Parent and the Student’s math teacher emailed several times regarding concerns about the Student’s math performance. The teacher stated the Student was not taking notes, producing very little work, and struggled to get the last few tests completed. The Parent stated:

I think he is overwhelmed again. I know that he has a ton of missing assignments. He also does not understand the homework and told me that in class he just gives up right way because he knows that it is not going to make any sense to him. My daughter had the same issues and was diagnosed with autism so I am wondering if maybe he has something else going on. I try to do homework with him but I am not very good at explaining how to do the math problems so it may just cause more frustration. I am not sure where to go from here.

The math teacher replied that he was sorry the Student was struggling and that he would also talk to the school counselor to see if the counselor has any suggestions.

5. On May 14, 2018, the Parent referred the Student for a special education evaluation due to concerns regarding reading, math, written language, social/emotional/behavioral, and motor skills. The referral form noted the Parent stated the Student “has always struggled with school but this past year has been very difficult for him. He is having trouble comprehending math and English. He gets very frustrated when given storytelling assignments and has poor handwriting.” The Parent stated the Student was diagnosed with attention deficit hyperactivity disorder (ADHD) and that she believed the Student may have dysgraphia and dyscalculia.
6. On May 18, 2018, the District notified the Parent via a letter from the District’s school psychologist that the Student had been referred for a special education evaluation due to a suspected disability. The letter stated the District would decide, with parental input, whether or not to evaluate the Student within twenty-five school days of the referral.
7. On June 7, 2018, the District notified the Parent, in writing, that it had decided to evaluate the Student to determine if he was eligible and in need of special education services. The letter notified the Parent that it may not be possible to complete the evaluation before the end of the school year and that the evaluation may need to be completed the following school year. The District sought and the Parent signed consent for the evaluation that day.
8. On June 19, 2018, the school counselor emailed the Parent regarding the planned next steps, which included:
 - Asking the Student’s teachers for specific strategies that have worked well with the Student;
 - Distributing the Student’s Section 504 plan to all of his teachers, which included an accommodation to check with the Student for understanding;
 - Notified the Student that testing would occur in the fall and encouraged the Student to “do his absolute best about coming to school each day – that if he doesn’t it will only set him behind

- from the beginning. I also told him we want things to be better for him at school and will work to make that happen"; and,
- Asking for the Parent's input regarding scheduling.

In response to further questions and concerns from the Parent regarding math, the school counselor offered to set up a math program for the Student to access during the summer.

9. The District's 2017-2018 school year ended on June 22, 2018.

2018-2019 School Year

10. The District's 2018-2019 school year began on September 5, 2018.
11. On September 20, 2018, the District invited the Parent to an evaluation review and eligibility determination meeting.
12. On October 2, 2018, the District held an evaluation meeting, which the Parent attended. The evaluation report indicated the District evaluated the Student in all areas of reported concern: reading, cognitive, social/emotional/behavioral, math, written language, and motor skills.

The evaluation report noted the Parent stated the Student "has always struggled with school but this past year has been very difficult for him. He is having trouble comprehending math and English. He gets very frustrated...and has poor handwriting" and stated, "he has worked with the tutor and got homework done but still did not understand the homework." The Parent reported the Student has a diagnosis of ADHD and he "has a lot of trouble paying attention." The Parent stated she thought he might have dysgraphia and dyscalculia.

The report noted several previous interventions, including: weekly meetings with a counselor, after school math tutoring (which the Student stopped attending), Parent coaching, changing the Student's math teacher, and daily 1:1 before school meetings with the Student's math teacher. The previous school year's math teacher reported to the counselor that the Student "was doing very well but then he stopped coming to school and became last in math." Other teachers from the previous school year noted concerns, including:

- The Student "appears despondent" and "there is a lethargic quality to his affect...low academic performance...but it is his lack of effort that is troublesome."
- "I don't know the degree to which [the Student's] lack of progress is due to low academic skills, emotional distress, laziness, or whatever else might be responsible."
- Very little work turned in.
- "He claims he is stupid but when I work with him one on one there seems to be some understanding. He seems very sad and lacks confidence in himself."
- The Student misses instruction and then is frustrated when he doesn't share the background knowledge classmates have.
- Reading comprehensions is "a bit above grade level, his written expression is on par with peers."
- Handwriting is pretty difficult to read.
- "Scatterbrained, doesn't pay attention, talking when shouldn't be."

The report indicated that the Student felt overwhelmed by school and thus refuses to come. Over the last several school years, the Student missed an increasing number of school days.

The evaluation group determined that the Student did have a qualifying disability based upon his ADHD diagnosis, and that the Student “may have a specific learning disability in mathematics calculation...because [the Student’s] full-scale cognitive score of 95 produces a Washington State criterion score of 79 and [the Student] obtained a score of 80 on the numerical operations subtest.” The examiner “expressed his opinion that [the Student] could very well have a severe discrepancy because his full-scale cognitive score likely underrepresents his true abilities because [the Student’s] processing speed score was likely influenced by his difficulty with writing.” The report noted that because “his decline in math scores broadly coincides with his increasing rate of school absences, the evaluation team did not feel it could rule out lack of instruction as a cause of [the Student’s] numerical operations subtest score. The report stated the group determined that the Student’s disability was not adversely impacting his education in reading, writing, math, or motor skills.”

The evaluation group concluded that the Student was not eligible for special education services because the Student did not demonstrate an adverse educational impact and did not demonstrate the need for specially designed instruction at the time. The report stated, “the evaluation team believes there is a good chance that reducing the burden of writing, increasing [the Student’s] school attendance, and placement in a highly supportive math class with additional math interventions will allow [the Student] to perform at a higher level in school.” The report did recommend that school-appropriate interventions and supports should be implemented for school refusal, that supports could be provided under a section 504 plan, and that the school team should coordinate with the Parent to “initiate (or revise existing plans) to reinforce work completion...[and] monitor [the Student’s] grades, work completion, and attendance.”

13. The District, in its response, stated the initial evaluation did “consider information about the Student’s absences and hypothesized school refusal in the initial evaluation.” The evaluation “documented Student’s attendance history and Parent’s report concern about Student’s attendance: ‘Since the beginning of the current school year, [Student] missed approximately 5 school days...During his sixth-grade school year, [Student] missed approximately 48 school days. During his fifth-grade year, [Student] missed 19 school days. During his fourth-grade year, [Student] missed 10 school days. During [Student’s] initial referral team meeting [Student’s] mother reported that [Student] is overwhelmed by school and does not like it...’”

The District’s response summarized the following regarding the initial evaluation’s consideration of the impact of the Student’s absences on his math performance:

In math, the team spent a significant amount of time considering the likely impact of his absences. The special education math teacher on the evaluation team reported that middle school mathematics is particularly sequential in nature in the sense that learning new skills frequently requires the mastery of previously learned skills as a foundation. The team also considered information shared by [Student], his mother, and the school counselor that [Student] had a particularly difficult relationship with his sixth-grade math teacher that

resulted in his changing classes. [Student's] current math class is taught by an effective teacher with a good student-teacher ratio and an instructional aide in the classroom. Additionally, the general education instruction TOSA (Teacher on Special Assignment) reported that [Student] was also eligible for a new math intervention program which would take place during the school's advisory period. Overall, the evaluation team concluded that there was not enough reason to believe that [Student's] math score provided evidence of an adverse educational impact resulting from his ADHD that could not otherwise be addressed outside of special education.

14. On October 4, 2018, the District provided the Parent with a prior written notice regarding the results of the evaluation, and restated that the Student was not found eligible for special education services. The notice stated, "in addition to considering qualification under the category of Health Impairment...the team also considered qualification for a specific learning disability in math." The notice stated the team "did not feel confident that [the Student] had a specific learning disability in math" and that this is described in the discussion section of the evaluation, "however basically the team felt that it could not rule out the effect of [the Student's] missing a lot of school as a significant reason for his difficulty in math."
15. On October 5, 2018, the District developed and implemented a Section 504 plan for the Student.
16. According to the District, the school did implement interventions following the creation of a 504 plan, which included: weekly counseling support, assistive technology, additional math help, adjusted day to a reduced schedule, assisted mental health provider to see Student at school, and set up online courses. The District, in its response, stated, "The availability of these supports through other channels establishes that support the team's decision that Student's absences and hypothesized school refusal behavior could be addressed through other interventions and did not indicate a need for specially designed instruction."
17. The Parent disagreed with the results of the evaluation and on October 30, 2018, requested an independent educational evaluation (IEE). The District granted the request and the IEE was completed in November 2018.
18. The IEE report, dated November 30, 2018, noted the Parent stated the Student "attends half-days due [to] anxiety...[and Student] reported that he worries a great deal about tests and completing the work on time." The Student "reported that he has 'lost trust' in the school...had a negative experience at the IEP meeting...[and] that while he has been awarded a 504 plan with specific accommodations allowing access to class notes, allowing for regular breaks, and individual tutoring with an older peer, he reported the experience was not helpful." The psychologist conducting the IEE reviewed the District's evaluation and 504 plan, and conducted several additional assessments (cognitive, academic, executive functioning, attentional capacity, developmental, and psychiatric). The report found that the Student exhibited challenges in spelling, math calculation, math fluency, and fine motor, while he excelled at read, reading speed and fluency, and reading comprehension. The IEE stated under "diagnostic impressions" that the Student had a mathematics disorder (fluency and

calculation), disorder of written expression, and attention deficit hyperactivity disorder (ADHD), inattentive type; and the report stated the Student's "anxiety appears to be directly tied to his academic performance, rather than isolated disorder." The report recommended that the Student receive specialized instruction and stated that the Student would qualify for an IEP that focused on his writing and math skills.

19. On December 10, 2018, the District invited the Parent to a meeting scheduled for January 17, 2019, to consider the results of the IEE—as the meeting invitation stated, to "reconsider [Student's] initial special education evaluation in light of an Independent Educational Evaluation."

20. The District was on break from December 24, 2018 through January 4, 2019.

21. On January 17, 2019, the Parent met with the Student's District evaluation team. According to the District's response, "by this time, Student's absences and school refusal behavior had increased. Accordingly, at this meeting, the District proposed to conduct another evaluation to gather more information relevant to understanding Student's school refusal behavior."

According to the prior written notice, dated January 17, 2019, the District "proposes to qualify [Student] for special education as a student with a health impairment based on his ADHD" as a result of additional information from the IEE and the Student's increased non-attendance at school. The notice confirmed that the District proposed to conduct an additional evaluation to gather more information "relevant to understanding [Student's] hypothesized school refusal behavior." The notice stated the group considered the Student's initial evaluation, the IEE, and information provided by the Parent in her written request for an IEE and IEP.¹

22. Also, on January 17, 2019, the Parent provided written consent for an additional evaluation in the area of social/emotional/behavioral. The consent for evaluation form stated, "At today's meeting, the evaluation team DID find that [Student] qualifies for special education based on the health impairment of ADHD in the areas of math and social/emotional/behavioral skills." The Parent, in her reply to the District's response to this complaint, stated she signed this form "with the knowledge that he had been found eligible for an IEP, along with everyone in attendance."

¹ According to the District, the January 17, 2019 meeting was to discuss the IEE results. The District maintains that the "wording of this prior written notice was perhaps imprecise, but what the team did at this meeting was discuss the IEEs and initiate an evaluation because it appeared that student would be eligible for special education." The District stated the Student was *not* found eligible on January 17, 2019. The District stated: "The plan was clear: The District would conduct an FBA, an initial evaluation would be completed, and the team would come together to determine if Student officially qualified for special education services." The District further stated the Parent was not asked to sign consent for initial provision of special education services on January 17, 2019, because no eligibility determination had been made. The District stated, "it would have been very premature for the Parent to sign consent for initial services before the IEP was developed and she knew what services she was consenting to."

23. In conjunction with the January 17, 2019 meeting, the Parent shared her input via a "Individualized Education Program (IEP) Meeting Parent Input" form. The Parent requested the Student receive an IEP and shared the following, summarized in relevant part:
- Goal to get the Student back to school, attending on a regular basis, and enjoying school. The Parent also wanted the Student to build "confidence in his academics and getting him on the appropriate track to succeed in the coming years."
 - That the Student qualified for an IEP in the area of "specific learning disability (written expression and math/dysgraphia)."
 - That the Student has "missed school as a result of his disability, but no action has been taken to resolve his truancy. His anxiety and learning disability are preventing him from making meaningful progress."
 - Requested assistive technology and specific accommodations.
 - Requested the IEP address attention and truancy.
 - Suggested specific measurable annual goal topics, including: letter-word combinations, math speed, equation steps, coping with social and academic aspects of school, and self-advocacy.
24. On February 21, 2019, the District invited the Parent to a meeting to review the functional behavioral assessment (FBA) and incorporate the FBA and IEE into the District's evaluation. The meeting invitation also stated that during the meeting, the team would develop an IEP for the Student.
25. On February 28, 2019, according to the Parent, she received a draft version of the Student's IEP. The Parent then requested the meeting be rescheduled so that she had more time to review the draft IEP, and the meeting was rescheduled for March 13, 2019.
26. In early March 2019, a District board certified behavior analyst (BCBA) conducted an FBA regarding the Student's school refusal behavior.
27. On March 6, 2019, the Parent sent the District's superintendent a letter, alleging that the Student had been discriminated against and bullied by staff, and that this bullying had led to "severe anxiety over attending school."
28. On March 7, 2019, the Parent provided the District with a document titled "Individualized Education Program (IEP) Meeting Parent Input," which listed the Parent's requests. The requests are summarized as follows:
- IEP include a contingency plan to provide a free appropriate public education (FAPE) if Student refuses to come to school. "What will the school do to ensure that [Student] is making progress on his IEP goals if he is not at school? I request the IEP include a plan of support at home if he isn't at school."
 - Student work with a mental health or behavior specialist that he trusts during school.
 - A second meeting to develop the IEP.
 - The special education teacher be the Student's case manager.
 - That information and recommendations from the IEE be included in the IEP.
 - That changes be made to the FBA and evaluation report regarding statements the Parent disagreed with.
 - The IEP include the following accommodations: word processor; text to speech; advanced learning activities in strength areas; oral responses; additional time; transitional statements;

preferential seating; collaboration between mental health specialist and teachers; separate worksheets for word problems and number problems; limit number of problems; check ins prior to moving on in work; and, break down lengthy, multi-step problems.

- The Student not be afraid to go to school, that he can trust he is safe at school.
- The school address the Student's truancy, anxiety, and learning disability.
- The learning specialist works with the Student in the general education classroom as much as possible to help him generalize specially designed instruction in the grade-level curriculum.
- The Student be in the general education classroom at least 80% of the day.
- The team take and review data to see if the Student qualifies for extended school year (ESY) services.
- Support in the area of attention.
- Progress monitoring at the trimester.
- "I request that a plan be put into place to ensure [Student] has support at home to make meaningful progress on his IEP goals."
- The IEP include annual goals related to: "ability to retrieve the correct letter-word combinations from memory and print those with accuracy...math speed drills and a visual system for retrieving the correct equation steps...[and] coping with the social and academic aspects of school, and promote self-advocacy."

29. On March 13, 2019, the Student's IEP team, including the Parent, met and finalized an evaluation report that incorporated information from the IEE, FBA, and October 2018 initial evaluation.

30. The FBA noted the "behavior of concern" as school refusal, and noted the Student had missed sixty full days of school and had seventy-two absences, as of March 15, 2019. The report noted no observations were included in the FBA, because the Parent "did not agree to allowing the behavior analyst and the school psychologist into the home to observe the morning routine and the target behavior in context" and "student is not attending school, so no observations at school could be conducted." The report noted the Student has a diagnosis of ADHD, has a 504 plan, and sees a therapist weekly. The report included a review of existing records, including academic history, the District's initial evaluation, and the IEE.

In an interview with the Parent, the BCBA noted the Parent described the challenges getting the Student to attend school, including: "he delays in getting ready until his mother must leave for work...he will refuse to get out of the car and enter the building" and that she has tried removing privileges.

In an interview with the Student, the BCBA noted the Student expressed the following concerns:

- He feels "put down" by teachers, and feels "called out on his handwriting;"
- Feels teachers are mean and do not "get" him;
- Feels stressed in the morning when it is time to go to school;
- Thinks attending a different school would be better; and,
- Feels overwhelmed and that "missing school makes it worse because it is hard to know what is going on when he has been absent."

The report stated the Student appeared “agitated when pressed about setting up a plan to return to school.”

The report noted the Parent and Student completed the “School Refusal Assessment Scale-Revised (SRAS-R)” and both ranked “avoidance of stimuli provoking negative affectivity” as the primary reason for school refusal. Other functions of the Student’s behavior included “attention-seeking” and “tangible.” The report noted the Student’s preference on a “forced-choice reinforcer assessment” was consumable rewards and independent rewards.

The report described the target behavior—school refusal—and hypothesis about the setting event (extended periods at home), hypothesized function (avoidance, attention, access to tangible items), antecedent, behavior, and consequence. The report included an extensive list of strategies regarding setting, antecedent, educative teaching, and consequence for behavior change. The report recommended the following intervention methods: antecedent interventions; systematic desensitization/exposure; differential reinforcement of an alternative/incompatible behavior; extinction; and contingency contract.

31. According to the Parent’s complaint, the FBA was “supposed to happen in part at our home, so the behavior specialist could better understand what’s triggering [Student’s] anxiety” but, “after the continuous failure from the school staff to support [Student], my son refused to let them into our home. He believes the school staff is bullying him.” The Parent also stated that a mental health professional should have been involved in addressing truancy. The Parent stated that the FBA did not evaluate the Student in the school environment.
32. The March 13 evaluation report incorporated information from the Student’s initial evaluation, District’s FBA, and the IEE, including the IEE’s diagnostic impressions (mathematics disorder – fluency and calculation, disorder of written expression, and ADHD – inattentive type). The report noted the team met on January 17, 2019 and found that the Student “does qualify for specially designed instruction in the areas of social/emotional/behavioral skills and math.” The report further noted regarding the January 17 meeting that, “at the time of that meeting, the evaluation team secured written permission from [Student’s] mother to conduct additional evaluation in the social/emotional/behavioral domain to support the development of a Functional Behavior Analysis (FBA) and Behavior Improvement Plan (BIP).” The evaluation report also incorporated Parent input as record in the Parent’s March 7 parent input document. The report summarized the evaluation team’s discussion of the results of the IEE and noted the District school psychologist “expressed reservations about [IEE providers] cognitive testing...team did not come to a final consensus...the team shift its attention to [Student’s] ADHD as a health impairment and [IEE] results...” The evaluation report noted that, “Although the evaluation team did not conclude that [Student’s] ADHD was the sole, or even primary cause of [Student’s] school refusal behavior, the team did feel that the increase in absences from school required the additional support of specially designed instruction.”

The Student’s evaluation group and IEP team found the Student experienced an “adverse educational impact in the form of difficulty with, written expression, sustaining attention, and weaknesses in executive functioning, particularly with organization” and that difficulties are

“exacerbated by school refusal behavior.” The report found the Student eligible for special education services under the category other health impairment and recommended the Student receive specially designed instruction in the areas of math and social emotional/behavioral, and that the team develop a behavioral intervention plan (BIP).

33. Also, on March 13, 2019, the Student’s IEP team developed an IEP for the Student. The IEP included an annual goal in the area of math and two annual goals in the area of social emotional/behavioral. The social emotional/behavioral goals are as follows:

- “When feeling stressed or anxious about a situation (i.e., attending class, undesired task, demand, and/or undesired peer behavior), [Student] will utilize coping strategies (i.e., taking a break, deep breaths, etc.) and return to or remain on task for minimum of 15 minutes.”
- “When feeling stressed or anxious, [Student] will reframe negative self-talk statements going from reframing 0 out of 5 statements to 4 out of 5 statements on five separate occasions, as measured by daily recordings/teacher observation.”

The present levels section related to the social/emotional behavioral goal included data and suggested behavior supports. The IEP provided the Student with access to assistive technology (keyboard, tablet), and the following accommodations and modifications (with additional accommodations listed for assessments):

- Provide concrete learning with manipulatives
- Repeat and clarify verbal and written instructions
- Preferential seating near teacher
- Provide transitional cues
- Chunk lessons with frequent checks for understanding
- When applicable use alternate forms of response
- Limit copy from the board
- Provide assistance with note taking
- Provide shorter writing assignments
- Encourage participation in group activities
- Additional time to complete tests/projects
- May use teacher approved notes on test
- Allow for usage of assistive technology supports for reading and writing and math (word prediction, digital books, screen reading, voice recognition)
- Repeat/review/drill short, frequent and repeated practice sessions
- Introduce one new concept at a time
- Complete assignments: independently, with guided instruction, cooperatively with classmates, with non-verbal signals between teacher and student to stay on task, and use a first-then strategy going from no-preferred to preferred activity
- Maintain positive relationships with Student
- Greet student when he arrives and connect him to a couple of preferred adults
- Have preferred activity when the student first arrives
- Reduce anxiety provoking situations where student might be embarrassed

The IEP stated the Student would “return to school on a reduced daily schedule, and (as a re-entry strategy) and attend 4 core classes daily,” and provided the Student with the following specially designed instruction in the special education setting:

- Math: 50 minutes per day (special education teacher)
- Special Emotional/Behavioral: 15 minutes per day (special education assistant)

The IEP stated the Student would spend 81% of his time in the general education setting. The team also developed a BIP focused on the Student's school refusal behaviors. The BIP incorporated the information, recommendations, and strategies outlined in the FBA. The BIP included strategies and steps for the Parent and for staff.

The District noted that at the IEP meeting, the team did not have time to address each of the Parent's requests, which she submitted prior to the meeting on an "IEP Meeting Parent Input Form."

34. The Parent, in her complaint, listed concerns with the BIP, including:
- "The draft BIP included punishment for truancy under the Becca Law, if [Student] continued to be absent."
 - "It does not use research-based evidence for helping students re-acclimate to the school environment in a more gradual way."
 - "The plan refuses to take into consideration a homebound or homeschool option, which I believe is a denial of FAPE. If he refuses to attend the school still has an obligation to ensure [Student] makes progress on his IEP goals."
35. On March 13, 2019, the Parent also signed consent for the provision of special education services.
36. On March 15, 2019, the District issued a prior written notice, which stated, "Per agreement of the IEP team on Wednesday, March 13, North Kitsap School District has implemented a working IEP for [Student.]" The notice stated the Student was found eligible for special education services in math and social emotional/behavioral, and noted the Student did not qualify for specially designed instruction in written expression.
37. Also, on March 15, 2019, the special education teacher emailed the Parent a copy of the Student's IEP and stated she would mail a hard copy with signatures the following Monday. The attachment included the meeting invitation, prior written notice, and IEP.
38. In her reply, the Parent stated the Student's IEP was not implemented in a timely manner after the March 13, 2019 IEP meeting. The Parent stated this is because the District rejected her request to transfer the Student to another school in the District or provide him with a homebound placement. The Parent also provided documentation that she applied to transfer the Student to a school in a different, neighboring school district and that the nonresident transfer was declined.
39. According to the District, once the IEP was developed, "the District was ready to provide the [specially designed instruction] as written in the IEP in person at Student's school."
40. On March 18, 2019, the Parent emailed the special education teacher and stated the team had "discussed listing his diagnosis of dyscalculia...while his absences may contribute to his trouble in math, his dyscalculia plays a huge role in his struggle" and stated, "I would also like his other

diagnoses listed as I believe it would be beneficial for all his teachers to have this information.” The Parent also asked why the Student did not qualify for occupational therapy services, given that “he did so poorly on the writing portion of both the school evaluation and the independent evaluation.”

41. On March 20, 2019, the BCBA emailed the Parent an updated copy of the FBA and BIP based on the input and discussions at the March 13, 2019 meeting.
42. On March 22, 2019, the District provided the Parent with two prior written notices that detailed the Parent’s input into the IEP and BIP that had been discussed and incorporated at the March 13 meeting, proposed to implement the initial IEP, and proposed to conduct an additional IEP meeting as soon as possible to finish discussing the Parent’s input.

The notice stated that at the March 13 meeting, the team “addressed information contained in the IEP meeting parent input form section entitled ‘Team Considerations: Assessments’” and incorporated additional information into the Student’s evaluation based on Parent input.

43. The District was on break April 1-5, 2019.
44. On April 10, 2019, the District invited to the Parent to an IEP meeting scheduled for April 18, 2019. The invitation noted the purpose of the meeting was to “continue discussion of [Student’s] current IEP created and implemented on February 27, 2019.”
45. On April 18, 2019, the Student’s IEP team met again. According to the documentation, at the meeting, the team discussed the BIP and addressed the Parent’s questions.

According to the prior written notice, dated April 26, 2019, the team updated the BIP and addressed the following Parent concerns:

- Mental health or behavior specialist: “The District accepts this request as the district’s behavior intervention team will be working with the case-manager to support the goals and the implementation of the BIP. The student also has access to the school counselor.”
- Special education teacher as the case manager: District accepts.
- IEE information included in IEP: IEE has already been integrated in the current evaluation.
- The IEP include requested accommodations: Largely added to IEP, except for the request for 30 minute collaboration between mental health specialist and teachers. “The District rejected the frequency of this request...The team will collaborate with outside providers as needed.”
- Address truancy: “The IEP addresses truancy and has behavior goals to help [Student] cope with the social and academic aspects of school. This is included in the BIP plan, which is part of the IEP.”
- Specially designed instruction in the general education classroom: “At this time, [Student] will receive additional help with general education classes when needed in the Resource Room.”
- General education setting 80%: In IEP.
- ESY: “Data and progress monitoring occurs regularly and reviewed for adjusting instruction as well as for ESY needs. ESY was [sic] explained that it is a data driven service not a typical summer school program.”
- Progress monitoring at the trimester: Included in IEP.

- IEP goal related to letter-word combinations: "This request was rejected as he did not qualify for occupational therapy services per evaluation by OT."
- IEP goal related to math: Requests "occur as part of Math specially designed instruction."
- IEP goal related to social and academic aspects of school, self-advocacy: Included as goal in the IEP, "as well as has recommendations for teaching replacement behaviors in the behavior plan that address coping strategies."

The prior written notice also summarized updates made to the FBA, to add detail "to help the parent understand the data that led to some of the conclusions with which she did not agree. The data was summarized in the first draft and explained in detail in the second draft but none of the conclusions changed" and "the hypothesis about the function of the behavior did not change." The following concerns were discussed and clarified:

- "Parent said he does not verbalize that he is anxious. The behavior analyst explained that he did verbalize it to her during a phone conversation...[and] during his visit with the school psychologist and behavior analyst."
- Provided data and information about somatization.
- "The parent did not agree that the student was trying to get attention from her, nor that he had a long-history of reinforcement for school-refusal or an absence of reinforcement for perseverance. The team rejected changing the hypothesis in the FBA, but instead the behavior analyst supported those conclusions with analysis of pertinent data and assessments given and laid out the detail in the updated version of the FBA...Attendance records were also reviewed documenting a long-history of non-attendance. The behavior analyst explained that this is a secondary function."

The notice additionally stated the BIP was updated and summarized the following Parent requests that the District rejected:

- Contingency plan and IEP to provide FAPE at home: "This request was rejected. The behavior analyst spoke to how this is contraindicated in literature about treatment for school refusal and would be harmful to the student...school refusal is also not a medical condition where a student physically cannot attend school that might be addressed by home health services. Such students have a request from a doctor detailing the medical condition that makes attendance impossible."
- Plan to ensure Student can make progress on IEP goals at home: "This request was rejected. [Student] has a behavior plan that addresses school refusal. He will receive education/social-emotional support at school and this will be monitored and adjusted as needed. However, additional skill building homework can be supplied/suggested upon request from teachers, as necessary. The district has signed release of information to communicate with outside counselor as well and will continue to partner with medical providers. The team can reconvene as needed to address lack of progress with IEP goals and/or the BIP."

46. On May 2, 2019, the Parent's advocate emailed the director. The advocate raised concerns regarding truancy and alleged that the District had not done it's "due diligence under Becca's Law in relationship to [Student's] school refusal." And that the Student wanted to be in school, but as a result of "bullying and the resulting anxiety [Student]...has felt...fearful to attend [middle school]." The advocate attached a release of information so that the District could communicate with her and a letter from the Student's "pediatrician diagnosing him with severe anxiety." The advocate stated the "family requests that you stop any truancy violations against

[Student], and work to provide him a Free and Appropriate Education as a homebound student.”

47. Also, on May 2, 2019, the Parent forwarded the advocate’s email to the school psychologist. The psychologist responded as follows:

Help me understand what message you are wanting me to have by sending me this. I am not clear. I am also not clear on whether this means you intend to make him available to continue with his plan or not. It is my understanding...the truancy is non-issue while working on this plan. We know he has anxiety about school, and we have a thorough and so far successful plan to address his school refusal using evidence-based strategies for anxiety and school-refusal. He had success on 8 out of the last 10 days. Do you plan to bring him tomorrow?...Also I would still like to meet...And are you asking me to send your advocate something or contact her? If so, please let me know.

48. In her reply, the Parent stated she did not receive a copy of the IEP or prior written notice after either IEP meeting (March 13 or April 18, 2019). On May 3, 2019, the Parent emailed the special education teacher and asked when the IEP and prior written notice would be sent to her. The special education teacher replied and attached a copy of the IEP. The Parent stated, in her reply, that there was no prior written notice attached to this email.

49. On May 3, 2019, the director proposed that the IEP team meet again to further discuss the Parent’s concerns.

50. Also, on May 3, 2019, the Parent emailed the director and stated that all correspondence should be addressed to the advocate and should copy the Parent. The director replied and stated that she would need “communicate with you as the parent but you can make sure and forward all correspondence if you would like.”

51. Later, on May 3, 2019, the advocate emailed the director and stated the Parent had never received the latest prior written notice and would like an electronic copy of the IEP and prior written notice. The advocate stated the Parent requested the Student’s educational records and that the Student be “put on the homebound PAL program for the remainder of the year.”

The director replied and stated she would “continue to communicate directly with [Parent] regarding her son and have provided the same guidance to [middle school] staff as well.” The director stated the case manager would send the IEP and prior written that day, and provided information about how a public records request could be made.

52. Also, on May 3, 2019, the Parent emailed the director and asked why she would not respond to the advocate. The Parent asked if there was a policy that prevents the director from communicating with the advocate.

The director replied and stated that there was no policy, but “the reason I want to communicate directly with you is to make sure you get all the information and communications regarding [Student’s] educational plan from me and/or the team” and that she did not want there to be “any confusion or missed communication.” The director stated,

"again, I am fine with you sharing information with your advocate. That is your right as a parent."

The Parent responded, "since there is no policy, I am again requesting that all communication go through my advocate. As long as you remember to cc me on the emails then you should have no concerns."

The director replied, stating, "As I stated previously, I prefer to communicate with parents directly and will continue to do so."

53. According to the Parent's complaint, she believes the director refused to communicate with the Parent's advocate as a way to "stall progress and intimidate me."
54. The District's response stated that the Parent's allegation that the director refused to communicate with the Parent's advocate was not accurate. The District stated, director "has been communicating with both the Parent and advocate at meetings, etc., but has declined Parent's request that [director] communicate only with the advocate and not with the Parent." The District stated the IDEA obligates them to communicate with parents and "in order to fulfill that obligation [director] needs to ensure that Parent receives information provided by the District regarding her son. The District cannot guarantee Parent receives such information if it is sent only to a third part and not to Parent." Thus, the director communicated with the Parent, and sent information to both the Parent and advocate when feasible.
55. On May 8, 2019, the District invited the Parent to an IEP meeting scheduled for May 9, 2019, to discuss "IEP services for [Student] per parent request."
56. Prior to the meeting, the Parent provided the District will feedback on the "(IEP) Meeting Parent Input" form. The Parent made the following requests:
 - 20 hours a week of homebound instruction, with "proper supports laid out in his IEP. I request the homebound teacher have expertise in providing special designed instruction for students with dyscalculia. I request that this teacher be [Student's] transition specialist, who will help transition back to the comprehensive campus. The transition back to school should happen over the course of months, and a timeline should be set."
 - The IEP team meet every two weeks "to start and fade to once a month. These meetings will determine if the program is working, and what other supports [Student] may need."
 - Truancy violations be dropped. Student's "school refusal is a direct result of his disability and the lack of support he has received at [middle school]."
 - Student's assistive technology be used at home during homebound instruction.

The Parent stated she was concerned that the Student's IEP was not being implemented, and stated:

[Student] has not received any of the academic supports or goals laid out in his IEP. My request for a school transfer or homebound instruction to address IEP goals have been denied so far. I request [District] do their due diligence under Becca's Law and state and federal special education law to ensure [Student] receives [free appropriate public education] FAPE. I want to avoid a more restrictive placement at a residential facility, and help him get back to school full time by next school year with proper supports.

57. On May 9, 2019, the Student's IEP team met for a third time. According to the prior written notice, the team discussed attendance, truancy, bullying, homebound services, effectiveness of the BIP related to school refusal, and the timeline for the plan.

The notice summarized the following:

- Attendance/Truancy: The truancy petition was put on hold while the IEP team discussed, developed, and finalized an attendance plan—a “gradual re-exposure to school via systematic desensitization plan to shape duration of attendance.” The team will “move as quickly as possible to the end goal of full attendance based on the data.”
- Bullying: Concerns being addressed in the FBA, BIP, and through specially designed instruction. The Student “answered survey questions in the FBA indicating other students were not a problem for him.”
- Homebound Services: “The District has informed parent that homebound instruction is contraindicated when addressing school refusal. The district and parent agreed to enroll student in the [program] program for math. The general education teacher will support student daily via this online platform and learning. The team agreed to start him at a 6th grade level and set up same day. The special education teacher will collaborate with the general education teacher to modify. Student will be working on Math with support from general education teacher he has a positive relationship with while the team works on increasing his time at school. The team has a detailed timeline for reentry that will be emailed to parent. The progression of the plan will depend on progress data. This data will be shared with parent weekly.”
- Assistive Technology: Student can access “word prediction software at home via [program]. Teacher will screen shot the process on how to access and email to parent. The general education and special education teacher will problem solve with student if and when he is struggling. General education teacher, parent, and special education teacher will continue to communicate regarding any challenges.”
- IEP Meetings: “The IEP case manager will communicate daily with parent to ensure high frequency and regular communication between school and home. Parent agreed to his frequency and communication modality and declined her request to meet every 2 weeks.”
- BIP: The BCBA shared progress data over the past eleven days, with “data showing steady progress toward goal. The team agreed to be consistent with the plan and keep the lines of communication open and frequent. The timeline will be shared with parent via email weekly and adjusted as quickly as progress is made. Continued daily communication will occur between parent and case manager.”

The notice also stated the Parent was provided with information about in-District transfers and that the Parent declined to give the school team consent to communicate with the Student's private counselor.

58. Also, on May 9, 2019, the BCBA emailed the Parent an outline of the “successive approximations for the terminal behavior of returning to school.” The BCBA stated that “based on his progress before you stopped bringing him on May 3rd, I can give a rough estimate that I think we could be where he comes one period per day at least once or twice before the end of school.” The BCBA provided further information and an explanation about how behavior is shaped, the reasoning behind the plan, and that she was adding elements of school-based

strategies for dialectical behavior therapy². The email attached the following plan for the “anticipated steps for shaping duration of attendance, systematic desensitization, and returning to school for 1 to 3 periods”, which consisted of the following steps, which “may be adjusted as necessary”:

- “Parking lot car.”
- “Bench with [staff] for 5-15 minutes with mom in parking lot.”
- “Bench with [staff] for 5-15 minutes with mom gone.”
- “Mom leaves parking lot from this point forward for when student is outside of building.”
- “Walk with [staff] for 15 minutes outside of building.”
- “Walk with [staff] for 15 minutes inside of building or sitting in BIT room with her for 15 minutes with parent.”
- “Walk with [staff] for 15 minutes inside of building or sitting in BIT room with her for 15 minutes without parent.”
- “Sitting with [staff] for 15-30 minutes in BIT room.”
- “Sitting with [staff] for 30 minutes in BIT room doing 5-10 minutes of work from [staff] or [special education teacher] *Can work in [special education teacher’s] room If he chooses.”
- “Sitting with [staff] for 30 minutes in BIT room working for 15-20 minutes *Can work in [special education teacher’s] room If he chooses.”
- “Sitting with [staff] in BIT room working for 30 minutes. Sitting in [special education teacher’s] room for 15 minutes.”
- “Moving to [special education teacher’s] room for 50 minutes.”
- “Moving to [special education teacher’s] room for 50 minutes, working for at least 15 minutes.”
- “Moving to [special education teacher’s] room for 50 minutes, working for at least 30 minutes.”
- “Attending [special education teacher’s] class for one period, working most of the period.”
- “Sitting in 2nd period for at least 30 minutes, working for at least 15.”
- “*Increased time working in 2nd period.”
- “**Add 3rd period.”

59. The Parent, in her reply, stated the online program “does not provide the [specially designed instruction] laid out in [Student’s] IEP, and does not support his IEP goals” and that the Student was “not successfully completing the...online program, because he isn’t getting the support he needs.”

60. The District stated the Student did access the online math program, although did not provide any information as to how often. The District stated the plan was that the general education

² Dialectical behavior therapy or DBT is a type of cognitive behavioral therapy that tries to identify and change negative thinking patterns and pushes for positive behavioral changes. The BCBA noted that DBT “includes strategies for: mindfulness, distress tolerance, emotional regulation, and interpersonal effectiveness.”

teacher would log in the online program with the Student and support him directly while he was working.³

61. As of May 17, 2019, the Student’s schedule was as follows:

- Period 1: 7 Science
- Period 2: SE Math Resource Room
- Period 3: 7 English
- Period 4: Home Schooled
- Period 5: Home Schooled
- Period 6: Home Schooled
- Period 7: Home Schooled

62. According to the District’s attendance record for the Student, as of May 17, 2019, the Student had the following absences during the 2018-2019 school year:

- Web Absence: 32 days⁴
- Absent Other: 9 days
- Absent excused: 53 days
- Web Tardy: 4 days
- Tardy: 7 days
- Absent Unexcused: 3 days

And the “attendance reasons” were listed as follows:

- Illness/Health Condition: 41 days
- Medical Appointment: 14 days
- Tardy Excused: 3 days
- Absence Unexcused: 3 days
- Testing: 1 day
- Tardy Unexcused: 1 day

63. According to the District’s response, the Student’s specially designed instruction in social emotional/behavioral is “currently being provided as Student arrives at school each day. When Student arrives at school, he is greeted at the car by a behavior tech. The team has established a progressive 18-step plan for getting the student from the parking lot into school, and returning to school for 1 to 3 periods.”

The District stated the plan was discussed generally at the IEP meetings, with the “first step of meeting Student at the car and the end goal for him to be attending 3 full periods.” The District stated the BCBA then used her “professional judgment and her knowledge around systemization to break the goal down further into doable parts.” The District stated, “progress within the steps is meant to be fluid and progressing through the steps will depend on how Student progressed. Once this 18-step plan is accomplished, the IEP team will reconvene to develop a new plan to further support attendance.”

The District provided the following data on the plan’s implementation:

Date	Duration Time:	Location	Notes ⁵
4/19/19	0	Park at curb	Did not show

³ On June 14 and 26, 2019, OSPI requested additional information from the District regarding the online math program. The District stated that because it is summer vacation, the District was not able to provide further specific information from the teacher regarding how she worked with the Student.

⁴ The District stated that “web absences” did *not* refer to absences from the online math program.

⁵ Some of the notes were very difficult to read so this decision only includes part of the notes that were readable; ellipses indicate sections of notes that were unreadable; with some guesses at a word included in brackets.

4/22/19	7:58-8:02	Parking lot	Intros/check in only – He kept head down in back seat, did not move...
4/23/19	8:00-8:05	Parked at curb – in car	Talkative, head up, stayed in car
4/24/19	8:02-8:06	Parking/curb – in car	Would not get out of car. Dug in “uncomfortable at school”...reports he has a bad feeling about school because of how he was treated here earlier and does not want to go near it. The whole situation makes him feel uncomfortable.
4/25/19	8:00-8:09	Bench – mom at curb	Positive talk
4/26/19	8:00-8:25	Walk with dog	Mom remained in lot. Other staff did not know full plan, did not have radio, but did have a positive [interaction]...
4/29/19	7:55-8:25	Outside building	Student did not enter building per plan/[expectation]...said he “did not care” if it was counted as attendance day or not, visibly anxious, more than other days. Tried several approaches to reframe, breath, positive talk, “dog brain,” would not enter.
4/30/19	7:58-8:05	Parked at curb – in car	Did not get out of car
5/1/19	7:58-8:15	Inside, BIT room	*with mom
5/2/19	7:58-8:03	Car at curb did not get out	...Student and mom report plan is moving “way” too fast. Asked if we have been in communication with...outside therapist. Outside therapist agrees it is moving too fast. Mom is moving, selling house...she does not see the point in pushing...if he will not be here next year...they want home hospital info...Both Student and mom were upset/frustrated ...said I would relay info and most likely...discuss next steps.
5/3/19	7:55-7:59	Parent interjection	Mom refused to participate. Psychologist met car in parking lot.
5/6/19	N/A	Did not arrive.	1 st no show.
5/7/19	N/A	Did not arrive.	2 nd no show.
5/8/19	N/A	Did not arrive.	3 rd no show.
5/9/19	AM meeting	Scheduled	Main conference room
5/10/19	-	-	Did not arrive at school. Got email to start Monday.
5/13/19	8:03-8:09	In car at curb	Did not exit car. Chatty.
5/14/19	7:55-8:03	In car at curb	Did not exit car. Chatty. Student mentioned steps felt like “leaps” for him. Mom verified the steps were not the same as “days” and would progress differently than an everyday movement. Neither was certain when getting out of the car would happen. “Maybe when its not raining?” Staff reports no online math program activity yet.

5/15/19	7:55-8:05	Golf cart ride.	Excited. Loved it. We talked about his favorite place in the school. He said it was the gym/cafeteria. 2 kids said "Hi [Student]" when we drove by.
5/16/19	7:58-8:13	Golf cart/school talk	Saw into classrooms, discussed 8 th grade plan/online status.
5/17/19	7:58-8:08	Walk around school "close-in"	Very willing to walk and talk with me. Mom pick-up in loop...had previously gone in golf cart. Close to classes and along breezeway downstairs in front of windows and open doors. Said he got accepted...was happy, and felt he could attend in building here next year without stress.
5/20/19	N/A	N/A	Called in sick
5/21/19	7:51-8:00	Car	Arrived early? Talk only. I called it short for today.
5/22/19	7:55-8:10	Walk around campus	Mom picked up in loop.
5/23/19	8:00-8:13	Walk with dog	Got very anxious, when seeing PE class exiting gym...exiting gym in mass. Made an anxious noise, quickly diverted path to avoid. I asked how he felt. He said "anxious." I praised him for recognizing, and dealing in an appropriate and acceptable way.
5/24/19	7:58-8:08	...	Next week in building – invited Mom.

CONCLUSIONS

Issue 1 – Initial Evaluation: The Parent alleged that the District failed in its "child find obligation" because the District did not find the Student eligible for special education services despite his diagnosis of attention deficit hyperactivity disorder (ADHD) and dyscalculia/dysgraphia. The Parent also alleged that the District did not properly address the Student's absences as part of his initial evaluation.

Initial Evaluation & Eligibility Determination: On May 14, 2018, the Parent referred the Student for a special education evaluation due to concerns regarding reading, math, written language, social/emotional/behavioral, and motor skills. Within the requisite period of time, the District notified the Parent that it had decided to evaluate the Student. The Parent signed consent for an evaluation on June 7, 2018, and within the required thirty-five school days, on October 2, 2018 (thirty-one school days), the evaluation group met to review the evaluation and determine eligibility. The District found the Student not eligible for special education services.

What the Parent disputes is the District's eligibility determination, finding the Student not eligible. A student eligible for special education means a student who has been evaluated and determined to need special education based on three factors: 1) the student has a disability in one of the categories enumerated in the law; 2) the student's disability has an adverse impact on their education; and, 3) the adverse impact cannot be addressed exclusively through education in general education classes with or without individual accommodations—i.e., the student requires special education.

In the October 2018 evaluation report, the District noted the Student did have a qualifying disability based on his diagnosis of ADHD and the Student may have a specific learning disability in math. However, the District's evaluation noted the District could not determine that the Student's disability had an adverse impact on his education, because the Student's "decline in math scores broadly coincides with his increasing rate of school absences" and the evaluation team "did not feel it could rule out lack of instruction as a cause." The evaluation group concluded the Student did not demonstrate an adverse educational impact and did not demonstrate the need for specially designed instruction. While the Parent may have disagreed with the eligibility determination, disagreement alone does not always indicate a violation of the IDEA and state implementing regulations. Regardless, the Parent and the District took the appropriate next steps to address their disagreement. The Parent requested and the District granted an independent educational evaluation (IEE), the District reviewed the IEE, conducted its own subsequent evaluation (a functional behavioral assessment (FBA)), and ultimately determined later that the Student was eligible for special education services.

OSPI finds the District followed all procedures for conducting the Student's initial evaluation – timelines were followed, the evaluation considered multiple sources of information and assessments (including input from the Parent), and properly determined the Student was not eligible for special education services. As of October 2018, OSPI believes the District's reasoning regarding adverse education impact was logical (as discussed further below). OSPI finds no violation.

Initial Consideration of Student's Absences: A student must not be determined eligible for special education services if the determinant factor is: 1) lack of appropriate instruction in reading, based upon the state's grade level standards; or 2) lack of appropriate instruction in math. Thus, the District was required to consider the impact of the Student's absences during the course of the initial evaluation.

The initial evaluation report considered the Student's absences and provided a hypothesis regarding the Student's school refusal. The evaluation noted that over the last several school years, the Student missed an increasing number of school days and the Student felt overwhelmed by school, thus refused to attend. The evaluation considered the possible impact of the absences: "Because [Student's] academic history suggests he was much better in math a few years ago and his decline in math scores broadly coincides with his increasing rate of school absences, the evaluation team did not feel it could rule out lack of instruction as a cause of [Student's] numerical operations subtest score." The District's response emphasized the team spent a significant amount of time considering the impact of the Student's absences, but overall, "the evaluation team concluded that there was not enough reason to believe that [Student's] math score provided evidence of an adverse educational impact resulting from his ADHD that could not otherwise be addressed outside of special education." The evaluation did recommend steps to address the Student's absences, including: reviewing school refusal literature; monitoring the Student's grades, work completion, and attendance; weekly counseling support; a 504 evaluation and plan; assistive technology; additional math help; adjusted day to a reduce schedule; and, assisted mental health provider to see Student at school. The District stated, "the availability of these

supports through other channels establishes support [for] the team’s decision that Student’s absences and hypothesized school refusal behavior could be addressed through other interventions and did not indicate a need for specially designed instruction.”

OSPI acknowledges that addressing absences/truancy/school refusal behaviors can be very challenging for districts and parents. In this situation, OSPI sees two ways the District could have considered school refusal behaviors in the initial evaluation. First, as described above, a district must consider a lack of appropriate instruction, which could result from a prolonged or a series of absences. Second, a district could consider whether the school refusal behaviors are themselves a symptom of a student’s disability.

The District primarily took the first approach, which OSPI finds reasonable given the information the District had as of October 2018, and the concerns presented by the Parent up to that point. In the spring of 2018, the Parent expressed concern regarding the Student’s struggling in math and writing—mentions of dysgraphia, ADHD, dyscalculia—and the Student feeling overwhelmed. The evaluation report reflected these concerns and discussed the Student’s challenges with math, attention, and the Student’s general lack of confidence. At this point, it was reasonable for the District to conclude the absences indicated a lack of appropriate instruction (approach 1) and not that the school refusal behavior was a function of the Student’s disability—ADHD (approach 2).

Later, the Parent and subsequent evaluations emphasize the second approach—that the Student’s school refusal behavior is tied to a potential disabling condition: anxiety. The IEE noted the Student attended half days due to anxiety and the “anxiety appears to be directly tied to his academic performance, rather than isolated disorder.” From January 2019 on, the Parent raised concerns regarding the Student’s anxiety and that the missed school was due to the Student’s disability (e.g., January 17, 2019 parent input form “missed school as a result of his disability...anxiety...preventing him from making meaningful progress”; March 6, 2019 letter to superintendent, stating bullying has led to severe anxiety over attending school; requests for mental health supports and requests to address truancy and anxiety). In retrospect, it is possible to conclude the District could have had a more in-depth discussion regarding whether the absences were a result of the Student’s disability. However, weighing all the factors and given the above discussion, OSPI finds that the District appropriately considered the Student’s absences in the initial evaluation and finds no violation.

Issue 2 – Initial Individualized Education Program (IEP): The Parent alleged that the District failed to develop the IEP within 30 days of the eligibility determination. The Parent also alleged that the District refused to include several of her requests in the Student’s IEP (e.g., contingency plan in case school refusal behavior continued).

Timeline: A district must ensure that it holds a meeting to develop the student’s IEP within 30 calendar days of a determination that the student is eligible for special education services, and must implement the IEP as soon as possible following its development.

Here, the District argues the Student was found eligible for special education services at the March 13, 2019 meeting and that the team developed the IEP the same day. The District maintains, in

retrospect, that the Student was *not* found eligible on January 17, 2019. The District stated the wording of the January 17 prior written notice was “perhaps imprecise” and that the team thought at the time it “appeared” the Student would be eligible, but that because the only data was the IEE, a District FBA and initial evaluation would need to be conducted. The District stated, “The plan was clear: The District would conduct an FBA, an initial evaluation would be completed, and the team would come together to determine if Student officially qualified for special education services.”

However, the District’s argument falls flat given other contemporaneous documentation. It is difficult to see how one could read the January 17 prior written notice as stating anything other than that the Student is eligible: The District “proposes to qualify [Student] for special education as a student with a health impairment based on his ADHD.” The consent for evaluation form the Parent signed on January 17, 2019 stated: “At today’s meeting, the evaluation team DID find that [Student] qualifies for special education based on the health impairment of ADHD in the areas of math and social/emotional/behavioral skills.” And, the March 13, 2019 evaluation report noted the team met on January 17, 2019 and found that the Student “does qualify for specially designed instruction in the areas of social/emotional/behavioral skills and math.” The March 2019 evaluation report explains that further evaluation was proposed and consented to on January 17 to “conduct additional evaluation in the social/emotional/behavioral domain to support the development of a Functional Behavior Analysis (FBA) and Behavior Improvement Plan (BIP)” —not to find the Student eligible for special education. OSPI finds that this documentation clearly indicates the Student was found eligible for special education services on January 17, 2019.

Thirty calendar days from January 17, 2019 is February 16, 2019. On February 21, 2019, the District invited the Parent to an evaluation and IEP meeting scheduled for February 27, 2019—41 calendar days from the eligibility determination. This meeting was rescheduled, but even if the IEP team met on February 27, 2019, it was already outside the timeline for initial IEP development. No explanation was provided as to why the IEP was not developed prior to February 16, 2019. OSPI speculates the District felt it could not develop the IEP without additional information from the FBA. However, this should not have delayed the development of the Student’s initial IEP as the IEP team could have developed and then later amended the IEP following the FBA if necessary. OSPI finds the District in violation regarding the initial IEP timeline and the District will be required to provide the Student compensatory services to account for the delay in developing the IEP.

The Student’s March 2019 IEP provided him with 50 minutes per day of specially designed instruction in math and 15 minutes per day of specially designed instruction in social emotional/behavioral. Had the IEP been developed by February 16, 2019, the IEP likely would have been implemented by February 20, 2019⁶; the District will provide compensatory services for the period between February 20 and March 15, 2019 (when the actual IEP was implemented). This 18-day period amounts to 900 minutes (15 hours) of math instruction and 270 minutes (4.5 hours) of social emotional. Even if the IEP had been developed within the proper timeline, the Student’s school refusal behaviors likely would have impacted implementation; thus, the District will not be

⁶ February 16, 2019 was a Saturday and February 18 and 19, 2019 were a holiday and a non-student day; thus, the IEP would not have been implemented on these days.

required to provide hour-for-hour compensatory services. Instead, the District will be required to provide approximately 1/3 of the missed hours: 5 hours of math instruction and 1.5 hours of social/emotional. The instruction will occur outside the District's school day and be provided by a certificated special education teacher (math) and a special education assistant or behavior specialist (social emotional/behavioral).

Parent's Requests Regarding the IEP: Parent also alleged that the District refused to include several of her requests in the Student's IEP (e.g., contingency plan in case school refusal behavior continued). IEPs should be developed through a consensus building process and the parent is considered an equal partner with school personnel in making decisions. Ultimately, the district has the responsibility to provide an IEP that includes the services a student needs in order to receive a free appropriate public education (FAPE). In the event a team cannot reach a consensus, the district must offer the student a FAPE and must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the student's educational program.

The Parent provided input on the Student's IEP using an "Individualized Education Program (IEP) Meeting Parent Input" on January 17, March 7, and around May 9, 2019. On the forms, she listed several concerns, ideas, and requests for the IEP team to consider. All of the documentation in this complaint indicates the IEP team considered and discussed all of the Parent's requests—indeed, the IEP team met on March 13, April 18, and May 9, 2019, in order to discuss all of the Parent's requests and concerns. Upon investigation, it appears the Parent's allegation regarding IEP development is largely connected to the requests that the District ultimately denied, namely the creation of a contingency plan (essentially a plan to provide instruction at home should the plan to get the Student back to school fail) and the refusal to put the Student on a homebound or home instruction placement (discussed below). In a prior written notice, dated April 26, 2019, the District explained that the request for a "contingency plan" was rejected because the team developed a behavior plan to address school refusal and because the provision of instruction at home was contraindicated in research on school refusal. The District maintained that providing instruction at home would ultimately be harmful to the Student's progress.

While the ideal is consensus, there will be times when a parent and district staff disagree, as is the case here. Overall, OSPI finds that the District properly developed the Student's IEP and diligently addressed all of the Parent's requests and concerns. While the Parent may disagree with some of the decisions made, the District had the obligation to and did offer an IEP that it felt reflected a FAPE for the Student. OSPI finds no violation regarding the substance of the Student's IEP and no violation regarding how the District addressed the Parent's concerns.

Issue 3 – Parent Participation: The Parent alleged that the District did not ensure parent participation.

Parent Participation: Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting the rights of students with disabilities. Parents of students eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of a FAPE to the student.

As discussed above, the Parent had the opportunity to provide input into the Student's initial evaluation and while she disagreed with the eligibility determination, the appropriate next steps were followed. The District also conducted an FBA, which included an interview with the Parent, information from the Parent provided through a "School Refusal Assessment Scale," and incorporated additional feedback from the Parent after the March 13, 2019 meeting. The Parent attended and participated in all of the meetings regarding the evaluations. OSPI finds that the Parent was afforded the opportunity and did participate in the evaluation process and eligibility determination.

Also, as discussed above, the Parent participated in the development of the Student's IEP and BIP. The Parent provided extensive feedback on the Student's IEP and education on January 17, March 7, and around May 9, 2019. All of the documentation in this complaint indicates the IEP team considered and discussed all of the Parent's requests at meetings on March 13, April 18, and May 9, 2019. The team met specifically on April 18 and May 9, 2019, because the team did not have time to discuss all of the Parent's input at the March 13, 2019 meeting. The District's prior written notices—dated March 15, March 22 (two prior written notices), April 26, and May 9, 2019—address each request or concern the Parent raised in her input forms and explain why the team agreed to or rejected each request.

While the Parent disagreed with some of the evaluation group and IEP team's decisions, this does not mean her participation was limited. Here, the Parent provided extensive input, participated in five meetings between October 2018 and May 2019, and the District followed all procedures to consider, discuss, and address the Parent's requests. OSPI finds no violation.

Copy of the IEP & Prior Written Notice: The Parent further alleged that she was not provided a copy of the Student's IEP or a prior written notice following the February 27 and March 15, 2019 IEP meetings until May 3, 2019. Based on the documentation in the complaint, it appears the IEP meetings the Parent is actually concerned about are the March 13 and April 18, 2019 meetings. A district must provide parents with a copy of their student's IEP, with any amendments, at no cost to the parents. Further, written notice must be provided to the parents of a student eligible for special education at a reasonable time before the school district: proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

On March 13, 2019, the Student's IEP team—including the Parent—met to review the evaluations and develop the Student's IEP. On March 15, 2019, the Student's special education teacher emailed the Parent a copy of the Student's IEP and prior written notice, and stated she would mail a hard copy with signatures the following Monday. On March 18, 2019, the Parent responded to this email with questions about the IEP, which indicates the Parent received a copy of the IEP. The March 15, 2019 prior written notice proposed to implement the Student's IEP on March 13, 2019. Even if this prior written notice was attached to the email the Parent received on March 15, 2019, this prior written notice has a key shortcoming. A prior written notice should be provided at a reasonable time *prior* to the proposal to initiate or change or refusal to initiate or change the provision of FAPE to a student. With this prior written notice (and upon review, the other prior

written notices issued in this complaint), it was purportedly provided to the Parent and dated a few days *after* the action—implementation of the IEP—was scheduled to occur.

While the District's prior written notices otherwise included detailed descriptions of the discussion and response to the Parent's various requests, the requirement that a prior written notice be sent before an action is taken is important. 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. Providing the notice before action is taken gives parents time to consider the decisions that have been made, provided further feedback, and consider options to resolve potential conflict.

OSPI finds, based on the documentation, the Parent was provided a copy of the Student's IEP on March 15 and again on May 3, 2019. However, based on the fact that prior written notices were issued after the proposed implementation dates, OSPI finds a violation. The District will be required to participate in a training module on the topic of prior written notices.

Communication with Parent's Advocate: Finally, the Parent alleged that the District refused to communicate with the Parent's advocate, that this stalled progress, and this prevented her from meaningfully participating in the IEP process. The advocate's involvement began on or around May 2, 2019, when the advocate emailed the director. On May 3, 2019, the Parent requested that the director send all communication to the advocate, but copy the Parent on emails. The director stated she would continue to "communicate with [Parent] as the parent but you can make sure and forward all correspondence if you would like." The director also stated, "the reason I want to communicate directly with you is to make sure you get all the information and communications regarding [Student's] educational plan from me and/or the team" and that she did not want there to be "any confusion or missed communication." The director stated, "again, I am fine with you sharing information with your advocate. That is your right as a parent."

The District has an obligation to ensure parent participation in the special education process and OSPI finds that the director's response was reasonable. It is important that the Parent got all the information and communication regarding the Student's educational plan. This is not a court proceeding, and there is no requirement that a district communicate only with an advocate even if requested by the parent. Although, in general, OSPI encourages districts to accommodate such requests when feasible to facilitate collaborative work—for example, the District could have continued emailing the Parent directly, but agreed to copy the advocate on all emails instead of asking the Parent to forward the emails to the advocate. However, the District's actions here do not violate any provision of the IDEA or state regulations. Further, there is no evidence that this stalled progress: most of this communication occurred on May 2 and 3, 2019, and a meeting was scheduled for May 9, 2019, with no documentation supporting that this meeting was delayed by the disagreement. And, OSPI does not see how this prevented the Parent from participating as the Parent attended the May 9, 2019 meeting and again provided input prior to the meeting. OSPI finds no violation.

Issue 4 – IEP Implementation: The Parent alleged that the District has denied the Student a FAPE as it has not implemented the Student’s IEP because, as the Parent stated, the plan to get the Student back in school failed and there was no back up plan. The Parent alleged that the Student has not received any specially designed instruction, accommodations, or related services.

As soon as possible following development of the IEP, special education and related services must be made available to a student in accordance with the student's IEP. Here the Student’s IEP was developed on March 13, 2019, and was set to be implemented beginning on March 15, 2019. The IEP provided the Student several accommodations and modifications, and provided the Student with 50 minutes per day of specially designed instruction in math (provided by a special education teacher in the special education setting) and 15 minutes per day of specially designed instruction in social emotional/behavioral (provided by a special education assistant in the special education setting). The social emotional/behavioral annual goals focused on the dealing with stress, anxiety, and negative self-talk. The team also developed a behavioral intervention plan (BIP) focused on the Student’s school refusal behaviors.

The Parent stated the Student’s IEP was not implemented in a timely manner, in part because the District refused her request to transfer the Student to another school or provide him with a homebound placement. The District stated that, once the IEP was developed, the District was ready to implement the IEP. However, the IEP was not implemented immediately as the Student refused to come to school.

Following the April 18, 2019 IEP meeting, the team and the District’s board certified behavior analyst (BCBA) developed a detailed plan to increase the Student’s attendance at school. The District implemented this plan beginning on April 19 through May 24, 2019, and provided documentation about the duration the Student remained at school and notes on steps taken. While progress may have been slow, upon review of the data, it appeared the Student was making progress as he moved from refusing to leave the car to walking around campus with staff and talking about attending school next year. The District also noted that the BCBA felt the Student was making “steady progress toward the goal.” There is also documentation that indicates the Parent may have been resistant to the plan (e.g., notes that “mom reports plan is moving ‘way’ too fast...mom is moving, selling house...she does not see the point in pushing...if he will not be here next year” and notes that “mom refused to participate”). Based on this, the District was implementing the Student’s social emotional/behavioral specially designed instruction as they were implementing the plan to get the Student back to school. OSPI finds no violation related to the implementation of the social emotional/behavioral portion of the Student’s IEP.

To a degree, the Student’s ability to access his specially designed instruction in math—as outlined in his IEP (special education at the middle school)—and the District’s ability to implement the IEP was predicated on his return to school through the steps and strategies outlined in the BIP and the return to school plan. As noted above, some progress on this was made, but not the point the Student was actually attending classes at the middle school. The District did reject the Parent’s request for a homebound placement (see below), but the District did agree on May 9, 2019 to enroll the Student in an online math program, while continuing to work to get him back in school. The general education teacher was to support the Student daily via the online platform (the

general education teacher was to log in with the Student and support him directly while he was working) and the special education teacher would work with the general education teacher to modify the material. The District stated the Student was accessing the math program, but could not provide documentation regarding how often. The Parent stated the Student was not successfully completing the online program, because he isn't getting the support he needs. It is unclear how much support the teachers were providing or the amount of progress the Student made through the online program. While perhaps imperfect, it does appear the District implemented the math program and that the Student accessed it to some degree. However, given that the District was not able to provide any information about the general education teacher's support, how the curriculum was modified by the special education teacher, or whether the Student made any progress toward his IEP goals, OSPI finds that the District did not fully implement the math portion of the Student's IEP.

OSPI finds a violation and the District will be required to provide the Student with an additional 6 hours of compensatory services in math.⁷

Issue 5 – Placement: The Parent alleged that the District failed to follow procedures to consider her request for a homebound placement. When determining the educational placement for a student eligible for special education, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: the student's IEP; the least restrictive environment requirements; the placement options that provide a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he or she needs. The placement options include the alternative placements listed in the definition of special education, such as: instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement.

Initially, the Parent's request was that the Student's placement be in the general education setting for at least 80% of the day and for a contingency plan to address how the Student will make progress if he is not at school. The Student's March 2019 IEP stated the Student would spend 81% of this time in the general education setting. As the spring of 2019 progressed, the Parent became more focused on requesting a "homebound or homeschool option" and the Parent alleged the refusal to agree to this placement was a denial of a FAPE. The Parent's advocate also at one point requested the Student be put on the "homebound PAL program for the remainder of the year." Based on these requests, OSPI notes that the Parent herself may not have been clear on what she was requesting as homebound or home instruction is a special education placement.

⁷ The Student began the online math program around May 9, 2019, and the District's last day of school was June 21, 2019—this amounts to 30 days or 1,000 minutes (25 hours) of missed math instruction. Given that the Student likely accessed some amount of math instruction during this period, the number of hours owed will be reduced by approximately 1/4 to 6 hours of compensatory services.

Homeschooling, in contrast, means a student is no longer enrolled in the district and the parent is providing instruction. And, finally, the "PAL program" appears to be an alternative learning experience (ALE) program, which is a public school offering and would not have necessarily provide the Student with his special education services (i.e., the Student could have attended the ALE for some portion and still needed to attend the middle school for his special education services).

Regardless of what was being requested, the District addressed the Parent's placement request. The Student's IEP provided the Student would spend at least 80% of his day in the general education setting—the Parent's first request. In response to the Parent's request for a contingency plan and a homebound placement, the District stated:

- "The behavior analyst spoke to how this is contraindicated in literature about treatment for school refusal and would be harmful to the student...school refusal is also not a medical condition where a student physically cannot attend school that might be addressed by home health services."
- "[Student] has a behavior plan that addresses school refusal. He will receive education/socio-emotional support at school and this will be monitored and adjusted as needed. However, additional skill building homework can be supplied/suggested upon request from teachers, as necessary."
- "The District has informed parent that homebound instruction is contraindicated when addressing school refusal. The district and parent agreed to enroll student in the [program] program for math. The general education teacher will support student daily via this online platform and learning...The special education teacher will collaborate with the general education teacher to modify..."

Based on the documentation in this complaint, the placement decision and rejection of a homebound placement was made by the Student's IEP team—a group of persons knowledgeable about the Student and his needs—after considering the Student's October 2018 initial evaluation, the IEE, the FBA, and the March 2019 evaluation (consolidating the IEE and FBA). The District determined that a homebound placement was the most restrictive placement option for the Student, was not appropriate, and had the potential to do considerable harm to the Student's progress. And, as discussed, the District had an appropriate plan to address the Student's attendance. While the Parent may disagree with the ultimate placement decision, the District followed the placement procedures and made a reasonable, appropriate placement decision in light of the Student's unique, disability related needs. OSPI finds no violation.

Issue 6 – Anxiety, Absence/Truancy, School Refusal Concerns: The Parent alleged that the District failed to address the Student's absences, truancy, and school refusal behaviors. Further, the Parent alleged that when the District finally created a plan to get the Student back to school, the plan did not address the Student's anxiety and ensure he would be provided a FAPE if the plan failed.

As discussed in issue one, the District properly considered the Student's absences when it conducted its initial evaluation in October 2018. While the Student was not initially found eligible for special education, the evaluation report recommended several strategies and supports for the Student, including: reviewing school refusal literature; monitoring the Student's grades, work completion, and attendance; weekly counseling support; a 504 evaluation and plan; assistive

technology, additional math help; adjusted day to a reduce schedule; and, assisted mental health provider to see Student at school.

As the school year went on, the District continued to address the Student's anxiety and school refusal/attendance. In January 2019, the District and Parent met and determined that based on the IEE and because the Student's absences and school refusal had increased, the Student was eligible for special education and conducted an FBA to gather more information. The FBA, report titled "Functional Behavior Assessment and Behavior Improvement Plan for School Refusal: Using Extinction, Systematic Desensitization, A Contingency-Contract and Differential Reinforcement," included a detailed review of existing records, including academic history, the District's initial evaluation, the IEE, information from the Parent and the Student. As part of the FBA, the Parent and Student were interviewed and completed the "School Refusal Assessment Scale-Revised (SRAS-R)" and the FBA recommended the following intervention methods—based on research-based evidence—antecedent interventions; systematic desensitization/exposure; differential reinforcement of an alternative/incompatible behavior; extinction; and contingency contract. The FBA also included a review of relevant research-literature, references, and a risk benefit worksheet.

In March 2019, the District incorporated all of the information and evaluations, and noted that, "Although the evaluation team did not conclude that [Student's] ADHD was the sole, or even primary cause of [Student's] school refusal behavior, the team did feel that the increase in absences from school required the additional support of specially designed instruction." Following this meeting in March 2019, the BCBA updated the FBA and BIP based on the IEP team's discussion and input from the Parent (the District added detail to the FBA to "help the parent understand the data that led to some of the conclusions with which she did not agree. The data was summarized in the first draft and explained in detail in the second draft but none of the conclusions changed" and "the hypothesis about the function of the behavior did not change.")

The Parent expressed some disagreement with the FBA, stating that the FBA did not evaluate the Student in the school environment or at home. However, the documentation indicates the Parent did not consent to the District doing any observations in the home and the Student was refusing to attend school, which is why the District instead interviewed the Student and had him fill out the school refusal scale. Additionally, the Parent stated the BIP "does not use research-based evidence for helping students re-acclimate to the school environment in a more gradual way." However, the BIP is based on the FBA, which is very detailed and it is hard to understand an argument that the FBA and BIP do not—at minimum—provide a solid plan to begin addressing the Student's anxiety and school refusal behaviors.

One of the Parent's other main concerns here seems to be her belief that the IEP and BIP do not address a plan for how the Student will receive instruction if he emotionally cannot or does not attend school. As discussed in issue two and five, the District properly responded to the Parent's requests for a "contingency plan" and homebound placement. The District was properly working to address the Student's anxiety and attendance through the IEP, BIP, and attendance plan. While it is logical to want a backup plan, it does not bode well for a plan if people focus on its failure prior to implementation. And the District's rejection of a request for a contingency plan does not indicate that the District failed to address the Student's anxiety and school refusal behavior. In

fact, the District—despite its reluctance—ultimately did enroll the Student in an online program for math to help ensure he received instruction while they all worked to get the Student back in school. As part of the IEP and BIP, as discussed in issue four, the team developed a detailed plan to increase the Student’s attendance at school. While this plan did not ultimately get the Student back to school within the course of the month or so it was implemented, the District stated the Student did make some progress. Further, the BIP and this plan indicate the District was working to address the Student’s anxiety and school refusal.

Overall, OSPI finds that the District worked to address the Student’s anxiety, school refusal behaviors, and attendance in the proper avenues available through the special education system. The District ultimately found the Student eligible, conducted a thorough FBA, developed an IEP and BIP, began implementing the social emotional/behavioral component of the IEP and BIP, and created and implemented a plan to increase the Student’s attendance at school. And well perhaps unsuccessful in that the Student did not return to class during the 2018-2019 school year, OSPI finds no violation based on the District’s actions.

CORRECTIVE ACTIONS

By or before **September 3, 2019, October 7, 2019, and October 31, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By of before **August 30, 2019**, the District and the Parent will develop a schedule for a total of eleven (11) hours of compensatory services in the area of math and 1.5 hours in the area of social emotional/behavioral. Services will occur in a one-on-one setting and be provided by a certificated special education teacher. The instruction will occur outside of the District’s school day and may be accessed over District breaks. If the District’s provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours’ notice of the absence, the District does not need to reschedule. The District will provide OSPI with documentation of the schedule for services by or before **September 3, 2019**. The services must be completed no later than **October 18, 2019**.

By or before **October 31, 2019**, the District must provide OSPI with documentation that it has completed compensatory services for 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.

The District either must provide the 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 **October 31, 2019**.

DISTRICT SPECIFIC:

By or before **September 30, 2019**, District special education administrative staff and the special education teaching staff and school psychologist at the middle school identified in this complaint will complete a training module on prior written notices. The training module has been developed by OSPI special education division and eLearning for Educators in Canvas, an online learning management system. Access to the training module in Canvas will be available in September 2019, OSPI will send you additional information regarding how to access and the complete the module. By or before **October 7, 2019**, the District will submit documentation that required staff have completed the training module.

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 July, 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.)