

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-71**

### **PROCEDURAL HISTORY**

On July 6, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parents (Parents) of a student (Student) attending the Seattle School District (District). The Parents 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 July 10, 2018, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On July 19, 2018, OSPI granted the District an extension of time until August 8, 2018, to submit its response to this complaint.

On August 8, 2018, OSPI received the District's response to the complaint and forwarded it to the Parents on August 10, 2018. OSPI invited the Parents to reply with any information they had that was inconsistent with the District's information.

On August 17, 2018, OSPI requested that the District provide additional information.

On August 21, 2018, OSPI granted the Parents an extension of time until August 29, 2018, to submit their reply to the District's response to this complaint.

On August 30 and 31, 2018, OSPI received the Parents' reply. OSPI forwarded that reply to the District on August 31, 2018.

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

### **OVERVIEW**

In the fall of 2016, the District completed an initial evaluation of the Student and his evaluation group determined that he was eligible for special education under the category of other health impairment. The evaluation report recommended that the Student receive services in the area of study/organizational skills. The Parents disagreed with the results of the initial evaluation and requested that the District pay for an independent educational evaluation (IEE). The District agreed to the request and the IEE was completed in the spring of 2017. Prior to the IEE being completed, the District held two individualized education program (IEP) meetings to develop an initial IEP for the Student, but the Parents did not provide consent for the initial provision of special education at that time. In May and August 2017, the IEP team met to review the results of the IEE. The Student's IEP team then met on September 5, 2017, to continue developing the Student's IEP. The Parents did not provide consent for the initial provision of special education at that time and the Student began the 2017-2018 school year without an IEP.

The District then conducted a reevaluation of the Student, and the Parents met with the evaluation group in mid-October and determined that the Student continued to be eligible for special education, but changed the Student's eligibility category to multiple disabilities. The Student's IEP team met again on October 24, November 14, November 27, and December 11, 2017, to develop the Student's IEP, which included responding to and addressing frequent and lengthy lists of concerns raised by the Parents. In late fall 2017, the District provided the Student with an assistive technology (AT) device recommended by the IEE and in early January 2018, the Student underwent an assessment for AT, which determined that he should have access to typing. On January 30, 2018, the Parents signed consent for the initial provision of special education services and the District implemented the Student's IEP. The Student's IEP team met a further three times on February 27, March 27, and May 10, 2018, each time amending the Student's IEP.

Throughout the school year, the Parents were in frequent communication with the District and school staff with concerns about the Student's safety and alleged bullying; specific services, goals, and accommodations they wanted in the Student's IEP; progress reporting and data; assistive technology; the Student's anxiety; IEP implementation; and other supports they felt the Student needed. The District responded to and addressed the majority of the Parents' concerns to some degree and amended the Student's IEP three times in the span of four months; however, the Parents continued to raise concerns and felt that the District was not allowing them to participate in the development of the Student's IEP or providing the Student the services and supports he needed.

The Parents alleged that the District failed to: 1) follow child find/special education referral procedures; 2) follow procedures for considering the results of the Student's IEE; 3) follow procedures for developing the Student's IEP during the 2017-2018 school year, including determining if the Student needed extended school year (ESY) services and supports in the areas of organization and study skills, and allowing for Parent participation; 4) follow procedures for providing the Parents with progress reporting consistent with the Student's IEPs; 5) ensure that each IEP team meeting was attended by a properly constituted IEP team; and, 6) follow procedures for evaluating the Student's need for assistive technology. The Parents also alleged that the District failed to implement the Student's IEP and that the Student experienced bullying that resulted in a denial of a free appropriate public education (FAPE). The District denied all allegations.

### **SCOPE OF INVESTIGATION**

This decision references events which occurred prior to the investigation time period, which began on July 7, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period. Additionally, the scope of this investigation does not address whether the District failed to implement the Student's IEP in place from July 7, 2017 through March 19, 2018, as OSPI has already addressed this issue in its investigation of the mother's prior complaint, SECC 18-27, which the Student's mother filed on March 19, 2018.

## ISSUES

1. Did the District follow child find/special education referral procedures?
2. Did the District follow procedures for considering the results of the Student's independent educational evaluation (IEE)?
3. Did the District follow procedures for developing the Student's individualized education program (IEP) during the 2017-2018 school year, including determining if the Student needed extended school year (ESY) services and supports in the areas of organization and study skills, and allowing for Parent participation?
4. Did the District follow procedures for providing the Parents progress reporting consistent with the Student's IEPs in place during the 2017-2018 school year?
5. Did the District ensure that each IEP team meeting was attended by a properly constituted IEP team, in accordance with WAC 392-172A-03095?
6. Did the District follow procedures for evaluating the Student's need for assistive technology?
7. Did the Student experience bullying that resulted in a denial of a free appropriate public education (FAPE)?
8. Did the District implement the Student's IEP in place from March 20, 2018 through June 2018, including providing progress reporting?

## LEGAL STANDARDS

Scope of Citizen Complaints: Through the citizen complaint process, OSPI can investigate allegations that an educational service district, school district, or a subgrantee is violating or has violated Part B of the IDEA or regulations implementing the act. The alleged violation must have occurred within one year of the date the complaint was filed. 34 CFR §300.153; WAC 392-172A-05025. The scope of citizen complaint includes determining the appropriateness of a district's determination regarding a child's educational program or placement. OSEP Memorandum 00-20 (July 17, 2000).

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 (including deafness), a speech or language impairment, a visual impairment (including blindness), 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 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).

Independent Educational Evaluation (IEE): If parents obtains an IEE at public or private expense, the results of the evaluation: must be considered by the district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and may be presented as evidence at a hearing regarding that student. 34 CFR §300.502(c); WAC 392-172A-05005(5).

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.

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments and if the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why: the student cannot participate in the regular assessment and the particular alternate assessment selected is appropriate for the student; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will

transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a FAPE to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. For purposes of ESY, "regression" means significant loss of skills or behaviors if educational services are interrupted in any area specified in the IEP. "Recoupment" means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP. 34 CFR §300.106; WAC 392-172A-02020. A student's IEP team must decide whether the student requires ESY services and the amount of those services. In most cases, a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for ESY services based only on one criterion or factor. *Letter to Given*, 39 IDELR 129 (OSEP 2003).

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.

Consent for Initial Provision of Services: A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student. The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student. If the parent of a student fails to respond to a request for or refuses to consent to the initial provision of special education and related services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student. If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district: Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the school district requests consent; and is not required

to convene an IEP team meeting or develop an IEP. 34 CFR §300.300(b)(3); WAC 392-172A-03000(2)(d). Parental consent is for the initial provision of special education and related services generally, not for a particular service or services. Individuals with Disabilities Education Act (IDEA), 73 Fed. Reg. 73,007, 73,011 (December 1, 2008) (comment to 34 CFR § 300.300).

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 (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the 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. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Progress Reporting: IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c). The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals.

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); at the discretion of the district or parent any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1). Neither the IDEA nor its implementing regulations require that an IEP team include more than one regular education teacher. Therefore, if an IEP team includes more than one regular education teacher of the child, the excusal provisions of 34 CFR §300.321(e)(2) would not apply if at least one regular education teacher will be in attendance at the IEP team meeting. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question C-3).

Assistive Technology Device: The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or

customized, that is used to increase, maintain, and/or improve the functional capabilities of a student eligible for special education. The term does not include a medical device that is surgically implanted, or the replacement of such device. 34 CFR §300.5; WAC 392-172A-01025.

Assistive Technology Service: The term “assistive technology service” means any service that directly assists a student eligible for special education in the selection, acquisition, or use of an assistive technology device. 34 CFR §300.6; WAC 392-172A-01030. The term includes: the evaluation of the needs of a student eligible for special education, including a functional evaluation of the student in the student’s customary environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students eligible for special education; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for a student eligible for special education, or if appropriate, the student’s family; and training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of students eligible for special education. 34 CFR §300.6; WAC 392-172A-01030.

Assistive Technology: The need for assistive technology must be determined on a case-by-case basis, considering the unique needs of each student. If the IEP team determines that a student with disabilities requires assistive technology in order to receive a FAPE, and designates such assistive technology as either special education or a related service, the IEP must include a specific statement describing such service, including the nature and amount of such services. Any assistive technology needs stated in an IEP must be provided at public expense, under public supervision and direction, and without charge. *Letter to Anonymous*, 29 IDELR 1089 (OSEP 1994). If the student's IEP team determines that the student needs to take a required assistive technology device home in order to receive an appropriate education, that device must be provided at no cost to the parents. This means that a district could not assess a charge on parents for normal use and wear and tear. State laws rather than Part B, however, generally would govern whether parents are liable for loss, theft, or damage due to negligence or misuse of publicly-owned equipment used at home in accordance with a student's IEP. “Therefore,...look to State law concerning the extent to which persons lawfully in possession of the property of another are financially responsible for its damage or loss. Such State laws, however, must be implemented consistent with Part B and the right of each disabled student to FAPE. *Letter to Culbreath*, 25 IDELR 1212 (OSEP 1997).

Disability-Based Harassment: Harassment occurring due to a student’s status of having a disability that adversely affects that student’s education may result in a denial of FAPE. A denial of FAPE occurs when, taking into consideration the student’s unique characteristics, it may be fairly said that a school district did not provide the student an opportunity to obtain some progress from the program it has offered. *Ojai Unified School District v. Jackson*, 4 F.3d 1467 (9<sup>th</sup> Cir. 1993), *cert. denied*, 115 S. Ct. 90 (1994). Harassment and bullying of a student eligible for special education

that prevents the student from receiving meaningful educational benefit constitutes a denial of a FAPE that districts must remedy. As part of its response, the district should convene an IEP team meeting to determine whether additional or different services are necessary and must revise the student's IEP accordingly. The IEP team should be careful when considering a change of placement for a student eligible for special education who was the target of bullying or harassment. A more restrictive placement may constitute a denial of a FAPE in the LRE.

Each school district shall adopt a policy and procedure that prohibits the harassment, intimidation, or bullying of any student. RCW 28A.300.285. Bullying is defined as aggression used within a relationship where the aggressor has more or real perceived power than the target, and the aggression is repeated or has the potential to be repeated. (Dear Colleague Letter, 61 IDELR 263.) In addition, under the IDEA, school districts have an obligation to ensure that students who are the targets of bullying continue to receive a free appropriate public education (FAPE) in accordance with the student's IEP. As part of an appropriate response to bullying under the IDEA, districts should consider convening an IEP team meeting to determine whether the effects of bullying have caused the student's needs to change such that his/her IEP is no longer providing educational benefit. (Dear Colleague Letter, 61 IDELR 263.) If a teacher is deliberately indifferent to teasing of a disabled child and the abuse is so severe that the child can derive no benefit from the services that he or she is offered by the school district, the child has been denied FAPE. *In the Matter of Federal Way School*, OSPI Cause No. 2011-SE-0013 citing *M.L. v Federal Way Sch. Dist.*, 394 F3d 634, 105 LRP 13966 (9<sup>th</sup> Cir. 2005).

Definition of a Free Appropriate Public Education (FAPE): A "free appropriate public education" (FAPE) consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit him to benefit from that instruction. The instruction and support services must be provided at public expense and under public supervision. They must meet the State's educational standards, approximate the grade levels used in the State's regular education system, and comport with the child's IEP. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 186-188, (1982). Every student eligible for special education between the ages of three and twenty-one has a right to receive a FAPE. 34 CFR §300.101; WAC 392-172A-02000. An eligible student receives a FAPE when he or she receives, at public expense, an educational program that meets state educational standards, is provided in conformance with an IEP designed to meet the student's unique needs and includes whatever support services necessary for the student to benefit from that specially designed instruction. 34 CFR §300.17; WAC 392-172A-01080.

FAPE Entitlement: A free appropriate public education (FAPE) must be available to every student between the ages of three and 21 who has been determined eligible for special education and who resides in the state of Washington. The obligation to make FAPE available to each eligible child begins no later than the child's third birthday and an IEP must be in effect by that date. If a child's birthday occurs during the summer, the child's IEP team will determine the date when services under the IEP will begin. 34 CFR §300.101; WAC 392-172A-02000.

Provision of FAPE: An IEP is required to be “reasonably calculated to enable the child to receive educational benefit.” It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). For a district to meet its substantive obligation under IDEA, a school must “offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” An IEP must “aim to enable the child to make progress,” the educational program must be “appropriately ambitious in light of [the student’s] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom, ” and the student should have the opportunity to meet challenging objectives. *Endrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017). A district must implement an IEP that is “reasonably calculated to remediate and, if appropriate, accommodate the child’s disabilities so that the child can ‘make progress in the general education curriculum,’ commensurate with his non-disabled peers, taking into account the child’s potential.” *M.C. v. Antelope Valley Union High School District*, 852 F.3d 840, 69 IDELR 203 (9<sup>th</sup> Cir. 2017).

If a school district fails to comply with the procedural elements set forth in the IDEA or fails to develop and offer an IEP that is reasonably calculated to enable a child to received educational benefits, the district is not in compliance with the IDEA. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176 (1982). Procedural violations of the IDEA amount to a denial of FAPE if they: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a FAPE; and (3) caused a deprivation of educational benefits. 20 USC §1415(f)(3)(E)(ii); see 34 CFR §300.513; WAC 392-172A-05105. *Endrew F. v. Douglas County Sch. Dist. RE-1*, further clarifies that to meet the IDEA’s substantive obligations, a district must offer an IEP reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances. 137 S. Ct. 988, 999-1000, 69 IDELR 174 (2017).

## **FINDINGS OF FACT**

### **Background Facts: 2016-2017 School Year**

1. During the 2016-2017 school year, the Student attended a District school for students in kindergarten through eighth grade and received accommodations under a Section 504 plan.
2. In the fall of 2016, the Student was referred for a special education evaluation and the District evaluated the Student. The initial evaluation included assessments in the areas of study/organizational skills and written language, and a review of existing information in the areas of adaptive/life skills, communication, motor skills, social/behavior skills.
3. On December 15, 2016, the Student’s evaluation group met and determined that the Student was eligible for special education services under the category of other health impairment. The Student’s mother participated in the meeting by phone and the Student’s father attended the

meeting in-person. The evaluation report stated the Student's diagnosis of attention deficit hyperactivity disorder (ADHD) had a significant impact on his school and academic performance, and recommended that the Student receive specially designed instruction in the area of study/organizational skills. The Parents disagreed with the evaluation and requested an independent educational evaluation (IEE), for which the District agreed to pay.

4. Based on the documentation in this complaint, from January through June 2017, the Student was out of the country, on "medical leave", and did not attend school.
5. On January 30 and March 10, 2017, the Student's individualized education program (IEP) team met to develop the Student's IEP. Neither of the Parents attended the first meeting. The Student's mother attended the second meeting. The Parents did not provide consent for the initial provision of special education services and the Student's mother indicated that she wanted to wait until they got the results of the IEE.<sup>1</sup>
6. On May 24, 2017, the District's evaluation group, including the Parents, met to review the final IEE report.<sup>2</sup> The IEE report stated that the Student had challenges related to executive functioning, that a diagnosis of written expression disorder was warranted, and that an additional diagnosis related to anxiety was warranted. The report also stated that the Student exhibited some behaviors consistent with "the autistic variation previously termed mild Asperger's syndrome" and other behaviors indicated that he "does not appear to meet the criterion for a separate diagnosis." The report stated that the "findings appear to be consistent with the findings of the recent [District] evaluation, and support [the Student's] qualification for special education services in the category of Health Impaired." The report recommended the following:
  - The Student's IEP goals for organizational skills should include specific training in learning a protocol for rapidly analyzing the problem, assessing priorities, defining objectives, determining a sequential plan and schedule/time estimate for accomplishing the objectives, and identifying materials needed. Development and guided practice in a general protocol for this planning process is recommended, as well as specific protocol for writing tasks that includes determining a thesis topic for his writing, possibly using a brainstorming technique, and then converting this into an outline for his work. He should be trained in completing a guide for the five-paragraph essay outline, and then referring to it regularly to direct his writing. Train him and using transitional terms to guide himself and maintaining his adherence to the outline.
  - The Student needs training in becoming more aware of and interpreting social and other environmental cues to help him understand what's going on and to guide his decision-making. They should include elements of both reading the situations and decision-making once he has more data.

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

<sup>2</sup> Based on the documentation in this complaint, the Student's father attended the meeting in person and the mother participated by phone.

- The current accommodations listed in the Student's IEP and 504 plan appear to be supported.
- The Student's current IEP/504 plan stipulates that he should be cued regarding time remaining for timed activities. This accommodation might be supplemented with an IEP goal directed at training the Student in self-management of a timer to track this himself. Working with the Student to combine this with estimating the time estimated to organize himself to initiate and were completed tasks, reach a goal or make a transition, and then timing himself to track his progress with a stopwatch might also foster his development of more efficient planning as well as to encourage his on-task efficiency. However, this should be monitored to see if this intervention increases his performance anxiety and becomes more of an interference in an aid.
- Train the Student in a protocol of periodic self-checks regarding his focused attention, time management, and productivity. These self-checks should occur on a regular 5 to 10 minutes schedule, and begin with 1-2 relaxation breaths, a quick reminder of his goals and an assessment of what he is accomplished, a review of his specific self-reminders (e.g. stay focused; get something on paper; good enough is good enough), set an objective for the next self-check, and get back to work. This method can be used during homework, independent seat work at school, and test. While this can be cued by a parent or teacher, using a device such as a Motivaider can provide vibrating prompts on a set schedule so that it is not disrupting to others. A kitchen timer or phone app can also serve the purpose. Research has shown this to be a more effective intervention AD/HD.
- Strategies for metacognition and increasing the ability to think more strategically can include:
  - Coach the Student in practicing a protocol for how to evaluate when he is stuck on a task, followed by a re-assessment of the problem and identification of possible solutions. Encourage him to evaluate the feasibility or likelihood of each possibility, and if set aside intriguing but tangential options.
  - Coach the Student in considering varying perspectives. Ask him to think about how others might view a certain event; talk about varying customs across cultures and their rationale within that culture; ask him to debate one side of an issue; and then an alternative viewpoint.
  - Discuss the relationships of literal and metaphorical meaning of proverbs, sayings, fables, and other iconic representations.
  - In response to reading comprehension questions, coach the Student in interpreting the terms used in the questions as clues for identifying the type of answer sought.
- Strategies for time management include:
  - Begin each morning by reviewing the general projected schedule for the day. Review the schedule in the evening and then do a quick summary of what to anticipate for the following day. This will also help the Student to develop time perspective.
  - Handouts outline planning for daily homework completion and for longer project planning will be provided.
  - The Student should estimate the time to complete tasks and then record how close he comes to meeting his predictions. This may not only serve to motivate his on-task behavior but will also help to improve the accuracy of estimations over time.
- When he completes tasks, he should plan time to clean up. At the end of the cleanup, he should stop and visually scan the area, pretending to be his mother or teacher in this activity. Use this perspective-taking to improve his attention to environmental input.
- To reduce hand tension while writing, the Student should use pencil grips. Consultation with an occupational therapist might identify other interventions to reduce hand cramping or to cope with it when it occurs.

- To address issues of hand fatigue and deterioration of legibility in handwriting as well as to support fluency in writing and editing drafts, the Student should be supported in developing his keyboarding skills. Once he reaches sufficient levels of fluency, he should be allowed to keyboard all of his writing.
- Addressing communication and collaboration decision-making within the parent-school team structure may help to monitor and make adjustments in the Student's interventions, and help him feel more relaxed and optimistic about his school program.
- Counseling for the Student is recommended to address his ability to manage tension relative to perfectionism, address school-related anxiety, and to generate and maintain reasonable expectations for performance.
- Social skills training, with an emphasis on increasing awareness of environmental cues, is recommended. The Student's school may offer a group to support this effort. Two examples of community-based programs that offer this training that enjoy good reputations are Aspiring Youth and Wally's Club.

7. The District's 2016-2017 school year ended on June 23, 2017.

**The Timeline for this Complaint Begins on July 7, 2017**

8. On August 11, 2017, the District held an evaluation feedback meeting. The following people attended the meeting:
- Parents
  - IEE Provider
  - A District Special Education Supervisor
  - Director of Special Education 1 (director 1)
  - A Special Education Regional Program Specialist (regional specialist)

According to the District's response to this complaint, the group discussed the IEE report.

9. According to the Parents' reply to the District's response to this complaint, the Parents requested an IEP meeting to develop the Student's IEP prior to the start of the 2017-2018 school year.

**2017-2018 School Year**

10. During the 2017-2018 school year, the Student attended a District middle school. The middle school operated from 7:55 a.m. to 2:45 p.m. on Monday, Tuesday, Thursday, and Friday, and from 7:55 a.m. to 1:30 p.m. on Wednesdays. The middle school's daily schedule was divided into seven class periods and a lunch period.
11. On September 5, 2017, the Students IEP team met. The following people attended the meeting:
- |  |                                 |
|--|---------------------------------|
| • Parents  | • IEP case manager              |
| • General education teacher (from Student's previous school) | • Principal                     |
| • Special education teacher (from Student's previous school) | • Regional Specialist           |
|  | • Southwest Regional Supervisor |

The team discussed the Student's proposed IEP and the Student attending the middle school. Based on the documentation in this complaint, the Parents and the staff agreed the Student would attend the middle school on a shortened-day schedule, attending class periods 3-7 and lunch.

12. Later on September 5, 2017, the middle school principal emailed the Parents and provided information about the Student's schedule for September 6, the first day of the school year. The principal stated that he would meet the Student prior to first period (at 7:55 a.m.) and then take him to his math class. The Student would be with the math teacher and a special education teacher (IEP case manager) until the Student's late start schedule began during third period. The Student would take the following classes:
  - Period 3 – Math
  - Period 4 – PE
  - Period 5 – Beginning Band
  - Period 6 – English Language Arts
  - Period 7 – English Language Arts

In response, the Student's mother stated the schedule looked fine "for now" and that they would discuss it with the Student. The mother stated that they hoped staff could provide more information regarding the counseling services, adding an occupational therapy goal, and the IEE evaluator's availability. The mother stated that she had forwarded a District special education administrator information about the Student from an occupational therapist that the Parents had previously provided to the District.

13. The District's 2017-2018 school year began on September 6, 2017. At that time, the Student did not have an IEP in place, because the Parents had not yet provided consent for the initial provision of special education.
14. On September 14, 2017, the Parents agreed to and signed consent for the Student to be reevaluated. The reevaluation included assessments in the area of fine motor/occupational skills and the District reviewed existing data, including the Student's May 2017 IEE.
15. According to the District's response to this complaint, during the 2017-2018 school year, the District had a partnership with a health care provider (provider 1) that operated a school-based mental health center at the Student's middle school. Provider 1 offered mental health and counseling services to all students, regardless of their eligibility for special education.
16. In September 2017, a mental health counselor and care coordinator at the Student's middle school referred the Student to a private counselor (counselor 1) that worked for provider 1 at the middle school. However, the Parents then expressed concern that counselor 1 did not "have background in all of [the Student's] diagnoses or medication."
17. On October 13 and 16, 2017, the Student's evaluation group met, with the Parents participating by phone, to review the results of the Student's reevaluation and found that the Student continued to be eligible for special education and related services, but changed the eligibility category to multiple disabilities, based on the Student's diagnosis of ADHD, his "suspected diagnosis of Autism Spectrum Disorder," a previously diagnosed anxiety disorder,

and other information from the IEE. The October 2017 evaluation report stated that the Student's diagnoses adversely impacted the Student's "capacity to interpret nonverbal cues from his environment and others around him, interact socially with peers, regulate his emotions, follow directives from adults, ignore classroom distractions, manage time effectively, and plan and maintain his organization relative to writing." The evaluation report recommended that the Student receive specially designed instruction in the areas of social/behavior, written language, and organizational/study skills. The evaluation report stated that the Student did not require specially designed instruction or related services for fine motor or occupational therapy, but that fine motor/occupational therapy supports be included in the Student's IEP as accommodations. The evaluation report also attached and incorporated the recommendations from the May 2017 IEE, including the recommendation that the Student receive mental health counseling. However, the October 2017 evaluation report did not specifically state on the recommendations page that the Student needed to receive counseling as a related service.

18. On October 24, 2017, the Student's IEP team met for a facilitated IEP meeting and continued to develop the Student's initial IEP. The following people attended the meeting:

- Parents
- Parents' Advocate
- IEP Case Manager
- Principal
- Language Arts Teacher
- Director 1
- Regional Specialist
- Occupational Therapist (OT)
- District Ombudsperson

According to the meeting notes and prior written notice, the IEP team discussed the Student's diagnoses, asked that an "IEP at a glance" document be provided to all of the Student's teachers, discussed the Student's strengths, discussed behavioral concerns, and discussed counseling services. The team also discussed requesting an assistive technology evaluation for the Student and asking the evaluator who had conducted the Student's IEE for recommendations regarding counselors that could provide the Student services. The team also discussed the plan moving forward, which included scheduling another IEP team meeting to continue developing the IEP.

19. According to documentation provided by the District, the IEE provider reported to the District that he believed the mother wanted a psychiatric nurse or a psychiatrist, because the mother indicated that she wanted someone to manage the Student's mental health and medications. The IEE evaluator stated that this was not realistic in a school setting and that a team approach would be more feasible and effective. The IEE evaluator stated that the Student should see a counselor on a regular basis at school and that this person could work with a nurse and the Student's physician to monitor medication changes.

20. On November 14, 2017, the Student's IEP team again met and reviewed the Student's draft initial IEP. The following people attended the meeting:

- Parents
- Parents' Advocate
- IEP Case Manager
- Principal
- Art Teacher
- Director 1

- OT

- District Ombudsperson

The meeting notes and prior written notice, dated November 27, stated that the team discussed: assistive technology (AT) and stated that when a specific AT recommendations are made, the team will make necessary changes; goals; baseline data, present levels, strengths, and challenges; the Student's behavior at home versus school; and accommodations. The notes from the meeting stated that next steps included reviewing accommodations, finishing goals, and reviewing service and counseling minutes. The prior written notice stated that the Parents requested that the band and art teachers be present at the next meeting.

21. The District's documentation in this complaint included a "Request for Assistive Technology Consultation", dated November 17, 2017. The request stated that the reason for the AT consultation was:

[The Student] experiences multiple disabling conditions that affect his educational progress in very different ways: Attention Deficit/Hyperactivity Disorder (AD/HD) [], Adjustment Disorder with Anxiety & Depressed Mood [], and Disorder of Written Expression. Reports also indicated suspected diagnosis of an Autism Spectrum Disorder. [The Student's] disabilities limit his alertness to classroom instruction and heightens his awareness of environmental stimuli. Specifically, his disability adversely affects his capacity to interpret nonverbal cues from his environment and others around him, interact socially with peers, regulate his emotions, follow directives from adults, ignore classroom distractions, manage time effectively, and plan and maintain his organization relative to writing. These factors prevent [the Student] from accessing the general education curriculum. As a result, [the Student] requires specially designed instruction for social/behavior, written language, and organizational studies skills, as he cannot successfully access the general education curriculum without changes to the delivery, content, or methodology of his instruction. He also requires occupational therapy support under accommodations to address issues related to hand fatigue and challenges with letter formation in order to supplement special education in the area of writing.

Information from [the Student's] current evaluation-(IEE)...[The Student] clearly presents with significant problems in planning and maintaining his organization relative to writing. These struggles may be related to his executive functioning (AD/HD). He does not exhibit any problems with writing mechanics, grammar, or sentence structure. Still, a diagnosis of disorder of Written Expression [] is warranted. No problems were found with fine motor dexterity and expression. His letter formation and spacing produce legible symbols. However, [the Student] exerted unusual pressure in his pencil grip, contributing to hand fatigue/cramping and decline in legibility overtime on writing samples of 10 to 15 minutes. It is up to the multidisciplinary team at [the Student's] school to determine if these motor and organizational aspects are of sufficient severity to qualify for specialized instructional interventions, but the combination of their impact interacting with his AD/HD appears to result in the significant impairment and provide justification for Section 504 accommodations.

The request form also stated that the Student should be supported in developing his keyboarding skills, and that once he reached fluency, he should be allowed to keyboard for all

writing. Additionally, the form stated that the desired educational outcome was for the Student to have "educational access for all academic needs".

22. On November 22, 2017, the Student was involved in an incident with a peer during his PE class. That same evening, the assistant principal contacted the Parents about the incident.

23. The District was on break November 23 and 24, 2017.

24. On November 27, 2017, the Student's IEP team met a fourth time, and continued to develop the Student's IEP. The following people attended the meeting:

- Parents
- Parents' Advocate
- Principal
- Director of Special Education 2 (director 2)
- IEP Case Manager
- Science Teacher

The Student's IEP was largely finalized on November 27. However, the Parents did not sign consent for the initial provision of services.

The November 2017 proposed IEP attached a list of the Parents' concerns, which stated that the Parents were "concerned about [the Student's] ability to organize information, time management, social/behavioral cues, and anxiety as it relates to the classroom," as well as the following:

- Writing below grade level as stated by [an English Language Arts (ELA or language arts)] teacher in 504 meeting on 10/12/2016 (at 3rd grade level)
- Poor handwriting and drawing, cannot focus on what he's writing (story, project, etc.) at the same time as the actual writing part and neatness
- Page layout struggles
- Clenching of pencil
- Writing letters from the bottom to top (opposite of instruction and will not change, we keep trying)
- Refuses to speak to text
- Has a hard time considering the experience/practice time
- Is literal when it comes to instructions
- Speaks very quietly and gets frustrated when others can't hear him
- Has a hard time expressing ideas, often cannot come up with words
- Has a hard time getting started, sort and prioritize in writing and daily tasks
- Indecisiveness-especially in writing
- Reading-understanding text in-depth, remembering story
- Auditory processing-following directions, understanding and remembering details, having a hard time understanding questions so that he could answer them appropriately
- Doesn't know how to use the information given, has a hard time applying it
- Long processing times
- Sorting and prioritizing is a great challenge
- Socially when the Student started kindergarten, he was very social, just less verbal than his peers; overtime he became shy and closed up demonstrates himself as mostly introvert; will not look at people in the eye when spoken to; has a hard time approaching others especially adults- will not ask for help or instruction when he gets stuck; poor communication; lack of understanding social cues and facial expressions.

- Memory problem-often will not remember even recent events
- Behavioral-when off medication-impulsiveness (poor choices even when he knows they are poor choices, he can't help himself) walking into people; acting unsafe/wild (climbing, running in hallways or class, grocery store, laying down anywhere, etc.)
- Behavioral-on medication and related to stress-will not quiet it down, will not communicate when he is disturbed and outside signs of stress and anxiety he may not demonstrate at school

The proposed IEP incorporated information and recommendations from the Student's May 2017 IEE. The proposed IEP also included two annual goals in the area of study/organization skills, three annual goals in the area of social/behavior, and two annual goals in written expression. The IEP provided the following specially designed instruction and related services from January 30, 2018 to January 29, 2019:

- **Written Language:** 60 minutes per week, general education setting
- **Social/Behavior:** 237 minutes per week, special education setting
- **Study/Organizational Skills:** 237 minutes per week, special education setting (concurrent)
- **Counseling Services:** 30 minutes two times per week, special education setting (related service)

The IEP indicated that the Student was not in need of extended school year (ESY) services. The IEP listed the following accommodations and modifications:

- **Weekly:** Access to follow-up practice time, frequent review of skills learned
- **Daily:** Access to typing, visual daily schedule, non-written responses, break assignments into smaller parts, non-graded daily practice logs, modified late start schedule, grade based on content, homework not graded, missing assessments/assignments noted as missing (not zero), pencil grip, preferential seating, notes/study guides, sensory breaks, shortened assignments, check for understanding, graphic organizer
- **Setting (Daily/Testing):** Modify/repeat/model directions, preferential seating, individual or small group instruction, study outlines/guides/graphic organizers
- **Timing/Scheduling (Daily/Testing):** Prior notice of tests/quizzes/large assignments, extra time, modify schedule

Additionally, the IEP provided for the following supports for school personnel:

- **OT Support:** 500 minutes per year

25. According to the District's response to this complaint, the District originally believed that counselor 1 would be able to provide the Student with IEP counseling services. According to the mother's reply, the mother did not feel like counselor 1 was a good option for the Student, but wanted the Student to receive mental health services.<sup>3</sup>

26. Later on November 27, 2017, director 2 emailed a copy of the November 27 IEP meeting notes to the Parents. According to the meeting notes, the Parents wanted the band teacher and counselor 1 to attend the next IEP meeting. The meeting notes also indicated that the

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<sup>3</sup> SECC 18-27, filed by the Parents on March 19, 2018, investigated whether or not the District implemented the Student's IEP with respect to the counseling services. The majority of the emails and discussion related to counseling have been left out of this decision. For a thorough discussion of counseling, see OSPI's decision in SECC 18-27, which was issued on May 18, 2018.

Student's IEP team discussed the specific classes that the Student would take the rest of the year.

27. On November 28, 2017, the mother met with the IEP case manager to review the accommodations in the Student's draft November 27 IEP.
28. On November 28, 2017, the Student's mother emailed director 2, stating that she had met with the IEP case manager about the accommodations and that she would try emailing the IEP case manager some additional accommodations the Parents wanted to be added to the IEP, which the mother and case manager had not addressed that day. The mother also stated that she invited counselor 1 to attend the next IEP meeting, which was scheduled for December 11, 2017.

Additionally, the mother expressed concerns about the middle school's procedures for notifying parents when a student got "jumped on or else attacked". The mother stated that parents should at the very least be informed during school/work hours, and that 6:00 p.m. was too late to do something about possible injury or mood. The mother expressed further concern about needing to be informed due to possible medical issues, and stated that the assistant principal had promised to provide the Parents with a summary of the incident on November 22, but had not yet done so. The mother then raised concerns about a biting incident which had occurred in the Student's PE class, and stated that she felt it was the school's responsibility to let the Parents know the outcome of its investigation or resolution.

29. On November 29, 2017, director 2 responded to the mother and recommended that the Parents speak with the assistant principal about the incident follow-up procedures and the incident in PE, and to let the principal know that the Parents had not received a follow-up email, as the assistant principal reported to the principal.
30. On November 30, 2017, the Student's father emailed the assistant principal, stating that the principal had called the Parents on November 22, about an incident concerning the Student that resulted in a disciplinary action for the other student involved and had agreed to send the Parents an email with a written account of the incident. The father stated that the Parents still had not received an email. The father also stated that in writing the Student's Section 504 plan and IEP, the Parents had made it known that it was quite difficult to get information out of the Student, and so it was important for the Parents to get another account of what had occurred, in case the Student needed medical attention. The father stated that if something happened in the future, the Parents wanted to be called during the school day so that precautions could be taken.
31. On December 1, 2017, the assistant principal responded to the father's email and provided an account of the November 22 PE incident. The assistant principal stated that the Student had reported to his PE teacher that in the hallway outside of the gym, a classmate ran up behind him and grabbed him around the neck and pulled him to the ground. The classmate reported that prior to this, the Student had ran in front of him during the PE class, hit a badminton birdie, and then laughed at the classmate. The assistant principal stated that she had spoken

with the Student and the classmate separately, and had asked the Student if he needed to see the nurse, but the Student said he was fine. The assistant principal then brought the Student and the classmate together for a mediation. The classmate shared why he was upset with the Student and the Student stated that he did not remember this, but thought it could have happened since they were in the same general area. The assistant principal then asked if it could have been an accident and the classmate thought this could have been the case. The assistant principal then asked that the classmate to use words to describe how he was feeling instead of using his body. Both students then agreed to be more aware of others and share their feelings, and if there was a conflict in the future, to report it to an adult. The assistant principal said that the classmate was given a consequence and his parents were notified.

32. Also on December 1, 2017, the IEP case manager emailed the principal, asking that the principal provide him the comments the Student's general education teachers had sent to the principal to share at the November 27 IEP meeting. The IEP case manager stated that the Student's mother had asked that the comments be included in the Student's draft IEP. On December 11, 2017, the principal forwarded the IEP case manager notes from the Student's band and math teachers.
33. On December 4, 2017, the Student's IEP case manager emailed the Student's mother, director 2, and the principal and attached a copy of the Student's draft IEP to review before the next IEP meeting. The IEP case manager stated that he had amended the IEP goals and had amended the accommodations and modifications. The case manager specified that he had added an emotional recognition goal to the IEP, and that the goal's baseline was based on a quick activity he had done with the Student. The IEP case manager stated that he wanted to talk to counselor 1 about the goal because she would be the person to work with the Student on that goal. Additionally, the case manager stated that he had included comments from the Student's math teacher, and would include comments from other teachers when received.
34. On December 5, 2017, the District AT team lead emailed director 1, stating that she did not see any record of the Student in the AT team's record regarding an AT consult. The team lead asked that director 1 let her know if the AT team needed to do to help.
35. Also on December 5, 2017, director 2 emailed the mother, asking if the mother's concerns with the nurse had been resolved. The mother responded and among other things, stated that she had a response email written regarding the November 27 meeting notes director 2 had sent and that it was a long response. The mother stated that she always felt like the Parents were not being heard, so she had to keep a paper trail. The mother stated that she also felt like staff was "not seeing what they should be seeing first as professionals in the field and what they should be pointing out." The mother said this is why she went into detail supplying reasoning behind everything, otherwise what the Parents stated was "tossed overboard". The mother stated that they would be glad when they were done with the initial IEP and that the Parents wanted to be precise and would not sign a document they did not completely agree with.

36. Later on December 5, 2017, the mother emailed director 2 and the principal with the Parents' response to the November 27 meeting notes. The Parents' asked the following questions and raised concerns, including:

- How could the school be ready to begin services, as stated by the principal, when the Student's needs had not yet been captured in an IEP?
- There was no plan to help the Student "socially integrate."
- The team needed to revisit the typing goal "prior to start of next school year to allow time for assistive technology needs."
- The Student had not yet received the MotivAider.
- They had not received any information from the principal about the "biting incident in PE."
- The Student needed to be assured that he would not "have lunch and recess time taken away even for disciplinary reasons."

Director 2 responded and stated that all notes from meetings would be incorporated into the prior written notices. Director 2 stated that the MotivAider had been ordered and shipped, and that the Student's IEP team could revisit "any updates on goals at next Monday's meeting."

37. On December 6 and 7, 2017, director 1 and director 2 exchanged emails about the status of obtaining a MotivAider for the Student, and director 1 confirmed that the device had been ordered and shipped to the District's central office.

38. On December 8, 2017, the Student's mother met with the IEP case manager. Later, the mother sent a follow-up email with attached notes. The mother stated that these were the notes she had ready for the November 27 IEP meeting, which they had been trying to get through. The mother also stated that her notes on the IEP draft itself still included "these points":

- Accommodations:
  - Reduced/adapted assignments
  - Advanced notice for larger assignments
  - Provide examples and specific steps to accomplish tasks
  - Tests - course tests conducted in a quiet environment/separate space in the classroom
  - Homework not to be completed at home – no grade value to homework
  - Book or coloring for coping mechanism (as observed by teachers)
  - Grade for context integrity
  - Grade only finished work
  - Small class sizes when possible
  - Social-emotional accommodations? Helping with pairing students, model and practice non-verbal cues, others?
- Goals:
  - Learning time management (per the IEE provider's recommendations)
  - Learn prioritizing assignments and activities
  - Note taking
- Questions:
  - How are teachers going to know how to recognize that there is an issue? The Student does not show obvious signs of anxiety (quiets down, may clear throat – his breathing gets affected by stress)

- OT – specific support, we would like to list the frequency in minutes weekly rather than yearly. I will also email the occupational therapist and ask that, and for specifics of her support to be added so that they are clear to anyone who reads the IEP.
- We would like the state assessment participation accommodations explain to us. It looks like the Student does not get accommodations for math State testing, he still needs extra time and quiet environment. It looks like the school is not planning on the Student participating in a lot state testing.
- Special education related services:
  - Counseling services - it says “counselor” we would expect “therapist”. I just want to make sure it is not a school counselor. It say location special education.
  - Written language - it was originally 40 minutes 5 times weekly now it says 60 minutes weekly. Could that be changed to daily, since he has English Language Arts (ELA) daily? The minutes don't match up, why the change?
  - Social behavior - 237 minutes / week and special education class
  - Study organizational skills - also 237 minutes/week in special education class

The mother stated that this was it for the Parents’ notes, that maybe the IEP case manager could address these himself, and that they would need to discuss the rest at the meeting on December 18, 2017.

39. Also on December 8, 2017, the mother emailed the OT regarding the Student’s draft IEP. The mother stated that page twelve of the current draft included a couple sentences that went against what a prior District occupational therapist, the IEE provider, and the educational psychologist the Student saw while out the country had observed, and that the Parents continued to observe, which was that the Student had hand cramps and other problems with hand writing than just speed. The mother expressed that the draft also referenced the Student using the home keys on a keyboard, but the Parents did not believe this observation was correct, and they had never seen the Student do this at home. The mother also expressed that the Parents wanted more information about the term “OT support” as written in the IEP. In response, the OT stated that she had removed the sentences on page twelve, and that she was unsure why the Student was not using the home keys when typing at home, but that during the assessment, he had been able to do so. The OT stated that this would be something to monitor and that she would speak to the IEP case manager about it. The OT then provided the following information about OT support:

School-based occupational therapists use yearly minutes to ensure that they can provide greater support at the beginning of the year or when programs change. The occupational therapists can provide support to the staff in developing a program of tailored interventions for the student that meets their needs (in [the Student’s], this would be a handwriting program). This is why I wrote it this way, with the hope that at the beginning I would provide support to set up a program that I would then be able to monitor along the way.

40. On December 11, 2017, the mother replied to the OT’s email and stated that the Parents were still unclear about the support the OT would provide. The mother stated that 500 minutes per year averaged to 12.5 minutes a week, and asked how this can be specified in the IEP. The mother asked that the therapist specify if she would be working directly with the Student.

Additionally, the mother asked for more information about the handwriting program and how the Student's hand cramps and letter formation would be addressed. The mother also stated that the Student's private occupational therapist was recommending a comprehensive evaluation to address hand and sensory issues, and asked if the results would be helpful to the District OT and if the private evaluation would be considered. The mother then asked additional questions about how the Student's sensory processing issues would be addressed. The mother indicated that she hoped the information could be provided before the Parents consented to the initial provision of special education. The mother stated that the Parents could not expose the Student to a full schedule, or nearly full schedule, without taking the necessary steps of support. The OT responded on December 15 and provided more information on services she would provide and the handwriting program. The OT also stated that if the Parents decided to obtain a private evaluation, she would review it.

41. Also on December 11, 2017, before the IEP meeting, the Student's father emailed the IEP case manager, asking that the following language be added to the IEP:

If a dispute occurs that required [the Student] to be pulled from his regular routine, we, as his parents, must be notified promptly, before the end of the school day. If a dispute arises that results in any mediation, and resolution of conflict is achieved, then no further punishment can be given, especially the loss of lunch and recess.

42. On December 11, 2017, the Student's IEP team met and reviewed the latest version of the draft IEP. The following people attended the meeting:

- Parents
- Parents' Advocate
- IEP Case manager
- Principal
- Band Teacher
- Guidance Counselor
- Director 2

The team discussed the following:

- That the "MotivAider" recommended by the IEE was being shipped that week
- Study skills/organization and social/behavior goals
- School partnering with the Parents to support the Student in making friends
- Possible typing goal and accommodations for testing, prior notice of tests and quizzes
- Band class and appropriate level of music class for the Student
- A treatment plan from counselor 1
- Whether to give the Student an accommodation to not lose recess

As of December 11, the Parents had not yet signed consent for the initial provision of special education services and the IEP had not yet been finalized.

43. Later on December 11, 2017, director 1 emailed an OT who was part of the District's AT team regarding an AT consult referral for the Student. Director 1 stated that she had sent an email regarding the referral in November 2017, but had not heard back and wondered if she may have sent the original email to the wrong address. Director 1 stated that she was including the IEP case manager and director 2 on the email, as they were both supporting the IEP process and supports for the Student. Director 1 asked that the AT team move forward with the referral as soon as possible and let her know if she needed to do anything further. On December 13,

the occupational therapist responded that she would be the AT person consulting on the case and asked the IEP case manager to set a time to meet after the District's winter break. They later agreed to meet on January 3, 2018.

44. Finally, on December 11, 2017, director 2 emailed the Parents and school staff a copy of the IEP meeting notes. On December 15, 2017, the mother responded that she wanted to revisit the topic of the Student taking a more advanced band class during the second semester and expressed that while the Student was currently using his personal computer tablet at school, until his AT assessment was completed, she did not want the District to rely on the use of the personal tablet in the long run.

45. On December 14, 15, and 21, 2017, the Parents exchanged emails with District staff about IEP meetings and assistive technology. The emails are summarized below.

- December 14 – The mother emailed director 2, the principal, and the IEP case manager, asking to confirm a date for the next IEP meeting.
- The mother emailed the Student's math teacher, asking if he could attend the next IEP meeting.
- The math teacher responded and provided days and times he was generally available to meet.
- The mother replied that she thought counselor 1 needed to hear the math teacher's classroom observation and be able to ask questions. The mother asked what Wednesdays the teacher could meet in January 2018, and stated that the teacher did not need to stay for the whole meeting if he could not or did not want to.
- December 15 – The math teacher responded that any Wednesday that the other members of the team could make work, he could as well. He also stated that he had tutoring until 4 on other days, but could attend a meeting after that time.
- The mother replied, suggesting a meeting on January 3 or 10.
- The IEP case manager responded to the mother's December 14 email, stating that he was not able to schedule an IEP meeting yet, because he was working with the AT team to come in the first week of January 2018 to meet with the Student about his AT needs.
- The mother replied, asking when the Student's AT evaluation would occur and expressed concerns about how long it was taking. The mother indicated that director 1 had told her that a MotivAider had been ordered for the Student. The mother also stated that she felt like there was plenty to talk about with the mental health counselor and that she did not fully understand a behavioral intervention plan (BIP). The mother asked when this would happen and why it needed to happen, since they knew what the issues were. The mother stated that she did not see the need for more evaluation, but saw the need to help the Student with the difficulties he faced at school and the Parents dealt with at home. The mother asked what the District was going to do for the Student while "we stay put and wait". The mother stated that the recommendation from the Student's psychiatrist<sup>4</sup> was to keep the Student out of school until adequate supports were available to him at school. The mother stated that this seemed like it would be the best option for the Student at that time, and asked if the Student needed to be present for the "evaluation" or if the evaluation happened just as a consultation of what his needs were at school. The mother also stated that the District had promised to meet the Student's needs on the first day of school, and expressed concern that the Student was regressing in functioning. Additionally, the mother asked if the District also had social skills

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<sup>4</sup> Based on the documentation in this complaint, the referenced psychiatrist provided the Student care when the Student was out of the country in the winter/spring of 2017.

camps over District breaks, believing this could help the Student's anxiety in social settings, especially when returning to school after days off. The mother then expressed additional concerns, and asked that an IEP meeting be scheduled.

- The Student's father responded that the Parents were told at the December 11 IEP meeting that the MotivAider had been shipped.
- Director 2 replied that she had the MotivAider and would drop it off at the middle school the following week.
- The mother responded that it was great to hear the MotivAider was there and that she hoped it would help the Student with his time management, because the Parents and school staff were still having little success getting the Student to function "semi-normal". The mother asked why an IEP meeting could not occur the following week, and asked if they really needed to wait for the next AT assessment to schedule an IEP meeting. The mother expressed that the IEP team could at least speak with counselor 1, and that the Student's math teacher would be available to share his "very interesting observations" of the Student. The mother stated that due to the math teacher's schedule, it seemed difficult to schedule a time when counselor 1 and the math teacher were both available.
- December 21 – The mother replied again, stating that she thought they should put a date on the calendar for the next IEP meeting as soon as possible. The mother stated that there was a lot to coordinate and that if they knew the AT evaluation would happen the first week of January 2018, she wanted to come up with some date options, so the meeting would not be at the end of January. The mother stated that was important to have the math teacher attend the meeting to share his observations of the Student and that it would be beneficial for the Student to have the math teacher and counselor 1 in the same meeting.

46. Also on December 15, 2017, the Student's mother emailed director 2 and thanked her for being at the last IEP meeting. The Student's mother asked for help facilitating communication between her and the principal and stated that the principal "always seems to make promises and appear forthcoming, but has poor follow through. He has said a few times he will do something and did not." The mother also expressed concerns that the principal was resistant to having more of the Student's general education teachers at the IEP meetings.

47. The District was on break from December 21, 2017 through January 1, 2018.

48. On January 2, 2018, the Student's father emailed the Student's IEP case manager (and copied director 2, the principal, and counselor 1) and asked if there was "any new information on coverage of counseling for [the Student]?" The IEP case manager emailed director 1 and director 2 that counseling services could start as soon as an IEP was in place.

49. According to the District's documentation, the Student underwent an AT evaluation on January 3, 2018. The evaluator agreed that the Student "could benefit from the use of assistive technology and agrees that a tablet with key board is recommended because of the flexibility a touch screen and applications a tablet provides."

50. On January 4, 2018, the mother emailed the IEP case manager and director 1 and asked for the following:

- Timeline for receiving AT;
- "Date or what need to happen for BIP (was it?) – behavioral assessment";

- "Dates for an IEP – we need this in the calendar now"; and,
- Confirmation that counselor 1 and the math teacher can attend the IEP meeting.

51. On January 8-10, 2018, the Parents and the District's ombudsperson exchanged several emails regarding the mother's concerns, which include, in relevant part:

- That the AT assessment was completed in January 2018, when "we knew in August that some kind of assistive technology is needed from [the IEE's] recommendations"
- The delay in scheduling an IEP meeting and finalizing the IEP
- Additional accommodations the mother wanted (e.g. "good communication between staff and parents" and not taking away recess as a consequence)
- No information about a timeline to get AT
- Counseling
- That the Student needs social skills support during school breaks
- That the Parents were not being notified before the end of the school if there is an incident involving the Student
- Consenting to an IEP that is "inadequate"

The ombudsperson replied and stated that she would check in with director 2 regarding the status of the mother's concerns. In several emails, the ombudsperson stated, "I am just thinking...that it would make sense to sign the IEP so that services can begin. Then you can keep working on these other things...But if the document doesn't get signed, services can't begin" and "it is not a common practice for families to expect services but not sign the IEP."

The mother replied and stated that her and the Student's father had discussed consenting versus not consenting in great detail and stated that "it is not a good idea to agree to an IEP that only partially addresses [the Student's] needs...but chances are that our plan will not work 100% and will need to be adjusted." The mother stated that if we consent "to an IEP that addresses only half of [the Student's] needs (50%), very likely his needs will only be addressed at 30% more or less. We need to start with a plan that is as close to 100% effective as possible."

52. According to the Parents' reply, they were "led to believe that we had to consent to the IEP as written and proceed as a whole, and not that we would be only consenting to placement." The Parents stated, in their reply, that had this been properly explained to them, they "would have gladly consented to Special Education placement before the start of 2017-2018 school year."

53. On January 10, 2018, the OT on the AT team emailed the IEP case manager and stated, "let me know when [the Student's] IEP is complete/signed, and I can get the AT set up for him."

54. On January 11, 2018, director 2 emailed the Parents and stated that the school has been: Providing services and implementing supports during the time we've met to thoroughly discuss [the Student's] IEP. [IEP case manager] will have the IEP complete and ready to sign by Tuesday, January 16, 2018. This is the IEP we have ready to serve. It is important that we have your consent since typically the services and supports [the Student] is receiving are the result of a signed IEP...If you are not going to sign consent for services, we'll be adjusting supports, and move forward with an updated 504 that will not include the

programming we've been working towards for [the Student.] With the IEP we have created, [the District] is providing FAPE, so we are ready for your signed consent.

55. On January 17, 2018, the mother and the Student's band and art teachers exchanged emails about accommodating the Student's injured finger and the Student's access to sensory experiences (e.g., using his Rubik's cube during class).
56. On January 18, 2018, the mother emailed director 2, the principal, and the IEP case manager about the Student being late to school and refusing to go to band class. The Student's mother asked that the Student's IEP state that the Student cannot be given lunch detention.
57. Also on January 18, 2018, the IEP case manager responded to the mother's email and stated that the principal already agreed that the Student would not get lunch detention for being late.
58. On January 19, 2018, the mother emailed the OT and counselor 1 regarding accommodations for the Student's sensory needs and concerns about social skills. The mother stated that the District had approved the Student's counseling and asked counselor 1 to keep the Student in mind if her schedule opened up. Counselor 1 responded and asked if the mother's concern about "using insurance benefits" had been addressed. The mother responded that the District had agreed to pay for counseling and that she anticipated that counseling would start as soon as she consented to the IEP.
59. On January 20, 2018, the IEP case manager emailed the mother a copy of the most up to date draft IEP and prior written notice (PWN).
60. On January 22 and 23, 2018, the Student's mother and the OT exchanged emails regarding adding an accommodation for sensory tools to the Student's IEP. The OT stated that she would be visiting the Student's classrooms and discussing with the Student's teachers.
61. Also on January 24, 2018, director 2 emailed the Parents and stated that the District was "prepared to continue implementing services outlined in the IEP for [the Student] with your signed consent. Without your consent, [the Student's] services and daily schedule will change as of Monday, 1/29, to reflect his gen ed status." The Student's mother responded and stated that in order for them to consent, the Parents need their questions answered and the adjustments made to the IEP draft. The mother stated "the way it is written now, [the Student's] needs are not being met. He would not be receiving FAPE under this IEP."
62. Later on January 24, 2018, the Student's mother emailed the IEP case manager and director 2 with the following revisions to the draft IEP:
  - Progress reporting provided monthly in a written goal page
  - Parent training for any AT
  - Dividing the study/organizational skills goal into two goals, one focused on task initiation and one focused on task completion

- Suggested specific language for the social/behavioral goals<sup>5</sup>

The mother also stated that the following items were missing from the Student's IEP and asked:

- An understanding of who will provide counseling, and that individual's qualifications
- A typing goal
- Supports to address the fact that the Student was "regressing cognitively and has a hard time getting out of the house and to school"
- An accommodation that all incidents of injury must be reported to the Parents at the time of the incident, or a safety plan
- What happens if the Student loses or drops his tablet?
- What topics will be discussed during counseling?

The mother stated that once she got answers to these questions and corrections were done, "we will be happy to sign the IEP, so that these services and data collection can begin and [the District] can start supporting [the Student.]"

63. On January 25, 2018, the IEP case manager responded to the mother's January 24 email. The case manager provided an example of what progress reporting looked like and stated that the reporting period can be discussed, but "none of the behavior we are seeing at school raises to the level of requiring monthly reporting." The case manager also stated that arrangements could be made to have the Parents attend AT training and that after the IEP was signed, the team could continue to work together on the wording of the IEP goals. The IEP case manager also stated that service providers (like specific teachers) were not detailed on the IEP, that the team discussed and decided a typing goal was not appropriate, and that the school had already implemented several steps to ensure "at school stressors do not invade the home space." The case manager stated that he was not sure "how a document meant to address learning deficits at school is to be applied at home" and that challenges that present at school were being addressed by the IEP. The case manager also stated that a safety plan would not fall within the scope of the IEP. Finally, the case manager stated that the tablet was like any other District property and on loan to the Student, but that they could order a special case, and that topics for counseling would be worked out with the counselor.

64. On January 26, 2018, the Student's father emailed the principal, IEP case manager, and director 2 about suspected bullying and stated that the Student came home "with a pink bubble gum stuck in his pants pocket." The father stated that the Student does not chew gum, is a precise rule follower, and would never put unwrapped gum in his pocket. The father asked, "how is the school going to address this ongoing issue?" On January 29, 2018, the principal asked the assistant principal to check into the issue and the assistant principal stated that she would follow up with the Student.

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<sup>5</sup> Based on a review of the Student's November 2017 IEP (implemented January 2018), the Student's IEP team incorporated nearly all of the mother's suggested revision and language into the Student's annual goals.

65. Also on January 26, 2018, the mother emailed director 2 and the Student's IEP case manager and stated that she wanted the District to update the prior written notice.<sup>6</sup> Among other requests, the mother stated she wanted:

- Data supporting BIP denial to be stated in PWN
- Progress reporting period to be changed
- Wording of goals to be changed
- Address the Student's social integration to prevent rising anxiety, worsen asthma and ADHD symptoms, and to address bullying
- Add a typing goal prior to the next school year
- Address what causes the Student's school refusal as evidenced by worsened attendance record of missing classes, being tardy to school or during class transition as well as frequent visits to the school nurse's office
- Add accommodations to limit the use of lunch detention as a consequence
- The OT to make recommendations for accommodations

The mother also stated that she understood the school staff do not see the Student at home and stated that is why she tries to stay in close communication with the school.

66. Later on January 26, 2018, the Student's mother emailed director 2 and asked why the prior written notice and not the IEP recorded the conversation regarding not giving the Student lunch detention. The mother stated that this needed to be an accommodation in the Student's IEP.

67. On January 29, 2018, the mother emailed the principal, the IEP case manager, and director 2 regarding the challenges the Student had in getting to school on time. In response, the IEP case manager stated that a functional behavioral assessment (FBA) was "part of an IEP and [would be] initiated after IEP services have been consented to."

68. On January 29, 2018, the Student's mother emailed the PE teacher regarding two incidents where the Student came home with gum stuck in his pants or shirt pocket. The mother stated that "both of these incidents add to the biting incident that happened this school year in the gym locker room. We need the school staff to be addressing this...It is concerning that suspected bullying gets no immediate attention, in fact no attention at all."

69. According to the documentation provided by the District, throughout the fall 2017 and January 2018 (prior to the IEP implementation), there were many instances when the Parents emailed the IEP case manager or the Student's general education teachers about the Student's accommodations not being followed and progress reporting not being provided. For example, the mother stated in an email on January 23, 2018, that "we have not been able to get [the band teacher] to follow one or another accommodation since the beginning of the school year." And in an email on January 24, 2018, the Student's mother wrote that "as of now, there is a deficit in progress reporting[ing]. At least we have not received any progress report[ing] if any data as collected."

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<sup>6</sup> The Student's mother did not specify which prior written notice she wanted the District to update.

70. On January 30, 2018, the mother signed consent for the initial provision of special education services and then requested an IEP meeting to amend the Student's January 2018 IEP. The District began implementing the Student's January 2018 IEP that same day.
71. Also on January 30, 2018, the IEP case manager emailed the Student's teachers and stated that the Student now has an IEP and qualifies in writing, social behavior, and study skills. The IEP case manager also highlighted some of the Student's accommodations and stated that an "IEP at a glance" would follow in the next few days.
72. The District was on break January 31, 2018.
73. On January 31, 2018, the IEP case manager emailed director 1, director 2, the District's regional program specialist, and the OT. The IEP case manager stated that he had never set up counseling for a student and needed assistance, and asked if they could get assistive technology set up now that the mother signed consent for IEP services. The IEP case manager stated that the Student was already using the MotivAider device and had a tablet.
74. Also on January 31, 2018, the Student's mother emailed director 2 and stated that she had not received any response to emails to various District staff about suspected bullying.
75. Later on January 31, 2018, the Student's mother emailed the Student's IEP team and requested that they set up a meeting to amend the Student's IEP. The mother stated that the team needed to discuss: "Bullying issue & prevention together with social integration support; sensory outlet accommodation for [the Student]...and Annual goals modified to effectively address [the Student's] needs."
76. On February 1, 2018, the middle school's second semester began. Based on the documentation in this complaint, the Student's schedule was as follows:
- Period 1 – Study Skills (special education)
  - Period 2 – Science (general education)
  - Period 3 – Math (general education)
  - Period 4 – Jazz Band (general education)
  - Period 5 – PE (general education)
  - Period 6 – Language Arts (general education)
  - Period 7 – Reading (general education)
77. Also on February 1, 2018, the IEP case manager emailed the Parents with dates that the AT person was available to do a short training session for the Student's assistive technology.
78. Later on February 1, 2018, the Student's mother emailed director 1 and referenced the incident that occurred in late November in the Student's PE class. The mother used this as an example of why the Student needed an accommodation that stated that "all incidents of injury must be reported to parents at time of incident by nurse, and all incidents of other types requiring resolution by staff to be reported by staff via call or email before end of day release."
79. On February 3, 2018, the Student's mother emailed the IEP case manager and stated that the Student was going to be part of an Autism study.

80. Also on February 5, 2018, the Student's mother emailed the IEP case manager and asked if they were meeting as scheduled on February 28, 2018, and whether they could meet sooner to "finish fixing the IEP, as agreed." The mother also asked whether the case manager had "heard from [the OT] about sensory processing outline, how to accommodate [the Student]" and asked when counseling would start. The case manager responded and stated that he would send out an invitation for a meeting, that he was working on setting up the counseling, and that he wanted to fix the goals before sending out the "IEP at a glance" document. The mother replied and stated that she wanted to meet sooner if possible and repeated her questions about the OT and counseling.
81. On February 6, 2018, the IEP case manager emailed all of the Student's teachers a copy of the Student's "IEP at a glance" and provided information about the Student's accommodations. The IEP case manager also emailed the Parents a copy of the "IEP at a glance."
82. On February 7, 2018, the IEP case manager emailed the mother to let her know that the OT had observed the Student and gave him some sensory tools (fidgets) for the Student.
83. On February 8, 2018, the mother emailed director 1 concerns regarding the counseling services, the Student's safety in the school environment, consent for an FBA, possible parent training, and a sensory outlet accommodation.
84. Also on February 8, 2018, the mother emailed the IEP case manager and principal regarding an academic/enrichment camp or a social skills class/camp during mid-winter break. The mother asked for help figuring out options for the Student. The principal responded that the "Mid-winter Break Academy" is not a full day program. And the mother replied and asked how the Student's "social skills needs [would] be met during the break camp and Friday celebration?"
85. Also on February 8, 2018, the OT emailed the mother and stated that the use of "fidgets" could be added to the Student's IEP as an accommodation and that she had provided the IEP case manager with a box of fidgets and hand strengthening tools, and instructions, for the Student to use.
86. Later, on February 8, 2018, the Student's IEP case manager emailed the mother that the Student's assistive technology would be dropped off the following week. He also addressed some of the mother's concerns about implementing the IEP and stated that he was able to line up some of the specialists, but could not actually "start anything until there was an IEP in place" and that the school "could not hold a spot for the [Student] in counseling, reserve technology or dedicate people to observe him until there was an IEP, signed." The IEP case manager stated that counseling is provided to "students in need" at the school and that the providers, not the District, require "information and signatures in order to provide these services." The mother responded and stated that the IEP team had known since the fall that the Student would need counseling. The mother stated that counselor 1 had informed her that the Student could not receive counseling for free and that the mother would sign consent "as soon as [the District] finally sorts the billing with [provider 1] as a provider." The mother

stated that she believed that the school "did not need to wait for us to sign the IEP to put [the Student] on the wait list" and that the District "knew that our intention was to consent to the IEP and the counseling was a big part of why we agreed to sign the IEP that clearly did not address supporting all of [the Student's] areas of concern." The mother stated that, according to counselor 1, there had been no action on the part of the District to set up billing or counseling.

87. On February 9, 2018, the mother emailed director 2 and asked what she suggested the District or school do to address the Student's "social skills support and integration during breaks?" The mother also raised concerns about the counseling.
88. On February 12, 2018, the AT person dropped off the tablet for the Student and taught him how to use it.
89. Also on February 12, 2018, according to the District's documentation, there was an incident at school where a peer bumped into the Student and the Student fell down the stairs. A school security specialist reviewed a video of the incident and stated that the "bump may or may not have been deliberate, but I would call it careless disregard for others." The security specialist stated that the peer apologized and helped the Student pick up his things, and that the Student went to the nurse's office and seemed "irritated, but not threatened." The Student's mother, in an emailed to director 2 about the incident, stated that she received a call from the school nurse and that she hoped "we will get a call about it before school is out today." The mother stated that they still had not heard back from anyone at the school regarding suspected bullying. In a second email to director 2 regarding the incident, the mother stated "if the [assistant principal] is responsible for calling us about the bullying signs and didn't, we really need your help in securing the requested accommodation" and that "whether this is or is not bullying, it needs to be investigated." Later, the Student's father emailed and stated that because the Student got hurt he missed band, and thus the Student "did not receive FAPE today."
90. Later on February 12, 2018, the mother emailed the IEP case manager and stated that based on the biting incident, the incident in late November 2017, the repeated gum incidents, and the incident earlier that day, they had enough "evidence to support the accommodation of getting a call from the school if an incident occurs at the time of incident or at least before school is out."
91. On February 13, 2018, the District provided the Parents with progress reporting on the Student's January 2018 IEP annual goals. Because the goals were new, the progress reporting did not include how much progress the Student had made. The comments did note that for task initiation, the Student initiates tasks 60% of the time without a reminder, that transitioning was more challenging, that the Student was not reporting anxiety to staff, and that the Student had appropriate conversations with peers during the study skills class.
92. On February 14, 2018, the Student's IEP case manager emailed the mother and provided an update on the Student's AT and stated that the Student has had "training and he is already

really savvy.” The case manager also addressed the mother’s questions and concerns regarding counseling. The mother responded with additional questions about the FBA.

93. On February 15, 2018, the IEP case manager and the Student’s father emailed regarding the Student’s instruction in organization skills, specifically organizing his backpack.
94. Also on February 15, 2018, the mother emailed director 2 and again asked about an accommodation regarding notification of incidents involving the Student.
95. On February 16, 2018, the principal emailed the Parents additional information about the optional mid-winter break academy and stated that the Student’s math and language arts teachers were two of the teachers teaching in the academy. The principal also stated that the academy was “not a time to practice social skills. It is a time to work on literacy and math.” The Student’s mother responded and asked how the school planned to “address [the Student’s] social skills support needs” and stated that the Student did not need academic classes.
96. On February 19, 2018, the principal responded and forwarded the mother’s February 16 email to director 2 and asked her to respond. The principal stated that he “would appreciate your insights as to what the school is responsible for and not responsible for on non-school days.” The Student’s mother replied and provided excerpts from the Washington Administrative Code (WAC) regarding extended school year (ESY) services.
97. The District was on break February 19-23, 2018.
98. On February 19, 2018, the IEP case manager emailed the Parents updated draft language for changes to the Student’s annual IEP goals. The Parents responded with comments and additional concerns, and requested a typing goal. The case manager stated that the IEP team would discuss all the issues at the IEP meeting scheduled on February 27, 2018.
99. On February 20, 2018, director 2 emailed the Parents and stated that the Student does not have ESY services on his IEP and that ESY was for regression and recoupment services. Director 2 stated that “the school is not required to provide ESY for school breaks or summer breaks at this time.”
100. On February 23, 2018, the mother emailed the principal and stated that in order for the school to address the Student’s social skills, two private psychologist recommended parent training. The mother stated that “returns to school routine and overwhelming busy and loud setting after breaks cause [the Student] to not receive FAPE” and that attending a school based camp during breaks would help the Student with the challenges of returning to school. The mother stated that “mid-winter literacy camp is not adequate support without targeted social skills support.”
101. Also on February 23, 2018, the Student’s mother emailed the IEP case manager and stated that the updated goals the case manager emailed did not “come close to what was requested

and promised. Some goals are missing, instruction is missing, [and] goals as written are not addressing [the Student's] needed skills development." The mother also asked for more frequent progress reporting.

102. Also on February 27, 2018, the Student's IEP team met and amended the Student's IEP (February 2018 IEP amendment). The following people attended the meeting:

- Parents
- IEP Case Manager
- Principal
- Language Arts Teacher
- Math Teacher
- Special Education Teacher
- Counselor 1

At the IEP meeting, the principal informed the mother of the misunderstanding with provider 1 and that counselor 1 would not be able to provide IEP counseling. According to documentation provided by the District, the principal discussed the option of having the school-based psychologist provide counseling services, but the mother rejected this offer and emails from the school psychologist indicated that he believed he would not necessarily be a good fit unless issues such as workload were resolved. According to the prior written notice, dated February 27, the team could not reach consensus on modifying a goal. And the IEP team amended one of the Student's study/organizational skills goals and one of the Student's social/behavioral goals, and added an accommodation (access to sensory fidgets). Additionally, counselor 1 attended the IEP meeting in order to have the mother sign a consent form for private services, which according to documentation provided by the District, the mother signed.

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

- The mother emailed the principal and asked for help keeping the Student safe at school and stated that "hopefully the FBA will soon be finished" and also that "the supposedly already initiated FBA is just like any other evaluation and requires mother consent and explanation of this evaluation." The mother asked again for a consent form to sign. The mother also wrote, in regard to counseling, that there was nothing "in the regulations preventing a school district from contracting for outside services. I verified this with OSPI today." The mother also stated that the next IEP meeting would need to be longer than one hour to address all of the Student's needs.
- The mother forwarded director 2 several email chains regarding counseling.
- The mother emailed director 2 and stated that because the discussion of counseling took up so much time at the IEP meeting, the team did not talk about the Student's safety or the FBA. The mother expressed frustration that the "arranged mental health counselor coverage, which was supposedly already arranged two weeks ago by [the principal], cannot happen." The mother stated that "what happened in yesterday's IEP meeting regarding the already agreed upon counseling is shocking. Suddenly, [the counselor] cannot provide counseling because it is on [the Student's] IEP." The mother stated that the school psychologist was not the appropriate person to provide counseling. The mother also listed the following concerns and requests:
  - Progress reporting needed to be more frequent in order to track the Student's progress. The mother said that she had not seen any data or evidence that the Student was making

progress, even though the Student's teachers stated he was making progress, but also said that the Student's writing was improving and that he was making progress in his English language arts class.

- The Student needed goals to address tardiness/absences, typing, and task initiation.
- The Student needed accommodations for "small classroom" setting, safety, and reporting all incidents at the time of the incident.
- The Student needed ESY services for social skills.
- The OT did not attend the meeting and did not request to be excused from the meeting.
- The mother emailed director 2 again and stated that on February 16, 2018, the principal told them that everything was set for the Student to begin counseling with the counselor and that the mother had been told "repeatedly that the staff is 'working very hard' on setting up counseling." The mother wrote that the "sudden realization that this will not be possible, as per the school principal yesterday does not match up."
- The mother emailed the IEP case manager, principal, special education teacher, science teacher, language arts teacher, and math teacher and thanked them for attending the IEP meeting. The mother requested another IEP meeting and requested that it be a minimum of two hours. The mother also asked the teachers to "supply any so far collected data for use to review and use for our upcoming dr. appointments."

104. On March 1, 2018, the Student's special education teacher emailed the Student's mother several of the Student's writing samples.

105. Also on March 1, 2018, the mother sent multiple emails to the Student's IEP case manager about the Student's behaviors and school anxiety, including that the Student had a history of being bullied on his soccer team. In response, the IEP case manager emailed the mother an FBA consent form to sign, which the mother signed and emailed back the same day.

106. On March 2, 2018, the mother emailed the OT and stated that she hoped to see the OT at the next IEP meeting. The OT responded and stated that she would plan to attend the next IEP meeting.

107. Also on March 2, 2018, the mother spoke with and emailed director 2 regarding safety issues. The mother stated that "the school incidents need to be addressed, investigated whether it is, or is not harassment/bullying related, but also all of those incidents needs to be recorded and taken into account as part of FBA." The mother also stated that the "poor communication issue between school staff and us parents needs to be addressed on [the Student's] IEP."

108. On March 5, 2018, the Parents emailed the IEP case manager, principal, and director 2 several times. The emails are summarized as follows:

- The Parents emailed the IEP case manager, principal, and director 2 and requested another IEP meeting. The Parents requested at least two hours to meet.
- The IEP case manager responded and stated that, until they could meet again, the Student was being served as written in the Student's IEP. The case manager stated that he believed that counseling and the wording of the goals were the remaining issues to discuss.
- The Student's mother replied and stated that the team also needed to discuss missing goals and accommodations.

- The mother emailed director 2 and asked for her help scheduling an IEP meeting. The mother stated that the IEP still did not address the Parents' needs: "He's not on full schedule, his tardiness and missed school do not have a goal with strategies listed etc."
- The mother emailed director 2 again and stated that it was "seriously unbelievable" that the Student had a task initiation goal on his IEP and that this goal was removed. The mother stated that there was no data to support removing this goal and asked director 2 to help "us get a mediation meeting in place."
- The mother emailed the IEP case manager and director 2 with additional concerns that she thought needed to be addressed: (1) The weight of the Student's backpack; (2) A backpack organization goal; (3) A behavior goal to address getting to school/class on time; and (4) The Student needed social skills instruction and a goal.
- The Student's father emailed the case manager and stated that it was important to get a meeting scheduled.

109. Also on March 5 and 6, 2018, the mother and the IEP case manager exchanged emails regarding the Student's IEP goals. The case manager stated that all of the Student's teachers agreed that transitioning to start work was not impeding the Student's progress, but that he was often the last one out of the classroom. The case manager suggested a goal related to completing tasks on time and the mother continued to express disagreement with removing the task initiation goal. The mother also requested the data collected related to the Student's goals and stated that statements from teachers do not count as data collection.

The case manager responded that statements from the teachers were data, and that all of the Student's teachers stated that the Student "does not need to receive specially designed instruction in task initiation because his task initiation skills do not impact his ability to complete work in the classroom is data." The case manager stated that, regardless, he would ask the Student's teachers to collect additional data points.

110. On March 6, 2018, the Student's mother emailed the OT and asked about strategies for reducing the weight of the Student's backpack, initiating friendships with other students, other sensory strategies, and adding to the rules for the use of fidgets to the Student's IEP.

111. Also on March 6, 2018, the Student's PE teacher emailed the assistant principal and the Student's IEP case manager and stated that there was an incident during fifth period soccer where the Student reported that another student called him names. A paraeducator spoke with the Student and the other student, who admitted that he called the Student names, but stated that it was because the Student was "slide-tackling" him and other students.

The PE teacher also emailed the Parents regarding the incident and stated that the other student was referred to the assistant principal, and that she would follow up with everyone the next day. The PE teacher also stated that the Student had been reminded several times that the behavior of sliding into other students was not appropriate. The Student's mother responded and asked whether this was a new behavior for the Student. The PE teacher replied and stated that it has happened a few times throughout the year, that the Student usually stopped after a reminder, and that she did not think the Student was doing it intentionally.

112. On March 7, 2018, the mother emailed the IEP case manager and asked for clarification and information regarding scheduling an IEP meeting. The mother stated that she had collected data to support, including a task initiation goal (e.g., previous teacher statements and emails, professional evaluations, and health care professionals' recommendations) and requested that baseline data be recorded in the Student's IEP. The mother also stated that data needed to be collected more frequently, monthly, and that this information would help determine if the Student needed ESY services.

113. Also on March 7, 2018, the Parents emailed all of the student's teachers and asked them to do "data point collection every day for a week in every class one week every month for the remainder of the school year – 3.5 months." The Student's mother also blind copied director 2 on her email to the Student's teachers and stated in an email to director 2 that she did not want the teachers to "feel pressured if they saw your email address, but I do want you to beware of me asking them this 'favor.'" In another email to director 2, on March 7, the mother repeated concerns that the IEP was not meeting the Student's needs, that the Student was not safe at school, and that the Student was not receiving a FAPE.

114. Additionally on March 7, 2018, the mother, IEP case manager, and assistant principal emailed back and forth about several incidents that the Student was involved in at school (e.g. incidents in PE, someone putting gum in the Student's clothes, and other students calling him names) and the mother's safety concerns. The mother stated that this information should be considered in the FBA. The assistant principal stated that she spoke with both the Student and the other student about the incident in PE. According to the assistant principal, both the Student and the other student apologized. Additionally, the assistant principal stated that she spoke with the Student about the gum and the Student stated that he did not know how it happened and did not notice it until he got home.

The mother replied and stated that the Student's diagnoses contributed to him "acting oddly and underestimating personal space and bumping into things or people." The mother also asked why it took so long for the assistant principal to follow up about the gum incident.

115. Later on March 7, 2018, the Parents filed a harassment, intimidation, and bullying (HIB) complaint with the District's office of student civil rights (OSCR). The HIB reporting form listed the following incidents:

- November 22, 2017: Incident involving the Student "making faces" at another student the previous day and who then jumped on the Student's back on November 22.
- Fall 2017: Incident where a classmate bit him in the locker room while changing for PE. Discussed at IEP meeting in the fall.
- January 18, 2018: Incident where the Student came home with chewed gum stuck in his pants pocket. Reported to the school and never investigated.
- January 22, 2018: Incident where chewed gum was stuck in the Student's shirt. Reported to the school and never investigated.
- January 29, 2018: Emailed PE teacher about all incidents and biting incident in the locker room.

116. On March 8, 2018, the mother emailed the IEP case manager and asked "how many sessions instructing [the Student] on backpack organization are in your record." The mother asked what specific instructions the Student gets and stated that the Student may need written instructions and a scheduled backpack organization on his calendar. The case manager replied that he did daily backpack checks and that the Student's backpack was consistently well organized. The mother replied and stated that the "the backpack has been fairly neat, but we thought that organization would also include sorting and prioritization as well," and asked for written instructions because the Student needs "oral instruction combined with written instruction."
117. On March 9, 2018, the mother and the OT exchanged several emails regarding strategies such as waiting until crowds clear in the hallway, building mindfulness/awareness into his counseling program, and leaving materials in each classroom. The OT also stated that she added rules for fidget use into the motor section of the IEP and that she was working on a list of items to leave in each class and a list of items to carry in the backpack for the Student. The mother indicated that she had also asked the band teacher about the possibility of getting a second trumpet at school so the Student did not have to carry the trumpet around.
118. According to the District's documentation, on March 11, 2018, the Student's language arts teacher accidentally identified the Student's missing work with zeros in the gradebook.<sup>7</sup> The language arts teacher addressed and corrected the grade as soon as it was brought to his attention. In emails about the issue to the mother and director 2, the IEP case manager confirmed that the mistake had been fixed and that all of the Student's accommodations were being followed every day.
119. On March 12, 2018, the Parents filed an additional HIB complaint regarding the March 6, 2018 "name calling/slide tackling" incident in the Student's PE class.
120. On March 13, 2018, the Student's mother emailed director 2 a series of concerns about the Student's education, including:
- That the Student was not being served or fully supported.
  - That counseling was on the Student's IEP and has not been provided.
  - That no IEP meeting had been scheduled.
  - The Student was regressing functionally and was not safe at school because his social skills impairment, body recognition/awareness, facial-emotional recognition, and all other symptoms are not being addressed.
  - That task initiation was not being addressed and that "staff [were] constantly comparing [the Student] to his typical peers, which is inappropriate."
  - That there was no typing or note taking goal on the Student's IEP.

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<sup>7</sup> The Student's IEP stated that "missing assessments/assignments are to be left blank in the grade book" and that "missing assignments should not be graded zero, only noted as missing."

- That the Student's teachers are supposed to "pair oral instruction with written instruction" and that the Student had not received any written instructions.<sup>8</sup>
- That valid data needed to be collected
- That the FBA was initiated before the Mother signed a written consent form; that the timeline for the FBA was improperly extended by delaying getting the Mother's consent; and that the accuracy of the data being collected was flawed.
- That "related services approved are not being delivered and many are still missing."

121. On March 14, 2018, the mother emailed director 2 and requested an IEE for the FBA because the mother did not believe that the IEP case manager was qualified to conduct the FBA. The mother stated that the FBA needed to focus on more than the fact that the Student was missing classes, and should include an evaluation of the Student's social skills, social interactions, and cognitive functioning. The mother wanted the FBA to address her concerns that the Student was being bullied. The mother also wrote that the Student was not making progress in "study/organizational skills, social skills or behavior," that the Student's IEP was not being followed because the Student had not received "instruction in writing ever that we would see, which in his case is like he received no instruction at all," and because the Student was not using his assistive technology (i.e., his tablet) or being provided with a visual schedule.

122. Also on March 14, 2018, the Student's father emailed the IEP case manager about the Student's backpack weight and learning organizational skills. The Student's mother also exchanged several emails with the OT about the Student's backpack and IEP. The emails are summarized as follows:

- The mother stated that she had not seen any change in the backpack's weight. She also stated that she had not heard anything about getting a second trumpet and that the Student seemed to be getting no instruction in organization. The mother stated that the Student's IEP stated that he needed "oral instruction to be paired with written instruction. Even if anyone was going over any kind of organization with him, if he didn't receive written instruction, it is like he received no instruction at all!"
- The OT emailed and stated that she spoke to the school counselor about getting the Student a locker and that she would write instructions and teach the Student how to use the lock. The OT stated that she had not yet heard about getting a second trumpet, but that another option would be to have the Student put his trumpet in his locker.
- The mother responded to the OT and asked when the Student would receive written instructions on backpack organization. The mother also stated that she had concerns related to the Student using a locker, and stated that he needed a lock with a key not a combination lock.

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<sup>8</sup> According to the documentation provided in this complaint, the Student's 504 plan included an accommodation that required staff to "pair written instructions with oral instructions." However, the Student's IEP did not include an accommodation that specifically stated that all instructions would be oral and written. The Student's IEP did provide him with accommodations, such as a visual daily schedule; copies of notes and/or study guides; allowing the Student to repeat back instructions to ensure understanding; and modified, repeated, or modeled directions.

123. On March 15, 2018, the mother emailed the IEP case manager, principal, and director 2 and stated that they had requested an IEP meeting on February 27 and March 5, and then asked for dates/times to schedule an IEP meeting.
124. On March 16, 2018, the IEP case manager emailed the mother and suggested that they use a school based rewards system. The mother responded and stated that anything like a school based rewards system needed to be discussed by the Student's IEP team and to consider the Parents equal members of the Student's team.
125. Also on March 16, 2018, the mother emailed the OT and stated that the Student now had a second trumpet. The mother also repeated concerns about the locker, the Student having access to a visual schedule, the use of the Student's tablet, and the weight of the Student's backpack.
126. On March 16, 2018, the assistant principal emailed the Parents the outcome of the HIB investigation. The investigation report stated that "the evidence obtained in the investigation was insufficient to establish by a preponderance of the evidence that [the Student] was subjected to bullying, harassment, or intimidation" and that there had been no substantial interruption to the Student's educational progress at the school.

The Parents responded and cited several places in the investigation report where they noticed typos or discrepancies with earlier emails regarding incidents, and noted areas where they disagreed or the Student reported a different version of events to the Parents. The Parents asked the assistant principal to correct the report. The assistant principal replied and stated that the Parents had a right to appeal the response to the HIB report to the District's HIB compliance officer. The Student's mother responded and stated that they would be appealing.

127. On March 23, 2018, a District student civil rights compliance officer emailed the Parents and stated that an appeal to their HIB complaint would be opened as of March 23, 2018.
128. On March 26, 2018, the principal emailed the Parents regarding the counselor and the IEP meeting scheduled for the following day. The principal stated that from 3:00-4:30 p.m., the team would finalize the discussion of goals, and from 4:30-5:30 p.m., the team would discuss counseling. The principal also included norms for the team to use, which included (1) stay focused on the current topic; (2) treat everyone with respect; (3) fully listen to all members of the team; and, (4) start and stop on time.

The Parents responded and stated that the principal could not set standards regarding how much each member of the IEP team would talk or contribute. The Parents stated that everyone needed to be aware of current special education law, to provide evidence for recommendations, to schedule another IEP meeting before they left, and that all staff needed to have read the IEE. The Parent added the following items to the agenda and raised concerns about:

- Agenda: Missing accommodations, change in frequency of progress reporting, and adding related services

- Concerns about the counselor selected by the District
- Concerns that the IEP was not “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances”
- That the Parents’ views were not being considered
- That the Student’s behavioral goals needed to be challenging
- That the Student’s inability to get to school on time was impeding his ability to function and communicate with peers
- That something needed to be included about “social skills support push in services” and support during school breaks
- That a keyboarding/typing goal needed to be included

129. Also on March 26, 2018, the District provided the Parents with progress reporting on the Student’s February 2018 IEP amendment annual goals. The progress reporting documented that the Student was making some to significant progress on most of his goals. The comments noted that on the goal of improving anxiety management, there was only one time when the Student clearly indicated he was frustrated, the goal of recognize nonverbal emotions was to be practiced in the counseling setting, and that the Student had met his goal to write a paragraph of five sentences when writing is “not on demand” and that the Student continued to take a lot of time to get started on writing task and does not always complete writing tasks.

130. On March 27, 2018, the Student’s general education language arts teacher emailed the IEP case manager examples of assignments the Student had done with “mentor texts” and opportunities to create “guided examples.” The language arts teacher explained that the assignments offered practice for scaffolding. In a second email to the IEP case manager, the language arts teacher stated that in prior work that the Student was “able to write multiple paragraph structured essays without scaffolding by the end of the unit,” although at the end of the current unit, the Student was struggling. The language arts teacher stated that two factors impacting the Student were a lack of follow through on in class practice and inefficient use of the computer as a scaffold (Student got distracted by things like changing font style and size).

131. Also on March 27, 2018, the mother emailed the PE teachers, IEP case manager, and principal regarding the Student’s reluctance to attend PE. The mother stated that this was because the Student was being required to write the locker room rules ten times, because the Student was not allowed to read his book, and because issues (e.g., teasing) with another student continue. The case manager responded that the Student was allowed to read, but not during instruction, and stated that he and the PE teacher would talk to both the Student and his classmate about “being nice, and how even though they may not mean to hurt feelings, they should be more careful not to.”

132. On March 27, 2018, the Student’s IEP team met to review the Student’s progress. The following people attended the meeting:

- |                    |                |
|--------------------|----------------|
| • Parents          | • Math Teacher |
| • IEP Case Manager | • Director 2   |
| • Principal        |                |

The team again amended the Student's January 2018 IEP (March 2018 IEP amendment) by removing the existing study/organization skills goals, re-added a study/organizational skills goal related to task initiation<sup>9</sup>, and adding a new written language goal focused on typing skills. The prior written notice, dated March 27, 2018, noted that the IEP team decided not to add an on time to school goal "because we could not associate specific at school incidents to late arrival on following days." The prior written notice also stated that, based on the Parents' request, all of the Student's teachers would receive training on social emotional instruction. The prior written notice also stated that the mother agreed to send a list of requested accommodations, and after the accommodations were reviewed, the District would consider scheduling an additional IEP meeting.

133. On March 28, 2018, the Parents emailed the Student's IEP team and stated that there were still issues on the agenda to discuss and that they would like to have three options for dates to meet by the end of the week.
134. Also on March 28, 2018, the Student's mother emailed the IEP case manager and asked for more information about rewards.
135. On March 30, 2018, the Parents emailed the principal and director 2 and again asked for options to schedule another IEP meeting. The Parents stated that "we almost got through the goals, we still need to talk about accommodations and related services."
136. On April 2, 2018, director 2 emailed the Parents, following up on a few items from the IEP meeting:
  - Getting to school on time: "We suggested a structured plan for your family to try in the morning, with the school's support, with a reward system for when [the Student] arrives to school on time. In rare circumstances this is an IEP goal."
  - Counselor: The District has a counselor ready to serve the Student. Director 2 stated that "you reported that you won't allow [the Student] to work with her. I recommended last Tuesday at the IEP meeting that you could identify a counselor who could serve the IEP minutes."
  - Additional Accommodations: The Parents would send additional accommodations to the case manager for review.
  - IEP Meeting: The District would follow up for an IEP meeting in a few weeks, which would "allow the team at [the school] to do their work on behalf of students. [The Student's] IEP team has spent over 15 hours meeting so far, and the IEP is in place. [The Student's] progress I shared with you quarterly, per the IEP."

The Student's mother responded and stated that "we never agreed to the original, poorly written IEP" and that the "rate of data collection [was] very ineffective."

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<sup>9</sup> A task initiation goal was included on the January 2018 IEP and replaced in the February 2018 IEP amendment by a study/organization skills goal related to task completion and a study/organization skills goal related to transitioning between tasks. The March 2018 IEP amendment re-added a reworded task initiation goal.

137. On April 3, 2018, the Student's father emailed director 1, the District's executive director of schools (executive director), and the District's chief of student support services (student support chief) regarding his concerns that IEP team members (i.e., the OT) were not requesting consent from the Parents to not attend the IEP meetings. The father also stated that the IEP team refused to include a second trumpet on the Student's IEP even though the Student "already gets this accommodation. We have provided a trumpet for use at home, and the school supplies a trumpet for use at school due to his disability and safety issues."
138. Also on April 3, 2018, the father emailed the PE teacher and case manager and stated that the Student's classmate was still being mean to him in class, although the Student said it was "getting better, and that [the Student] is trying to deal with it in different ways."
139. On April 4, 2018, all of the Student's teachers received training for social skills support and instruction.
140. On April 5, 2018, the father emailed the executive director and student support chief and requested help with the Student's "very complex" case. The father listed the following concerns, among others:
- "We are being told by the school and district staff that our son 'is being served' and that we do not need an IEP meeting."
  - The Student is not receiving FAPE currently, "since just some of his needs are being met, not all."
  - That director 2 was telling the Parents they consented to the IEP, when the Parents felt pushed into "signing it" and that the Parents "only consented to the placement, not to the poorly developed IEP."
  - The frequency of progress reporting and frequency of data collection was inadequate.
  - That being told to prioritize was concerning and that putting a limit on communication (e.g., one email per week) was not appropriate.
  - That the Parents' input was being ignored.
  - That the FBA was delayed and then that the FBA was initiated before the Parents consented.
141. On April 6, 2018, the mother and the IEP case manager exchanged several emails about the Student. The case manager stated that he and the Student checked the Student's grades frequently, often talked about plans to work on missing work, that he worked with the Student during his study skills class to finish missing work, that the Student was receiving extra time for assignments when it was needed, and that he worked with the Student on outlining assignments.
142. On April 7, 2018, the IEP case manager emailed the Parents and stated that the Student was having a great week, that he was on time four out of five days, that the Student was seen several times with other students having "equitable conversations (turn based, mutual interest)," and that the Student was handling the stress of the end of the quarter well.
143. Also on April 7, 2018, the Student's mother emailed the principal and director 2 and stated "please send us a few options for IEP meeting we first requested on 3/27."

144. On April 9, 2018, the IEP case manager provided with Parents with an additional update about the Student. The case manager stated that the Student was not demonstrating signs of stress at school in regard to the upcoming break, that the Student was concerned about his writing grade (which is typical for many students), that the Student was talking to peers during lunch and class, and that the Student was making great progress. The Parents responded and disagreed with almost everything the case manager stated in his email and stated that "sadly [the Student] is NOT 'doing great,' despite your observation. Please take into account what we as parents and [the Student] himself report." The case manager replied and stated that "at school [the Student] does not demonstrate behavior that indicates that he is under stress. As I have stated many times. He completes classwork (except for essay writing) gets along with peers participates and is engaged with work."
145. The District was on break April 9-13, 2018.
146. On April 15, 2018, the mother emailed director 2, and copied the IEP case manager, and repeated concerns about why an IEP meeting was not being scheduled, that this was limiting the Parents' right to participate, and that the school was required to hold an IEP meeting if the Parents request one. The mother also repeated concerns about the counselor the District selected to provide the Student's services.

The IEP case manager responded and stated:

No one at the meeting said we were not going to schedule another meeting, we simply asked why another meeting was necessary. Your response was that we need to discuss accommodations, per your emails...We requested a list (and only a list) of the accommodations you would like to add, you said that you would supply this list. Until we have a reason to meet there is no need to schedule another meeting. You are not limited in participating in your sons education. In any way.

The mother replied and stated that the principal made it clear he did not want to meet again and that it should not be expected for "parents to do research and then request accommodations for their child, but those professionals should be suggesting various supports for students with needs based on their expertise of each student, carefully considering parental input and other professional recommendations." The mother then stated that she had emailed all her accommodation requests in the past.

147. On April 17, 2018, director 2 emailed the Parents and stated that they could hold an IEP team meeting on a Thursday in May. Director 2 asked for a list of accommodations that the Parents would like to discuss.
148. On April 20, 2018, the PE teacher emailed the assistant principal and the IEP case manager and stated that another student reported that several classmates were being rude to the Student. The PE teacher stated that she spoke with the Student, but did not have a chance to speak with the other students and that the paraeducator and other PE teacher were in the gym supervising and did not observe any unfair or unkind behavior. The assistant principal responded and stated that she would follow up with the students.

149. On April 23, 2018, according to the mother's reply in SECC 18-27, the mother provided the District the name of an "appropriately trained and experienced provider for counseling services, recommended by the [Student's] pediatrician."
150. Also on April 23, 2018, the mother emailed the principal and director 2 about a call she had received from the assistant principal on Friday, April 20, regarding an incident in PE. The mother stated that, that day, the Student came home upset and crying, and that the Student had gone to "PE class today without resolution about Friday incident. This seems unsafe." According to the Student, other classmates pushed him, called him names, and swore at him. The mother stated that one of these students had a history of targeting the Student. According to the mother, the Student told her the following: (1) that the assistant principal "didn't seem interested in the story and kept texting on her phone...and taking notes on a piece of paper;" (2) that the assistant principal told the Student that he was going to get lunch detention and that he was close to being suspended; and, (3) that the assistant principal did not talk to the other students. The mother also stated that there was another incident that day during PE. According to the Student, he and another classmate both jumped to catch a frisbee and there was no physical contact, but the classmate says the Student shoved him and the Student told the classmate and the assistant principal "if I am as weak as you say I am, then you wouldn't have felt that." According to the Student, the classmate then tripped him, pushed him to the ground, called him names, and teased him. The mother stated that the Student needed supports in PE class and that these issues were clearly not being addressed.
151. On April 24, 2018, the mother emailed director 2 and asked how the District was planning to address the Student's safety at school and that the Student was "being frequently injured, he is missing school and his mental and physical condition have substantially worsened."
152. Also on April 24, 2018, the mother emailed the IEP case manager and stated that an ombudsperson from the Office of the Education Ombuds (OEO) suggested that the Student receive "push in social skills support" and that a special education teacher could be present during PE to "make sure it's delivered in a way that would support [the Student] and keep him safe, but without obviousness." In a second email to the IEP case manager, the mother stated that the Student needed a visual schedule and that he would not attend PE until there was adequate support set up for him.

The case manager responded and stated that all of the Student's teachers post a visual daily schedule and that the Student has been given several schedules. The mother replied that the Student said he was "scared to go to PE."

153. According to the documentation provided by the District, the assistant principal also called the Student's mother on April 24, 2018. The mother then emailed the assistant principal and asked her to send the results of the investigation by email. The assistant principal responded: On April 23<sup>rd</sup>, in Gym class [the Student] and student A were in separate groups playing ultimate Frisbee. The witnesses stated that [the Student] grabbed Student A from the other team and then blocked the Frisbee. The witnesses stated that [the Student] had been repeatedly doing this behavior which is not 'legal' in the game on Friday 4/20 as well and

student A cursed at him out of frustration. Yesterday, April 23<sup>rd</sup>, student A said [the Student] did it again and it angered him. Student A grabbed [the Student] by the forearms and flipped him over onto the grass. The witnesses said [the Student] got up and proceeded to play. After every one came back inside [the Student] reported the incident to the PE teachers. During my investigation, both [the Student] and student A provided names of witnesses, along with their written statements. Included in the meeting was a discussion on next steps for the future and that's when [the Student] stated that he wanted to change his schedule and come out of PE.

The mother replied and stated that the assistant principal was leaving details out and asked if she was aware of the Student's IEP and other diagnoses? The mother stated that the Student wants to keep going to PE, but he is afraid he will be attacked again and that the Student needed more supports.

154. On April 25, 2018, the Student's father emailed the principal and asked him if he was aware of the incidents in PE. The father stated that it sounded like "the staff decided to solve this issue by attempting to exclude [the Student] from his PE class." On April 27, 2018, the Parents sent a second email to the principal regarding the same issues and asked how the principal was going to assure the Student's safety during PE.
155. On April 27, 2018, the mother emailed the OT regarding ongoing concerns about recording the trumpet accommodation in the Student's IEP, lightening the Student's backpack, and providing the Student with written instructions on how to organize the his backpack.
156. Also on April 27, 2018, the Parents emailed director 2 and requested an independent educational evaluation (IEE) for the FBA. In a second email to director 2, the Parents requested that they schedule an IEP meeting on May 10, 2018.
157. On April 30, 2018, the Parents requested and the IEP case manager sent them a copy of the most recent IEP and prior written notice.
158. Also on April 30 and on May 1, 2018, the principal and the mother exchanged emails regarding the ongoing concerns about PE, safety, and the Student's "poor body awareness."
159. On May 1, 2018, director 2 emailed the Parents and stated that she received their request for an IEE FBA, and would let them know the District's decision shortly.
160. On May 2, 2018, the OT emailed the IEP case manager and stated that the mother asked her to make a few updates to the Student's IEP. The OT forwarded the mother's email from April 27 regarding the trumpet and backpack accommodations and organization. The IEP case manager proposed written instructions for organization and stated that if the accommodation specified "trumpet" he could add it to the IEP.
161. On May 2, 2018, director 2 emailed the Student's mother and stated that it was not feasible for her to go through all of the emails to get agenda items, but that they could have a phone

conversation. Director 2 also stated that she did not mean to “constrict [the mother’s] communication, I am just trying to streamline.”

162. Also on May 2, 2018, the mother emailed the IEP case manager and language arts teacher about the Student’s grade and asked if there was a plan to help the Student finish missing assignments because it looked like there was “substantial regression since [the Student’s] special education placement.” The case manager responded that he and the Student spoke about finishing assignments and that the Student would not answer when asked what days he would like to stay and finish and that the Student did not want to schedule anything on his tablet.

163. On May 8, 2018, the IEP case manager emailed the Student’s IEP team and stated that the Parents requested an IEP meeting and that the school team felt the meeting was unnecessary because the Student was showing progress across all school settings. The case manager stated that three accommodations had been identified as being needed and that because the team just needed to formalize the language, it was appropriate to reduce the IEP meeting time from two hours to thirty minutes. The case manager stated that if there were additional agenda items, they should email him.

The mother responded that limiting the IEP meeting length was unreasonable and that the team needed to address all of the Student’s needs. The mother stated that she wanted all data sent to them for the Parents to review and asked the team to confirm which general education teachers would be at the meeting.

164. Also on May 8, 2018, the IEP case manager sent the Parents an update about the Student’s language arts grade, missing work, interactions with peers, being on time to school, and provided data on PE and lunch.

165. On May 9, 2018, the Student’s mother sent director 2 the following proposed agenda for the IEP meeting:

- OT 20 min
- Accommodations 30 min
- Related services 30 min
- Bullying, lunch detention and next steps 20 min
- ESY 10 min
- Counseling therapy, counseling therapy in the summer 15 min
- Social skills training and group now and in the summer (as recommended in IEE) 15 min

166. Also on May 9, 2018, the OT emailed the Parents a copy of the IEP updated with new accommodations and a change to the motor section regarding the Student’s backpack. The OT also stated that she could only come to the IEP meeting the following day for a short time because she had other conflicting meetings. The mother responded and asked the OT to send a copy of the written instructions on backpack organization and mentioned that the Student was supposed to receive “oral instruction paired with written instruction.” The OT responded and attached the schedule/checklist for the Student. The mother replied and asked for “all

instructions that have been given to him in all classes.” The mother also asked the OT to include in the IEP why the Student benefits from a second trumpet and for her to explain “what kind of OT service would help [the Student] with his letter formation and other issues mentioned in his previous evaluations.”

167. On May 10, 2018, the Student’s IEP team met to discuss further amending the Student’s January 2018 IEP. The following people attended the meeting:

- Parents
- Parents’ advocate
- IEP case manager
- Principal
- Science teacher
- Director 2

The team discussed strategies for the Student’s use of the MotivAider, organizational and OT accommodations, the Student’s backpack organization and checklist. The Parents requested ESY services for behavioral, social, and communication and the school team recommended “utilizing data to analyze progress towards goals to decide on the need for ESY.” The prior written notice, dated May 10, also stated that the Parents requested counseling during the summer and director 2 agreed to support this. The team also discussed goals for body awareness, self-monitoring, and conflict resolution. The team added an annual goal in the area of social/behavior related to participating in physical activities and improving body awareness. The team also added accommodations for the Student to have a second trumpet for use at school (“when available”) and space to keep items in each classroom so the Student did not have to carry items between classrooms.

168. On May 12, 2018, the mother emailed the principal and expressed concerns regarding the OT’s failure to promptly add accommodations to the Student’s IEP and her failure to address the Student’s needs with goals and services, after the “initial denial” of OT services.

169. On May 13, 2018, the District granted the Parents’ request for an IEE FBA.

170. On May 14 and 29, 2018, and on June 19, 2018, the mother emailed the Student’s science teacher a list of questions and asked for an update on the Student’s progress in his class.

171. On May 15, 2018, the IEP case manager emailed the Student’s language arts teacher and asked him to adjust the Student’s grade, per the IEP, and the language arts teacher agreed.

172. Also on May 15, 2018, the IEP case manager and the mother exchanged emails regarding the Student’s use of the “MotivAider” and other strategies for getting the Student motivated and organized. The case manager stated that in situations like this he would like to work with the Student to develop a tracking sheet that the Student was interested in using, including specific rewards for specific outcomes and that this process is usually “almost entirely student driven.”

173. On May 16, 2018, the mother emailed the OT and IEP case manager and stated that the Student reviewed the backpack organization checklist with a mental health professional and a peer and provided comments. The mother asked if the document could be adjusted and

that the Student would be more likely to use it. The case manager responded that the changes could be made and that he had spoken with the Student about the checklist and how it would be helpful.

174. On May 18, 2018, the mother emailed director 2 and stated she wanted a communication evaluation. Director 2 responded and stated that her understanding was that the Student did receive speech services that were discontinued due to a change in insurance. Director 2 also stated that barring excessive cost, the District would likely approve the psychologist the mother recommended for the IEE FBA. The mother responded and stated that the Student received speech therapy and writing support outside of the District in the past. The mother stated that the Student was evaluated by a District therapist for speech therapy only and not communication.
175. On May 21, 2018, the IEP case manager emailed the Student's mother that the Student was on time that day and provided an update about the study skills class. The mother asked questions about homework and stated that verbal reminders are ineffective, the Student needs "his instructions in writing as well. That's why it's on his IEP." In a second email, the mother also asked additional questions and suggested the case manager use the MotivAider device for writing tasks completion and asked if it should be used for the Student's morning routine at home. The mother also stated that based on the Student's attendance, his "time management and organizational skills have regressed in the past quarter," that the Student needed a written out system, and stated that she did not think the Student had the skills to deserve an "'A' from Study/Organizational skills (Resource class)." The mother suggested and asked about numerous strategies that she thought the case managers should try. The case manager responded and stated that the data indicated that the Student did not have a time management deficit at school and that he tracks the Student's attendance.
176. Also on May 21, 2018, the mother emailed director 2 and stated that the IEP case manager was not providing the Student accommodations (e.g., written instructions and assignments) and that it was problematic that the case manager did not think getting to school on time "relates to school" or recognize that the Student needed support in that area.
177. Later on May 21, 2018, director 2 emailed the mother and confirmed the provider for the IEE FBA. The mother responded and repeated concerns about scheduling another IEP meeting (to discuss accommodations, organizational needs, being on time to school, data, counseling, social skills group, and ESY), getting the amended IEP, scheduling a communication evaluation, and discussing the Student's schedule for the following year.
178. On May 22, 2018, the Student reported to his science teacher that a classmate kicked him in the back for no reason. The science teacher reported this to the assistant principal and she spoke with the Student and had him go to the nurse. After the nurse had the Student call the Parents, they emailed director 2 and repeated concerns about bullying and the Student's safety.

179. On May 23, 2018, the mother and director 1 exchanged emails regarding the Student's second trumpet accommodation and the mother expressed concern that the accommodation stated the Student would have a second trumpet "when available." The mother also stated that she wanted another IEP meeting scheduled and that she had not yet received an updated copy of the IEP and that the prior written notice does not "reflect exactly what we think was/was not agreed upon."
180. On May 24, 2018, the PE teacher emailed the IEP case manager and stated that the Student left PE without permission after refusing to complete an assignment. The case manager responded with questions about what happened, stated that the Student went to the office, and stated that this was the Student requesting a sensory break. The case manager also notified the Parents and stated that he went over how to properly request a sensory break with the Student. The case manager and the Student's mother exchanged several emails about the incident and the mother stated that she felt the incident was preventable if the Student had been properly supervised and supported according to his needs.
181. On May 25, 2018, the IEP case manager emailed the Parents and stated that the Student had a great week in study skills and was on time every day.
182. On May 25 and 26, 2018, the mother emailed school staff, District staff, and members of the school board several times regarding her continuing concerns. The mother's concerns are summarized as follows:
- Request to schedule an IEP was being denied and no prior written notice regarding the denial was sent.
  - The Student was not making progress because he had not finished all his assignments on time and thus did not deserve a 100% grade in the study skills class.
  - The data tracking of the Student's progress was inaccurate or incomplete.
  - The study skills/resource class was ineffective.
  - There was no safety plan in place and concerns about bullying were not addressed.
  - The Student's IEP, as written, was not being implemented and did not meet his needs because the Student was not making substantial progress, missed instruction time, missed after-school activities, does not turn work in on time, and there was no progress in the area of organization.
  - The IEP was missing accommodations.
  - Counseling and social skills support was not being provided.
  - The case manager was not doing his job.
  - Parent participation was being limited.
  - The Student was being denied ESY services.
183. Also on May 25, 2018, the Parents requested a mediation meeting with the District. During the first week of June 2018, District and school staff discussed possibly scheduling a mediation or facilitated IEP meeting. Ultimately, the District decided to agree to a sixty to ninety minute facilitated IEP meeting.
184. On June 1, 2018, the IEP case manager emailed the Parents and stated that the Student's data regarding him being on time to classes was improving.

185. On June 4, 2018, the mother and the case manager emailed several times about the Student's goal for being on time and rewards. The mother also stated that a classmate (same student as other PE incidents) kicked a soccer ball in the Student's face. The case manager stated that he continued to work with the Student on different rewards for reaching the goal of being on time.

186. On June 4, 2018, the District sent the Parents a letter regarding their appeal request to the District's HIB investigation. The letter stated that the appeal review found "no basis for changing [the assistant principal's] original determinations regarding each separate incident as detailed in her March 15 letter." With regard to the November 2017 incident, the appeal found that the assistant principal appropriately responded and addressed the negative interaction between the Student and a classmate, and that no further incidents with this classmate had occurred. With regard to the gum incidents, the appeal found that the District could not make a determination because no alleged aggressor could be identified, but that school staff appropriately responded by providing a more secure space for the Student to store his backpack and clothing and that no further incidents had occurred. With regard to the March 2018 incident in PE, the appeal found that this incident was the first reported incident between the Student and the classmate (despite the Parents' allegations that this was repeated behavior) and that the incident did not constitute a violation of the District's HIB policy. The appeal letter stated that the school applied a different provision of the conduct code and appropriately discipline the classmate for name calling. The letter stated that if the Parents were dissatisfied with the response, they may file a HIP appeal to the superintendent.

187. On June 6, 2018, director 2 emailed the Parents and stated that they would be scheduling a facilitated IEP meeting. Director 2 identified the following agenda items, based on the Parents' emails: request for a communication evaluation; data on goals; ESY services; OT questions; counseling services.

According to the District's documentation, throughout June 2018, the District, school staff, and the Parents attempted to find a time to schedule the requested IEP meeting.

188. Also on June 8, 2018, the assistant principal stated that the Student would be assigned a lunch detention for being tardy.

189. According to the District's documentation, on June 12, 2018, an incident occurred in PE where the Student threw a soccer ball at very close range and hit a classmate on the back of her head. According to the documentation, the Student was given a disciplinary referral for this incident.

190. On June 14, 2018, the IEP case manager emailed director 2 and the principal and stated that they needed to discuss the Student's behavior in PE. The case manager stated that the Student's Parents "believe that he is having problems in PE due to his disability, however no one from [the District] can identify the motor skills issues his parents claim to be present." The case manager believed that the Student was choosing not to follow directions because

"teachers report that the simple act of pulling [the Student] out for a few minutes results in fewer incidents."

191. On June 14, 2018, director 2 emailed the Parents and stated that the IEP team did not determine that the Student needed counseling services for the summer, but that when school resumed in the fall, counselor 2 was available to provide counseling. The mother responded and stated that the District was not considering the Student's needs, his identified impairments, and his suspected Autism diagnosis. The mother stated that no one on the Student's IEP team was qualified to make a mental health provider referral.
192. On June 15, 2018, the mother emailed director 1 again and asked why the trumpet accommodation still said "when available."
193. Also on June 15, 2018, the mother emailed director 2 a list of concerns about OT services, the principal, and the IEP case manager.
194. On June 18, 2018, according to the District's documentation, the Student ran into a classmate during PE and hurt his knee. The Parents were notified and the Student's mother responded and repeated concerns about the Student's poor body awareness and need for additional support because there had been safety issues all year.
195. On June 21, 2018, the mother emailed the IEP case manager and asked for the Student's attendance data.
196. On June 22, 2018, the IEP case manager emailed the Parents the Student's fourth quarter progress reporting. According to the progress reporting, the Student made the following progress on his annual goals:
  - **Study/Organizational Skills:** Some progress made in writing task initiation, based on teacher observations.
  - **Social/Behavior:** Some progress made in going to a pre-designated area when frustrated or anxious to improve anxiety management. The Student only had one reported incident where he sought to leave an anxiety producing situation.
  - **Social/Behavior:** Met goal to interact with other students by having conversations based on mutual interest, based on observation in the classroom and at lunch.
  - **Social/Behavior:** Some progress made in learning to correctly identify emotions based on nonverbal communication. The Student "when shown pictures...can identify at least 4 of 6 emotions."
  - **Written Expression:** Met goal of writing five paragraphs. The Student completed 2 of 3 assignments for the 2<sup>nd</sup> semester and 5 of 6 for the year. All assignments met or exceeded grade level standard. One was typed.
  - **Written Expression:** Met goal of writing a 5 sentence paragraph. Same notes as previous goal.
  - **Written Language:** Some progress made on typing goal and can type 0-9 words per minute. The Student's on time attendance impacts his ability to practice in the classroom.

- **Social Behavior:** Significant progress made on participating in PE according to the rules regarding physical contact. The impact of interventions was immediate and when the Student had an incident he was counseled and returned to the game without further incident.

The mother responded and asked for the supporting data and any other evidence the progress reporting was based on.

197. On June 21, 2018, the principal emailed director 2 and stated that:  
As a result of the family's request to meet again, we have offered after school times, which were not accepted, and then we have offered during the day times, which were not accepted. The last day of school was not one of the options we offered for many reasons. Now it seems as if it is the only option. We continue to want to try [to] partner with the family. We can't meet for more than 30 minutes tomorrow. We can re-arrange a few things and meet tomorrow from 11:30 to noon.
198. Also on June 22, 2018, the Parents requested a prior written notice, documenting the denial of a mediator facilitated IEP meeting.
199. On June 26, 2018, the Parents emailed the case manager a detailed list of questions about the progress reporting and stated that the Student's report card "shows regression in ELA and Study Skills classes." The Parents also requested the supporting data for the each goal.
200. On June 28, 2018, the IEP case manager adjusted the Student's grade in his language arts class, based on the Student's IEP accommodations.
201. Also on June 27 and 28, 2018, the Parents emailed director 2 several times and stated that the Parents were not available for an IEP meeting during the summer, and stated that they were frustrated that staff schedules were given priority over parent's attendance while trying to schedule a meeting. The emails also repeated the same concerns (progress, counseling, social skills, ESY, participation, etc.) that the Parents had raised for much of the school year.
202. On July 3, 2018, the IEP case manager emailed the Parents data related to the Student's being on time, data from observing the Student during lunch (related a social/behavior annual goals), data on safety interventions implemented during PE (related to a social/behavior annual goal), and data on transitions (related to study/organizational skills goals).
203. On July 6, 2018, the mother emailed director 2 and stated that she had not received a response regarding her concern that there was no mental health or health professional on the Student's IEP team.
204. Also on July 6, 2018, the Parents filed this citizen complaint.
205. On July 11, 2018, the independent evaluator completed the Student's FBA. The report stated that "generally...[the Student] engaged in behaviors that were consistent with his peers." The report also identified some socially avoidant behaviors and some work avoidant behaviors related to writing. The report provided recommendations, including but not limited

to: that social skills training would be beneficial, limiting the use of his tablet, and provide opportunities for skill building.

206. On August 24, 2018, the Student was diagnosed with Autism Spectrum Disorder by a private provider.<sup>10</sup>

## CONCLUSIONS

**Issue 1: Child Find/Special Education Referral Procedures** – The Parents alleged that the District failed to follow child find procedures, specifically with regard to information about the Student’s suspected diagnosis of Autism. School districts have an affirmative obligation to conduct child find activities calculated to identify, locate, and evaluation all children with disabilities residing within their jurisdiction who are in need of special education and related services. Through the citizen complaint process, OSPI can investigate allegations that a district has violated Part B of the IDEA or regulations implementing the act, within one year of the date the complaint was filed.

In the fall of 2016, the Student was referred, evaluated, and found eligible for special education services under the category of other health impairment. The Student’s eligibility category was later changed to multiple disabilities based on an independent educational evaluation (completed in May 2017) and a District reevaluation (completed in fall 2017). The Parents filed this complaint on July 6, 2018, thus, the timeline for the investigation began on July 7, 2017. This allegation falls outside the one-year timeline and outside the scope of this investigation, as the Student was referred and found eligible for special education services prior to the start of the timeline.

**Issue 2: Procedures for considering the results of the Student’s IEE** – The Parents alleged that the District failed to consider the results of the Student’s independent educational evaluation (IEE) because the IEP team did not adopt all of the IEE’s recommendations. If parents obtains an IEE at public or private expense, the results of the evaluation: must be considered by the district, if it meets agency criteria, in any decision made with respect to the provision of a free appropriate public education (FAPE) to the student.

### Autism Diagnosis

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 listed eligibility categories, which includes Autism. On May 24 and August 11, 2017, the Student’s evaluation group met, including the IEE provider, and reviewed the IEE report, which identified the Student as having executive functioning challenges, suggested a diagnosis of a written expression disorder and anxiety, and confirmed the diagnosis of ADHD. The IEE report also stated that the Student exhibited some behaviors that appeared to be consistent with Autism Spectrum Disorders and other behaviors that indicated a separate diagnosis was not warranted. On October 13 and 16,

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<sup>10</sup> The letter provided by the doctor is dated August 24, 2017, but the Student’s mother confirmed that this was a typo and the diagnosis was received in August 2018.

2017, the Student's evaluation group met following a District reevaluation to consider the results of the reevaluation and May 2017 IEE. The District determined that based on the IEE and reevaluation, the Student's eligibility category should be changed to multiple disabilities to capture his different diagnoses, including the suspected Autism diagnosis. Throughout the school year, the Parents expressed concern that the District was ignoring the evidence that the Student had an Autism diagnosis and that this was impacting the Student's ability to receive a free appropriate public education (FAPE). The Parents have since confirmed that the Student was diagnosed with an Autism Spectrum Disorder.

The documentation in this complaint clearly indicates that the District did consider the IEE and based on that information, the District evaluation group chose to change the Student's eligibility category to multiple disabilities. Eligibility under the category of multiple disabilities does not negate the existence of an Autism disability; it just means that the Student has more than one disability. There is no indication that, had the evaluation group changed the Student's eligibility category to Autism instead (based on the then suspected diagnosis), the Student's IEP would have been developed differently or the services changed in any way. While it is possible that this eligibility category could have cued the District to offer or the Parents to request different services and supports, there is no indication that qualifying the Student under the eligibility category multiple disabilities negatively impacted his access to special education services. The Parents can still request that the Student's IEP team consider changing his eligibility category to Autism or request specific services and supports that may impact students with Autism, and the District is required to consider their requests. OSPI finds that, based on the documentation, the District properly considered the IEE's discussion of a suspected Autism diagnosis and other diagnoses.

### IEE Recommendations

The IEE also provided detailed recommendations related to:

- IEP goals for organizational skills, writing tasks, and time management
- Training regarding social and environmental cues
- Continue with current 504 plan/IEP accommodations
- Use of a MotivAider device (or similar) for time management
- Coaching on how to think strategically
- Strategies for time management
- Strategies for ending tasks and transitioning
- Recommendations related to hand tension and writing
- Develop keyboarding skills and type writing assignments
- Address communication and collaboration in decision-making in Parent-school team
- Counseling
- Social skills training

As discussed above, the Student's evaluation group met and discussed the IEE several times, and later met and discussed the District's reevaluation of the Student. The Student's October 2017 reevaluation report and subsequent IEPs included information from the May 2017 IEE. Based on the documentation in this complaint, the Student's IEP team incorporated many of the IEE recommendations in some format in his January 2017 IEP and February, March, and May IEP

amendments, including: study/organizational skills goals related to time management (task initiation, transition, and end task skills), goals related to scaffolding and writing paragraphs, goals related to nonverbal communication and emotions (social cues), and counseling services. The District also provided the Student with the MotivAider device and a tablet, ultimately added a typing goal, worked with the Student on backpack organization, and reported that the Student less frequently stated he had hand tension or cramps. There are IEE recommendations that were not included in the Student's IEPs or not included to the degree that the Parents requested.

There is no requirement that a district adopt or implement the recommendations in an IEE word for word. A district is required to consider the IEE with respect to the provision of a FAPE to the student. OSPI finds that the documentation indicates the Student's evaluation group and IEP team discussed and considered how the IEE report and the recommendations made in the IEE reflected the Student's needs and abilities. The District implemented many of the recommendations and did not, or have not yet, implemented other recommendations. OSPI finds that the District met its obligation to consider the Student's IEE.

**Issue 3: Procedures for developing the Student's IEP** – The Parents alleged that the District failed to follow procedures for developing the Student's IEP, including determining whether the Student needed extended school year (ESY) services and supports in the areas of organization and study skills. The Parents also alleged that the District denied their participation in the development of the IEP and that the delay in developing the IEP denied the Student a FAPE.

For an initial IEP, a school district must ensure that the district holds a meeting to develop the student's IEP within thirty (30) calendar days of determining that the student is eligible for special education services. An IEP should include a statement of: the student's present levels, measurable annual goals, how the district will measure and report student progress, the special education services/related services/supplementary aids, a statement of the least restrictive environment, any modifications or accommodations, extended school year (ESY) services if necessary, behavioral plans if necessary, and the date/location/frequency/duration of services. A district is responsible for making a FAPE available to the student once the parents of the student provide informed consent to the initial provision of special education services. The district must make reasonable efforts to obtain informed consent from the parent and parent consent is for the initial provision of special education and related services generally, not for a particular services or services. A district is not required to provide a FAPE, convene an IEP meeting, or develop an IEP if a parent refuses or fails to respond to a request to provide consent for the initial provision of special education services.

#### Initial IEP: November 2017/January 2018 IEP

The Student was found eligible for special education services in December 2016, and the Student's IEP team met in January and March 2017 to develop the Student's initial IEP. The Parents disagreed with the evaluation, requested and obtained an IEE, and indicated that they would not provide consent for the initial provision of special education services until they received the results of the IEE. As discussed above, the Student's evaluation group met in May and August 2017 to discuss the IEE. On September 5, 2017, the Student's IEP team met and determined that the

Student needed to be reevaluated to include assessments in the area of fine motor/occupational skills and to allow the District to further review existing data, including the May 2017 IEE. The Student's evaluation group met again on October 13 and 16, 2017, to review the reevaluation. On October 24, November 14, November 27, and December 11 2017, the Student's IEP team met and worked to develop the Student's IEP.

Based on the documentation provided, the IEP was largely finalized by November 27, 2017. The Parents had not yet provided consent for the initial provision of special education services and throughout fall 2017, the Parents continued to have questions and concerns regarding: getting input from all of the Student's teachers; counseling services; the wording of specific goals and additional goals requested; the inclusion of specific accommodations (e.g., not loss of lunch or recess, same day reporting of safety incidents, good communication between home and school); addressing the Student's safety at school; assistive technology (see issue no. 6); social skills and social integration; the Student's anxiety; monthly progress reporting; and OT support. Some of the Parents' requests (e.g., a typing goal and monthly progress reporting) were not agreed to by the team or included in the Student's initial IEP and some concerns were not addressed to the degree the Parents wanted (e.g., social skills training beyond the social/behavior goals). The proposed November 2017 IEP did address many of the Parents' concerns and included a list of some of the concerns, provided the Student with annual goals and specially designed instruction in study/organizational skills, social/behavior, and written expression, as well as counseling services, numerous accommodations, and occupational therapy support for school personnel. Further, the District responded to a majority of the Parents' numerous emails and addressed many of their concerns (see e.g., January 25, 2018 email explaining what progress reporting looked like and why a specific service providers were not included on an IEP, among other questions/concerns).

In mid-January, the District communicated to the Parents that if the Parents did not sign consent for special education services, the District would not continue providing supports and the Student's status would be changed to general education. The District also stated that the Parents could provide consent and the team could continue working on the IEP. On January 30, 2018, the Student's mother signed consent for the initial provision of special education services and the District began implementing the Student's IEP. In the Parents' reply, they stated the District led them to believe that they had to consent to the IEP as written, and not that they would be consenting only to the special education placement. The Parents stated that had this been explained to them, they would have consented to the special education placement before the start of the 2017-2018 school year. However, OSPI also notes that in several emails, the Parents stated that they would not sign a document they did not completely agree with or "consent" to an IEP that is "inadequate", and that they would only start with a plan that was as close to 100% effective as possible.

There does appear to be some confusion regarding the difference between consent for the initial provision of special education services and the perception that the Parents were required to agree/consent to the IEP (e.g., District ombudsperson stated that the Parents should "sign the IEP so that services can begin"). OSPI notes that once a parent provides consent to special education

services, there is no requirement that anyone sign an IEP to indicate consent. Based on documentation in this complaint, the frequency of the Parents' requests to add to or change the draft IEP, and the Parents' statements that they would not agree to an IEP they felt was inadequate, OSPI has determined that any confusion regarding consent was not the primary reason the IEP development was delayed.

OSPI finds that the District properly developed the Student's initial IEP and was largely responsive to the Parents' questions and concerns. OSPI does acknowledge that the confusion surrounding consent, while not the primary factor, likely did contribute to the delay in developing the IEP to some extent; and thus, the District will be required to develop guidance regarding the consent for the initial provision of special education services.

### IEP Amendments

The Student's IEP team amended the Student's IEP three times during the 2017-2018 school year (February 27, March 27, and May 10) to address the Parents' ongoing requests and concerns. The February 2018 amendment: changed one of the Student's study/organizational skills goals (from begin tasks to complete tasks); one of the social/behavior goals (changed wording); and, added an accommodation for access to sensory fidgets. The March 2018 amendment: added back a task study/organizational skills goal related to task initiation and removed the study/organizational skills goals related to completing tasks and transitioning; and, added a typing goal. At the March 2018 IEP meeting, the team discussed and decided not to include a goal related to being on time to school and determined that all of the Student's teachers would receive training on social emotional instruction. The May 2018 amendment: added a social/behavior goal related to body awareness and participation in PE; and, added accommodations for use of a second trumpet at school and a place to leave items in each classroom to reduce backpack weight and help with backpack organization.

In between IEP meetings, the Parents repeated and raised additional concerns that were discussed, but did not result in changes or additions to the Student's IEPs (e.g., accommodations for small classroom setting, reporting safety incidents, ESY, backpack organization goal, additional social skills instruction and goal, and frequency of progress reporting). There is no requirement for the District to provide every service and accommodation requested by the Parents, if the IEP team does not feel it is necessary to provide the Student a FAPE. OSPI finds that the District considered the Parents' requests, followed procedures, and properly amended the Student's IEP in February, March, and May 2018.

### Parent Participation

The Parents alleged that the District limited their ability to participate in the development of the Student's educational program. The parents of a child with a disability are equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which parents provide information regarding the strengths and express concerns for enhancing the education of their child; participate in discussions about the child's need for special education and services; and join with the other participants in deciding how the child will

be involved and progress in the general curriculum and participate in State and district-wide assessments. When a district proposes to initiate or change (or refuse to initiate or change) the identification, evaluation, educational placement of a student, or provision of FAPE to a student, the district is required to provide a written notice explaining the action (or refusal to take action). The written notice must include a description of the action proposed/refused, an explanation of why, and a description of the factors considered and the basis for the decision.

The Parents stated that the District limited their participation by refusing to consider parental input when making the choice of provider for the Student's counseling, by attempting to put in place a communication plan, and by refusing to or delaying scheduling of IEP meetings.

As discussed in SECC 18-27, the District has discretion over staff assignments, including related services providers. While the Parents may disagree with the counselor the District selected, disagreement does not mean their ability to participate in the decision to include counseling services on the Student's IEP was limited. Further, the District's documentation indicates that by attempting to put in place a communication plan or by requesting that emails be sent in a certain way, the District was attempting to streamline and manage the Parents' lengthy and near-daily email correspondence. There is nothing that prevents a district from developing a policy around parent-teacher communication. The documentation in this complaint does not indicate that the District was trying or did in fact limit the Parents' participation. The Parents continued to send frequent and often lengthy emails outlining their concerns and questions. Nearly all of the emailed concerns were responded to or addressed during IEP and other meetings.

Finally, the documentation does indicate that often, it was difficult to schedule IEP team meetings and that on several occasions when the Parents requested that an IEP meeting be scheduled, the District did not respond within a few days. In scheduling several of the meetings, it took a number of email exchanges before a mutually agreed upon date and time could be determined. However, while some meetings were delayed, there is no indication that the District ever refused to schedule a meeting when requested during the 2017-2018 school year. The Student's IEP team met eight times during the school year and was in the process of scheduling a ninth meeting when the school year ended. The District proposed a time to meet during the summer and the Parents declined.

OSPI believes, that based on the documentation in this complaint, the Parents equate disagreement with their participation being limited. The fact that the other members of the school team disagree with the Parents' request or that an IEP team decision conflicts with the Parents' previously held beliefs, does not mean that the Parents' participation was limited. Here, OSPI finds that the District did not limit the Parents' participation.

#### Extended School Year (ESY) Services

The Parents alleged that the District failed to consider their request for ESY services for the Student. ESY services are services that extend beyond the normal school year, in accordance with a student's IEP. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The

purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need.

In February 2018, the Student's mother indicated that she wanted ESY services related to social skills over mid-winter break, because the Student had challenges returning to school after breaks. The District responded that the Student did not have ESY services on his IEP, because the IEP team determined such services were not necessary. Then at the May 2018 IEP meeting, the Parents again requested that the Student receive ESY services for behavior, social, and communication. The District's response and documentation indicates that the school team attempted to engage the Parents in a discussion about the need for ESY and that while the Parents indicated a desire for the Student to receive behavior-based ESY, the Parents continued to shift the conversation away from the topic of ESY and the IEP team did not reach a consensus on the issue. The school team recommended that they use the existing data to analyze progress towards goals to decide on the need for ESY. In late May, the Parents stated several times that they were being denied ESY services. According to the District's response and documentation, the District planned to discuss ESY services at the ninth IEP meeting, but did not have the opportunity because the meeting was not ultimately scheduled. OSPI notes that at this point, the District should have provided the Parents with a prior written notice, clearly documenting the decision to not provide ESY and the reasoning behind that decision. However, despite this procedural error, the District substantiated that it properly considered the Parents' request for ESY, followed the procedures to determine whether the Student needed ESY, and made good faith-efforts to continue the discussion with the Parents.

**Issue 4: Progress Reporting** – The Parents alleged that the District failed to provide progress reporting as specified in the Student's IEP. A student's IEP must include a statement, indicating how the student's progress towards the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals. The purpose of progress reporting is to provide parents with sufficient information regarding a student's progress towards his or her annual IEP goals.

The Student's January 2018 IEP and subsequent February, March, and May 2018 IEP amendments all stated that progress reporting would be provided to the Parents quarterly. On February 13, 2018, the District provided the Parents with progress reporting on the Student's January 2018 IEP annual goals; however, because the IEP had only been implemented for two weeks, there was little progress to report at that point. On March 26, 2018, the District provided progress reporting on the annual goals contained in the Student's February 2018 IEP amendment. The progress reporting stated that the Student was making "some" to "significant" progress on most of his goals. Finally, on June 22, 2018, the District provided progress reporting on the annual goals contained in the Student's May 2018 IEP amendment. Again, the Student made some to

significant progress on several of his goals and met one of his social/behavior goals and both written expression goals.

Throughout the year, the Student's mother asked for data that supported the progress reporting or progress the District stated the Student was making. Several times between February and June 2018, the mother asked the Student's IEP case manager or individual teachers to provide her with data they had collected, and frequently asked that data be collected more frequently. The mother also disputed what counted as data, stating that the statements provided by teachers did not count as data collection. Throughout the year, the case manager provided the mother with teacher reports and statements, updates on the Student's progress, and in July 2018, the case manager provided the supporting data sheets for several of the Student's annual goals.

Generally, the IDEA does not require that districts provide parents with the data tracking sheets teachers use to collect data on a student's progress, when reporting progress toward a student's IEP goals. The purpose of progress reporting is to provide parents with sufficient information regarding a student's progress toward annual IEP goals, so that the parents understands the amount of progress the student has made toward attaining the goal. Here, while the actual progress reporting sheets were not very detailed, progress reports are not required to provide empirical data. The Parents and school were in frequent communication about the Student's progress and had more than one IEP meeting per quarter. While the Parents may disagree that the Student was making progress, disagree with the amount of progress reported by the District, and disagree with the method of data collection the District used, the District did provide the supporting data sheets for several goals. The District met its obligation to provide quarterly progress reporting and that progress reporting met the requirements stated in Federal and State law; further, the District in actuality provided progress reporting and data informally more frequently throughout the year in response to the Parents' requests for information and data. OSPI finds that the District substantiated that it provided the Student with progress reporting as required by the Student's IEPs.

**Issue 5: Properly Constituted IEP Team** – The Parents alleged that the District failed to include required members of the Student's IEP team in several of the IEP meetings. An IEP team must be composed of parent(s); not less than one regular education teacher, not less than one special education teacher of the student; a representative of the district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; and, an individual who can interpret the instructional implications of evaluation results. An IEP team may, at the discretion of the district or parent, include other individuals who have knowledge or special expertise regarding the student, including related services personnel. Neither the IDEA nor its implementing regulations require that an IEP team include more than one regular education teacher. Therefore, if an IEP team includes more than one regular education teacher, the excusal provisions of 34 CFR §300.321(e)(2) would not apply if at least one regular education teacher will be in attendance at the IEP meeting.

The Student's IEP team met on eight occasions throughout the 2017-2018 school year, and the following individuals attended each meeting:

- **September 5, 2017:** Parents, a general education and special education teacher from the Student's prior school, IEP case manager, principal, regional specialist, and southwest regional supervisor
- **October 24, 2017:** Parents, Parents' advocate, IEP case manager, principal, language arts teacher, director 1, regional specialist, occupational therapist (OT), District ombudsperson
- **November 14, 2017:** Parents, Parents' advocate, IEP case manager, principal, art teacher, director 1, OT, District ombudsperson
- **November 27, 2017:** Parents, Parents' Advocate, principal, director 2, IEP case manager, science teacher
- **December 11, 2017:** Parents, Parents' Advocate, IEP case manager, principal, band teacher, guidance counselor, director 2
- **February 27, 2018:** Parents, IEP case manager, principal, language arts teacher, math teacher, special education teacher, counselor 1
- **March 27, 2018:** Parents, IEP case manager, principal, math teacher, director 2
- **May 10, 2018:** Parents, Parents' advocate, IEP case manager, principal, science teacher, director 2, OT

The documentation in this complaint indicates that at each IEP team meeting, the required members attended, which included the Parents, at least one general education teacher, at least one special education teacher, a district representative (e.g., the director or principal), and an individual who can interpret the instructional implications of the evaluation results (e.g., the director, principal, and case manager). The Parents alleged that the IEP team was not complete because the OT did not attend, because multiple general education teachers did not attend, and because there was no one on the team with medical or mental health training. There is no requirement that more than one general education teacher attend and a general education teacher attended every IEP team meeting. Thus, even if the Parents invite additional general education teachers as long as one attends, the others are not required to follow the excusal procedures. The District has discretion to determine what additional school staff has knowledge regarding the Student and should participate in the IEP meeting. Additionally, the Student's IEPs included 500 minutes a year of occupational therapy support as a "support for school personnel", but the Student did not receive direct occupational therapy support as a related service. While the Parents may have considered the OT part of the Student's "team," there was no requirement that the OT attend the meetings or follow the excusal procedures. Finally, there is no requirement that the Student's team include a health or mental health professional. If the Parents want to invite individuals, such as a mental health counselor, who have knowledge or special expertise regarding the Student, they are welcome to do so and OSPI encourages the District to accommodate reasonable requests. OSPI finds that the District had all of the required individuals at all of the Student's IEP meetings and was not required to follow excusal procedures.

**Issue 6: Procedures for Evaluating the Student's Need for Assistive Technology** – The Parents alleged that the District failed to follow procedures for evaluating the Student for assistive technology (AT) and thus delaying the Student's access to AT devices. AT devices are any item, piece of equipment, or product system that is used to increase, maintain, and/or improved the functional capabilities of a student eligible for special education. AT services include any service

that directly assists a student in the selection (i.e., through an assessment or evaluation), acquisition, or use of an AT device. The need for AT must be determined on a case-by-case basis, considering the unique needs of each student. If the IEP team determines that a student requires AT in order to receive a FAPE, the IEP must include a specific statement describing the nature and amount of AT services. Any AT needs stated in an IEP must be provided at public expense, under public supervision and direction, and without charge.

The Student's May 2017 IEE recommended that the Student use an AT device called a "MotivAider" or other devices (e.g., timer, stopwatch, phone app) for learning time management skills and discussed the Student developing keyboarding skills and typing writing assignments. The IEE did not recommend any other specific AT. At the October 24 and November 14, 2017 IEP meetings, the team discussed requesting an AT assessment, and on November 17, 2017, the District requested an AT consultation. Based on the District's documentation, by early December, the District had ordered the MotivAider and was working to set up an AT consultation. The MotivAider was provided to the Student by mid-December 2017. Due to winter break, the District observed the Student and provided an AT consultation on January 3, 2018, and recommended that the Student use a tablet with a key board. The District let the Parents know that as soon as the Parents signed consent for the provision of special education services, the AT could be set up for the Student. The documentation indicates that the Student was provided a tablet on February 12, 2018, and taught how to use it (prior to this, the Student was using his personal tablet at school).

The Parents, in their reply, stated that the District knew the Student needed AT since the May 2017 IEE and August 2017 meeting, and that the delay in providing the Student with an AT consultation delayed the development and implementation of the Student's IEP. While the IEE does mention specific AT devices, the documentation indicates that it was not until the October 24 and November 14, 2017 IEP meetings that the team discussed the Student's broader need for AT. After that, the District ordered the MotivAider and set up an AT consultation. While there may have been some delay in getting the AT consultation set up, there is no indication that this delay significantly contributed to delaying the development of the IEP. The District's documentation indicated that the District was willing to amend and add AT to the IEP as needs were identified. The District was under no requirement to provide the Student with AT until the Parents provided consent for special education services.<sup>11</sup> Further, the Student was provided with and began using the MotivAider device before the Parents signed consent for services. The documentation indicates that even if the delay in setting up the AT consultation did in some way delay the development of the IEP, the Student was not denied access to AT or access to his education.

The Student's IEPs do state that AT was recommended, incorporate sections of the IEE discussing the MotivAider, and provided the Student with an access to typing accommodation. But the IEPs do not specifically state what AT devices the Student is being provided. OSPI strongly recommends that the District amend the Student's IEP to correctly record his AT. OSPI also finds that while the District could potentially assessed the Student's need for AT earlier, the District is not in violation as it has now assessed the Student's needs and provided him with AT devices.

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<sup>11</sup> The Parents provided consent for the provision of initial special education services on January 30, 2018.

**Issue 7: Bullying that Resulted in a Denial of a FAPE** – The Parents alleged that the Student was bullied by peers, which resulted in the Student being denied a FAPE. Harassment and bullying that occurs based on a student’s status of having a disability or receiving special education services (or bullying unrelated to the student’s disability) that adversely affects or prevents the student from receiving meaningful educational benefit may result in a denial of a FAPE. If a teacher is deliberately indifferent to the bullying and abuse is so severe that the student can derive no benefit from the services that he is offered, then the student has been denied a FAPE. Confrontations between students, which are not characterized by a power imbalance between the students, generally do not constitute bullying. As part of an appropriate response to allegations of bullying, a district should convene the IEP team to determine whether the effects of the bullying have caused the student’s needs to change such that the student’s IEP is no longer providing educational benefit. The bullying of a student with a disability, or a student with a disability who engages in bullying behavior, may trigger the need for a reevaluation to determine if additional supports and services are needed.

The documentation in this complaint indicates that there were several incidents that the Parents felt indicated the Student was being bullied and that caused them concern for the Student’s safety at school. These incidents include:

- Fall 2017: Incident where a classmate bit the Student in the locker room while changing for PE.
- November 22, 2017: Incident involving the Student “making faces” at another student who then jumped on the Student’s back.
- January 18 and 22, 2018: Incidents where the Student came home with chewed gum stuck in his clothes.
- February 12, 2018: Incident where a student bumped the Student on the stairs and the Student fell.
- March 6, 2018: Incident involving the Student “slide-tackling” another student and the other student called the Student names.
- April 3, 2018: Instances where a classmate was being “mean” to the Student in PE.
- April 20, 2018: Incident where the PE teacher reported that several classmates were being rude to the Student. According to the Parents, the Student said that other Students pushed him, called him names, and swore at them. The Parents stated that the classmate involved had a history of targeting the Student.
- April 23, 2018: Incident where a classmate tripped the Student, pushed him to the ground, and called him names. The school investigation noted that the Student was not following the rules of the game in PE and the classmate acted out of frustration.
- June 4, 2018: Incident where a classmate kicked a soccer ball in the Student’s face during PE.
- June 18, 2018: Incident where the Student ran into another classmate and hurt his knee during PE.

The Parents also expressed frustration that they were not immediately informed about incidents and felt that they should be notified during school/work hours. The Parents requested that this be added to the Student’s IEP as an accommodation. The Parents repeatedly stated that the Student’s behavior was related to his disability and was an indication of the Student’s “poor body awareness.” On March 7 and 12, 2018, the Parent filed a harassment, intimidation, and bullying (HIB) complaint with the District’s office of student civil rights (OSCR) regarding the fall 2017, January 2018, and March 2018 incidents. The assistant principal investigated the HIB complaint and the found that there was insufficient evidence to establish that the Student was subjected to

bullying, and that there had been no substantial interruption to the Student's educational progress at school based on the reported incidents. The Parents appealed the HIB complaint and the appeal found that there was no basis for changing the original determination regarding each incident and that school staff had appropriately responded to and addressed each reported incident. In late April 2018, after several more incidents in PE, the Student's mother stated that the Student was afraid to go to PE and would not attend until there was adequate support set up for him. In the school staff's follow up to several of the incidents, staff noted that the Student would on some occasions display overly physical behavior in PE. For example, on June 12, 2018, the Student threw a soccer ball at a close range and hit another student on the back of her head. The school staff also could not identify the motor skills issues that the Parents felt were present and contributing to the Student's behavior, and the Student's teachers reported that they believed it was more an issue of the Student choosing not to follow directions. At the May 2018 IEP meeting, the team discussed the incidents and developed a goal related to participation in physical activities and improving body awareness. The District reported that the Student made significant progress in this area and that the impact of the intervention was immediate.

The documentation indicates that in the majority of the incidents, school staff (e.g., the nurse, principal or teacher) called or emailed the Parents regarding what happened. The documentation also indicates that the school staff looked into what happened and spoke with involved students and/or witnesses. In several incidents, the other students involved were given disciplinary referrals or consequences, the Student and other students engaged in mediation, and the Student went to the nurse when necessary.

There is not a clear indication that incidents involving the Student meet the definition of bullying. The documentation shows that while there were several incidents where classmates targeted the Student physically or called him names, there were also several incidents where the Student may have provoked classmates with overly physical behavior or not following the rules. Regardless, the District had a duty to and did respond when the Parents raised allegations or concerns of bullying. While communication with the Parents was not always immediate (i.e., immediately following the incident and during the school day), the District did investigate and follow up with the Parents the same day or within a week. Additionally, the Student's IEP team (albeit delayed) addressed the Student's behavior and the incidents in PE by developing a goal related to physical activities and body awareness. The District reports that the Student has made progress and that this intervention reduced the number of incidents in PE. OSPI acknowledges that the Parents' concerns regarding the Student's safety are important and should be taken seriously. The District should continue responding to any safety concerns the Parents raise and if a pattern of behavior begins to emerge in the new school year, OSPI strongly recommends that the District convene an IEP meeting to discuss how and if the Student's behavior relates to his disability. OSPI finds that the District took appropriate steps to investigate and respond to the reported instances of bullying, and the District did not deny the Student a FAPE.

**Issue 8: IEP Implementation** – The Parents alleged that the District failed to implement the Student's IEP from March 20, 2018 through June 2018. A district must ensure that special education, related services, and all modifications and accommodations are made available to the

student, consistent with the student's needs, as described in the IEP. The district must also ensure that the student's IEP is accessible to each general education teacher and special education teacher who is responsible for its implementation. A district is also required to ensure that a FAPE is available to every student who has been determined eligible for special education. A FAPE consists of instruction and services that are specifically designed to meet the needs of a child with a disability, and a FAPE is provided through a student's IEP. An IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. However, the IDEA does not require the absolute best or potential-maximizing education for the student; rather, the district is obligated to provide a basic floor of opportunity through an individually designed educational program. If a district fails to offer or implement the student's IEP, the district is not in compliance with the IDEA. Procedural violations can amount to a denial of FAPE if they: impede a child's right to a FAPE, significantly impede the parents' opportunity to participate in decision making, and cause a deprivation of educational benefits.

On March 20, 2018, the Student's February 2018 IEP amendment was in place, which provided the Student goals and specially designed instruction in written language, social/behavior, and study/organizational skills and related services in counseling.<sup>12</sup> The Student's IEP also provided him with several accommodations. According to the District, the Student received his specially designed instruction in written language in his general education language arts class and his specially designed instruction in social/behavior and study/organization in his special education study skills or resource class.

### Accommodations

The documentation in this complaint shows that after the Student's original, January 2018 IEP was implemented, the Student's case manager provided the Student's teachers with a copy of the "IEP at a glance" and provided the teachers information about the Student's accommodations. There is documentation that on a few occasion, a teacher failed to provide the Student with one of the accommodations in his IEP (e.g., accommodations related to grading and missing work), but on each occasion, the documentation shows that the case manager reached out to the teacher and corrected the mistake. There were also several occasions where the Parents stated that the Student was not being allowed to access sensory breaks or was not being provided with other accommodations (e.g., visual schedule). In such cases, the District responded and explained that the Student was allowed to access sensory breaks; however, there were times when the Student attempted to use sensory breaks inappropriately, for example, reading during instruction time. Finally, the Student's mother frequently stated that the District was not providing the Student with "oral instructions paired with written instructions" for all assignments and activities. On review of the Student's IEPs in place between March 20 and June 2018, OSPI finds that this was not an accommodation in the Student's IEPs and therefore, the District was not obligated to provide this accommodation. The District's documentation indicates that the District consistently implemented the Student's IEP accommodations.

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<sup>12</sup> See SECC 18-27 for conclusions regarding the implementation of the Student's counseling services.

### Specially Designed Instruction in Organizational Skills

Throughout the spring of 2018, the Parents frequently communicated that they felt the District was not providing instruction in study/organizational skills because the Student's backpack was not organized and too heavy, and because the Student was not receiving written instructions on backpack organization. The District's documentation indicates that the IEP case manager responded to the Parents' concerns and questions with information about how he: worked with the Student on organization, did backpack checks, worked with the OT to develop a backpack checklist, and worked with the Student to use the checklist. OSPI notes that the Student did not have a study/organizational skills goal related to backpack organization, but acknowledges that specially designed instruction consists of more than just instruction toward the annual goals.

The Parents felt that the Student was showing substantial regression, including in the area of time management and organizational skills. The Parents disputed the grade that the Student was receiving in the study skills/resource class and frequently suggested strategies that the case manager should try. The District's documentation and the Student's progress reporting indicated that the Student was making progress across all areas and that the Student's ability to initiate and transition between tasks had improved in all areas except writing tasks.

It is important for the IEP team to consider the Parents' perspective that the Student was not making progress, particularly in study/organizational skills. However, OSPI finds that, based on the documentation provided and the information about the Student's progress, that the District provided the Student with specially designed instruction and properly implemented the Student's IEP as written.

### **CORRECTIVE ACTIONS**

By or before **October 12, 2018** and **November 16, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

1. By **October 5, 2018**, the District will develop written guidance regarding consent for the initial provision of special education. The guidance should, at a minimum, define consent, address obtaining consent from parents, clarify that consent is required for the provision of services and not for the IEP, and should address situations like the one that arose in this complaint. The guidance should include examples. The guidance will be provided to the principal, assistant principals, and all certificated special education staff, including educational staff associates (ESA) at the middle school identified in this complaint. ESAs include school psychologists, physical therapists, speech language pathologists, school counselors, school nurses, and other services providers.

By **October 12, 2018**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by October 19, 2018 and provide additional dates for review, if needed.

By **November 16, 2018**, the District will provide OSPI with documentation showing that the written guidance have been provided to all the individuals identified above. This will include an official human resources roster identifying all required recipients, so OSPI can cross-reference the list with the actual recipients.

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

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

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

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

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