

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-101

PROCEDURAL HISTORY

On December 30, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from an advocate on behalf of a parent (Parent)¹ of a student (Student) attending the Everett School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On January 2, 2020, 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 January 9, 2020, the District requested an extension of time for the submission of its response. OSPI granted the District's request the same day and requested the District submit its response no later than January 28, 2020.

On January 28, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on January 29, 2020. OSPI invited the Parent to reply.

On January 29, 2020, OSPI requested additional information from the Parent, and received the requested information the same day. OSPI provided the requested information to the District on February 4, 2020.

On February 6, 2020, OSPI received additional information from the District. OSPI forwarded the additional information to the Parent and advocate on February 7, 2020.

On February 6, 2020, the Parent's advocate, on behalf of the Parent, requested an extension to submit the Parent's reply. OSPI granted the advocate's request the same day and the Parent was asked to submit her reply no later than February 17, 2020.

On February 18, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on February 25, 2020.

On February 19, 2020, OSPI requested additional information from the District. On February 24, 2020, OSPI received the requested information and forwarded the additional information to the Parent and advocate the same day.

On February 21, 2020, OSPI requested additional clarifying information from the District and spoke to the District's attorney on February 24, 2020. OSPI received the clarifying information on

¹ The Parent's advocate submitted documents throughout the complaint timeline on behalf of the Parent. The Parent's advocate and Parent are referred to collectively throughout the complaint as "Parent."

February 24, 2020 and forwarded the additional information to the Parent and advocate on February 25, 2020.

On February 27, 2020, OSPI interviewed the Parent's advocate.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to and after the investigation period, which began on December 31, 2018 and ended on December 31, 2019. 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 or after the investigation period.

It is also noted that the Parent filed an additional complaint with OSPI on January 24, 2020. The subsequent complaint alleged, in part, that the District did not follow procedures for conducting manifestation reviews and for addressing the Student's need for medication in the Student's individualized education program (IEP). After receiving the District's response for this complaint, it became evident that in order to respond to issue number three below—"*Did the District follow procedures to address the Student's behaviors...*"—it would be necessary to discuss manifestation determinations and events involving the Student's medication, which overlap with the timeline of the subsequent complaint, which is still under investigation at the time of this decision. However, while this complaint discusses manifestation determinations and medication issues, it does so only within the context of responding to the issues below.

ISSUES

1. Did the District follow procedures for developing the Student's individualized education program (IEP), including developing measurable annual goals, ensuring that each IEP team meeting was attended by a properly constituted IEP team, and ensuring the Parent was provided proper prior written notice?
2. Did the District follow procedures to implement the Student's IEP, including providing the Student with the specially designed instruction?
3. Did the District follow procedures to address the Student's behaviors, including conducting and implementing a functional behavioral assessment (FBA) and all behavioral intervention plans (BIPs)?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also

ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105(3)(a). "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

Measurable Annual Goals: IEPs must include a statement of the student's measurable annual goals, including academic and functional goals designed to: meet the student's needs that result from the student's disability so that he or she can be involved in and make progress in the general education curriculum; and, meet each of the student's other educational needs that result from the student's disability. 34 CFR §300.320(a)(2); WAC 392-172A-03090(1)(b).

IEP Development for a Student with Behavioral Needs: In developing, reviewing, and revising each student's individualized education program (IEP), the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or the learning of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). If an IEP team determines that they would be appropriate for a child, a functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

Behavioral Intervention Plan (BIP): A BIP is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The BIP, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports

to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031.

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

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

Positive Behavioral Interventions: Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior. WAC 392-172A-01142.

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 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); and when appropriate, the child. At the discretion of the parent or district, the IEP team may also include any individuals who have knowledge or special expertise regarding the student, including related services personnel. 34 CFR §300.321(a); WAC 392-172A-03095(1). The general education teacher who serves on the IEP team should be one who is, or may be, responsible for implementing a portion of the IEP. However, the general education teacher may not, depending upon the child's needs and the purpose of the specific IEP team meeting, be required to participate in all decisions made as part of the meeting, be present throughout the entire meeting, or attend every meeting. IDEA, 64 Fed. Reg. 12,475, 12,477 (March 12, 1999) (34 CFR Part 300, Questions 24 & 26).

IEP Team Member Excusal: Parents and districts can agree in writing that an IEP team member's participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member's area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of the team member's area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting. 34 CFR §300.321(e); WAC 392-172A-03095(5). As provided in 34 CFR §300.321(a)(2), the public agency must ensure that the IEP Team includes "[n]ot less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment)..." 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).

Disciplinary Removal Generally: When a district removes a student from school for disciplinary reasons, it must make sure that the removal is consistent with state laws and regulations

governing discipline for all students. WAC 392-172A-05140. Students eligible for special education may not be improperly excluded from school for disciplinary reasons. 34 CFR §300.530; WAC 392-172A-05140. The procedural rules for the discipline of students who are eligible for special education are based on four general principles: (1) a student eligible for special education's placement should not be changed through discipline for behavior that is a result of his or her disability; (2) a student eligible for special education may be disciplined for behavior that is not a result of his or her disability, but only in a manner that is consistent with the discipline imposed on nondisabled students without disabilities; (3) during a period of discipline, a student eligible for special education should continue to receive services that will allow him or her to progress in his or her education; and (4) when a student's disciplinary removal from school is significant enough to amount to a change in educational placement, additional procedural requirements apply. *See generally* WAC 392-172A-05140 through 05175.

Disciplinary Removal that Results in a Change of Educational Placement: A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days; or, when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. 34 CFR §300.536; WAC 392-172A-05155. After a student eligible for special education has been removed from his or her current placement for ten school days in the same school year, and the removal is a change of placement, during any subsequent days of removal the student must continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The student's IEP team determines appropriate services. The services may be provided in an interim alternative educational setting. WAC 392-172A-05145(3).

After a student eligible for special education has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement, during any subsequent days of removals, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The services may be provided in an interim alternative educational setting. WAC 392-172A-05145(4).

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question

was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or behavior intervention plan. 34 CFR §300.530(e); WAC 392-172A-05146.

If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct an FBA, unless the district had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or, if a BIP already has been developed, review the plan, and modify it, as necessary, to address the behavior; and, except for special circumstances, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan. 34 CFR §300.530(f); WAC 392-172A-05147.

FINDINGS OF FACT

Background: 2018-2019 School Year

1. At the commencement of the 2018-2019 school year, the Student was in fifth grade and attended an elementary school in the District. He was eligible for special education under the category of emotional/behavioral disability.
2. In December 2018, following a diagnosis of Autism Spectrum Disorder (ASD), the Student was reevaluated in the following areas: cognitive, academic, behavior, communication, sensory, and medical. The reevaluation concluded the Student should continue to be eligible for special education but recommended the Student's eligibility category be changed to Autism. The evaluation found the Student to be adversely impacted in the areas of sensory processing and integration and social/behavioral development.

The evaluation recommended the Student receive specially designed instruction in behavior, as well as in math, written expression, and reading. The evaluation explained that "while, [Student's]...standardized assessment does not suggest a significant deficit in any academic area which would pose an adverse educational impact, review of behavioral data suggests that [Student] demonstrates significant work avoidance behaviors in the classroom," which "often results in highly disruptive behaviors that ultimately negatively impacts his work completion and the learning of others." The evaluation found the Student's behaviors to sometimes result in removals and stated the "[Student] requires specially designed instruction to include emotional regulation strategies, problem solving strategies and social-cognitive concepts including flexible thinking, size of the problem and following a group plan."

The evaluation also found the Student to have strengths in that he "likes to help others and wants to be liked by others" and was found to have "strong verbal skills and can engage in conversation well with adults in a 1:1 setting." The evaluator wrote: "[Student] is a bright and curious young boy. When calm, [Student] is able to reflect on his behavior and how it impacts his relationship with others. [Student] is described as compassionate and insightful. He is able to adequately perform simple daily tasks in a safe and efficient manner." The evaluation

concluded the Student's disability "does not preclude [Student] from accessing the general education curriculum with non-disabled peers once successful integration can occur [sic]." The evaluation additionally recommended the Student receive sensory support as a related service to "better access and participate in age appropriate activities," and recommended the service be provided by either an occupational therapist (OT) or a physical therapist (PT).

3. On December 7, 2018, the Student's individualized education program (IEP)/evaluation team met to review the evaluation. The meeting was attended by the Parents, school psychologist, principal, special education director (director), behavior specialist, special education teacher, general education teacher, speech language pathologist (SLP), and PT. According to the District's response, at the meeting, the team determined the Student remained eligible for special education and changed the Student's eligibility category to Autism. The team additionally recommended the Student's location of services be changed to a middle school in the District to enable him to receive services from the "Achieve Autism ('Achieve')" program.² Changing the Student's location required advancing the Student to the next grade level (sixth grade) for the second semester of the 2018-2019 school year. The Achieve classroom at the middle school was "designed to assist students who had social emotional needs, as well as diagnoses of autism."³ The District also completed and discussed a functional behavioral assessment (FBA) for the Student (2018 FBA).⁴
4. The 2018 FBA was developed to address the Student's target behaviors of noncompliance, physical aggression, and following inappropriate peer directives. The FBA included the following statement describing the Student's behavior:

When [Student] is presented with a non-preferred task, he often refuses to follow teacher instructions and sometimes his behavior escalates to yelling, cursing, knocking over/throwing chairs, knocking items off other's table, crawling/rolling on the floor, ripping up papers, throwing objects, punching and kicking. Sometimes [Student] engages in aggressive behavior without a known triggering event. Sometimes [Student] engages in aggressive behavior when a peer tells him to do so.

The FBA included baseline data, noted the behaviors occurred across settings and provided several antecedents to the behavior—including transition to non-preferred tasks and being

² According to the Parent's reply, at the IEP meeting, the Parent originally requested the District consider alternative placements, including those outside the District, which would enable the Student to remain in elementary school, but her request was denied.

³ Behavioral supports were built into the Achieve Autism classroom. This included a "Tier System," and a behavior contract, which the Student signed. According to supplemental information provided by the District on February 24, 2020, the Tier system was a "positive behavior support program in which students increase or decrease in tier levels based on the criteria set forth in the classroom contract. The tier level corresponds to the level of independence students experience in the classroom, as further set forth in the classroom contract." Data was regularly collected regarding when the Student would drop or raise "tiers" and information about escalations or behavior incidents was further documented in the District's response.

⁴ The Student had a previous FBA completed in the prior school year.

told by another student to engage inappropriate behavior. It noted behaviors often resulted in the disruption of learning of others, increased 1:1 teacher/staff support to the Student, avoidance of completing assignments on time, increased peer attention, room clearance, and sometimes removal of the Student from school. Variables which were found to affect the behavior included medications, social factors, sleepiness, and the Student's ASD characteristics. The 2018 FBA listed multiple strategies, including:⁵

- "Provide emotional regulation instruction that includes teaching and reinforcing skills such as identifying and communicating emotions, self-calming strategies, etc."
- "Provide visual supports/systems that reinforce the identification of triggers, increases in negative emotional states and the use of coping strategies that are accessible within and outside of the classroom based upon [Student's] level of agitation."
- "Coach and reinforce [Student's] use of a broader range of terms to describe his emotional state. After an escalation, provide an opportunity to debrief, problem-solve and reteach coping skills strategies."
- "Provide opportunities for restitution as part of the problem-solving process."
- "[Student] may initially require higher levels of coaching in order to complete this process, with the goal of increasing his ability to complete these steps more independently over time. Once [Student] is able to return to class and re-engage he should be praised and received warmly by his teacher and staff."
- "Create a de-escalation plan/protocol that identifies early signs of escalation and provides appropriate and consistent responses early in an escalation cycle and provides appropriate and consistent responses early in an escalation cycle."
- "Establish a clear response plan when [Student's] behaviors reach a level where additional support from office/school staff is required. This plan should include some scripted language that provides consistency in responses as well as a focus on supporting his ability to self-regulate and use effective and appropriate strategies to regulate his responses when he becomes frustrated/agitated."
- "Given [Student's] sensory sensitivities/ASD characteristics, staff responses should be consistent and focused on practices that are likely to be more successful such as avoiding trying to engage [Student] in conversation when he is agitated."
- "Build frequent breaks into his schedule and expand his access to sensory items/activities that may meet some of his current sensory needs."
- "Continue the use of daily report/homenote that communicates daily progress to parents."
- "Ensure the goals are positively stated and focused on replacement behavior/strategies. Include a high rate of praise with the replacement behaviors/strategies. Utilize this system as a part of the progress monitoring/data collection plan. Have [Student] assist in filling out his feedback at the end of the day to help reinforce more consistent use of these skills throughout the school day."
- "Establish a check-in period during most challenging transition such as periods between lunch/recess and specialists. Provide non-contingent positive adult attention during and preteach steps for expected behaviors during recess and specialists, including discussions about possible frustrations and what he can do to manage those appropriately."
- "Ensure that each day is viewed as a new day both at school and at home. When [Student] experiences a difficult day, avoid revisiting the incident once he is able to deescalate and it is discussed and resolved during the debriefing/problem solving process. Staff and family should

⁵ In the Parent's reply, the Parent commented that she felt some of the interventions included in the Student's behavioral intervention plan (BIP) do not appear to reflect the findings of the 2018 FBA.

avoid attributing his negative behavior to negative intent/intentionality...When negative behavior occur and are reported, team members... should assume positive intent of all team members (family and school personnel) and focus on providing positive and appropriate supports that ensure that [Student] is able to make progress and maintain positive relationships both at home and within the school setting."

5. Following the meetings on December 7, 2018, the District issued prior written notice (PWN) that it was proposing to change the Student's eligibility category to Autism. The PWN indicated the IEP team determined the Student qualified for continued special education services in "all areas of eligibility," except for communication. The PWN also noted an FBA was reviewed and finalized at the meeting and that the IEP would be updated to include an updated BIP.
6. On December 17, 2018, the Student began his first day at the middle school in the Achieve program as a sixth grade student. During the week of December 17, 2019, the Student visited the Achieve program to help get acquainted with the new building.⁶
7. On December 18, 2018, the Parent emailed the director to inquire when the next IEP meeting would be scheduled. She indicated a preference to have the meeting prior to the Student entering the middle school on January 7, 2019, to help ensure a smooth transition.
8. From December 24, 2018 through January 4, 2019, the District was on winter break.
9. On December 27, 2018, the District mailed an IEP meeting invitation to the Parents and Student for an IEP meeting on January 7, 2019.

The Timeline for this Complaint Begins on December 31, 2018

10. On January 2, 2019, the Student's Achieve classroom teacher and case manager 1 (case manager)⁷ sent the Parent a copy of the draft IEP and BIP to review prior to the upcoming IEP meeting on January 7, 2019.
11. On January 3, 2019, the case manager emailed the executive director of special services (executive director) that the Parent would be participating in the IEP meeting by phone. She told the executive director that she and the Parent had already gone over the FBA and that the Parent "was good with everything." She told the executive director she did not believe the executive director needed to be present for the meeting.

⁶ According to the District's response, during this time, the Student did not attend general education classes per an agreement between the District and the Parents. Instead, the District's response asserted the Student received tutoring directly from the special education teacher in the Achieve classroom.

⁷ Case manager 1 served as the Student's case manager from the beginning of the 2018-2019 school year until December 11, 2019. Due to a dispute between the Parents and case manager, the Student's case manager was changed to the special education teacher in the Achieve classroom on December 12, 2019 (special education teacher).

12. January 7, 2019 was the first day of the second semester for the District for the 2018-2019 school year. The Student began the semester as a sixth grade Student at a District middle school and was enrolled in the following courses:⁸

- Period 1: robotics 6
- Period 2: social skills
- Period 3: fitness 6
- Period 4: math 6
- Period 5: social skills
- Period 6: science 6
- Period 7: social skills

13. Also on January 7, 2019, members of the Student's IEP team met to develop the Student's IEP and to develop a BIP based on the December 2018 FBA.⁹ The Parents, Achieve teacher 1 and the Student's future case manager (case manager), Achieve teacher 2 (special education teacher), and principal (serving as the district representative) attended the meeting and signed the IEP.¹⁰

The Student's IEP provided the Student with the following amounts of specially designed instruction:

- Behavior/Social Skills, for 470 minutes per week, to be provided by a special education teacher in the "Special Education/SDI"¹¹ setting;
- Math, for 235 minutes per week, to be provided by a special education teacher in the "special education/SDI" setting;
- Reading, for 117 minutes per week, to be provided by a special education teacher in the "special education/SDI" setting; and,
- Written Expression, for 118 minutes per week, to be provided by a special education teacher in the "special education/SDI" setting.

⁸ Each course was 47 minutes in length. Social skills periods were taught by either the Student's case manager or special education teacher. According to a phone interview with the District's attorney on February 24, 2020, the Student was receiving specially designed instruction during his social skills periods. The District's attorney clarified that the special education teacher would additionally design instruction, which would then sometimes be provided to the Student by his paraeducator as a push-in service during general education classes.

⁹ The Student also has an Emergency Response Protocol (ERP), dated March 5, 2018. The ERP was updated on January 7, 2020.

¹⁰ In the complaint and Parent's reply, the Parent raised concerns that a general education teacher and OT or PT was absent. In the District's response, the District asserted that because the Student "was not currently accessing the general education setting" and was receiving tutoring by special education teachers through an agreement between the Parents and the District, the IEP team should be considered a properly constituted team. On February 18, 2020, the OSPI investigator contacted the District regarding the "tutoring agreement" mentioned in the District's response, as it was not mentioned in the documentation provided in the District's response. On February 22, 2020, the District replied that the Parent had removed the Student from school at the time of the IEP meeting and stated the District and Parent were negotiating an alternative placement. While the Student was removed, the District had offered tutoring.

¹¹ OSPI reminds the District that "SDI" is not a setting and should not be listed on the IEP as a setting.

The Student's IEP additionally provided the Student with the following related services:

- Occupational Therapy/Physical Therapy as a Related Services," 15 minutes per week, to be provided by a PT in the "special education/related services" setting;
- Shared Para Support, for 955 minutes per week, to be provided by a shared paraeducator in the special education/related services setting;
- Shared Para Support, for 945 minutes per week, to be provided by a shared paraeducator in the general education setting; and,
- Transportation as a related service.

The IEP also included several accommodations, including breaks and modified grading.

The Student's IEP indicated he would spend 46.29% of his time in the general education setting and would receive all of his specially designed instruction in the "Achieve behavioral setting" in order to enable the Student to access general education curriculum with accommodations in addition to behavioral support. The IEP stated that while the Student continued to function and perform in the average range and at the same level as his peers academically, the Student continued to require specially designed instruction to "guide the behavior in these core subjects and the goals reflect this decision."

The January 2019 IEP included the same annual goal for reading, math, and written expression:

- In one year, when triggered in reading [math, written expression], [Student] will eliminate explosive outburst within the classroom using no more than 2 verbal prompts to release anger safely within the sensory room in 5/5 trials as measured by data logs.

The Student's present levels of performance for reading, math and written expression were reported as the Student's standardized assessment scores and academic functioning. Each present level reported the same need: "*[Student] needs to eliminate explosive outburst within the classroom.*"

The January 2019 IEP also included two annual goals for behavior:

- Behavior goal 1 – In one year, [Student] will comply with reasonable requests and directions given by adults in a school setting pre-escalation or during escalation in 4 out of 5 occasions for 20 days as measured by daily teacher data logs.
- Behavior goal 2 – In one year, [Student] will control negative behaviors (i.e. arguing with teachers, name calling, cursing, making fun of others) to 8 out of 10 times of escalation as measured by daily staff data logs and student self-monitoring sheets."

Under present levels of performance for each behavior goal, the IEP included information from the Student's most recent behavior assessment scores.

The January 2019 IEP indicated the Parents would be provided progress reports two times annually and during the annual IEP meeting.

14. At the January 7, 2019 IEP meeting, the IEP team developed a BIP for the Student. The BIP identified several target behaviors, including excessive arguing, cursing, screaming at others, threatening others, throwing objects, hitting (objects and people), punching and kicking others, hitting himself, walking out of class, and suicidal threats (words, pictures, etc.). The

target behaviors and functions were the same as those outlined in the 2018 FBA with the addition that the Student sometimes also experienced negative feelings from home due to his parents' recent divorce.

For each antecedent behavior, the BIP offered multiple antecedent strategies:

- Feelings of inadequacy (difficult task)/low self-esteem
 - Approach student and ask if he needs help
 - If he says yes, assist with the area that is causing difficulty
 - If he says no and behavior escalates, allow break time
 - Ask student to table (put it to the side) the difficult task and work on something less stressful
 - Provide encouragement to build confidence
 - Return to the more difficult task (reassure student that you will model and assist)
 - Provide one-to-one assistance on the difficult task
 - Break the task into small steps
 - Re-cap the difficult portion of the problem
- Expressing negative feelings from his home situation (parent's divorce) (including cursing excessively and possibly calling names)
 - He will state the problem in his anger, listen attentively
 - Allow wait time (do not engage)
 - Student will sit quietly until he has calmed
- If behavior escalates
 - Ask student if there is something you can do to assist
 - Give options (you dropped a Tier but you have stars to move-up, you can complete the following task and that will give you enough stars to move up) If student agrees, honor the request
- If behavior continues to escalate (begins to punch others, throw objects, hit the wall or board)
 - Allow additional wait time (do not engage)
 - Remove other students from the room and maintain a visual on the student
 - If other student sits, the calming process has begun
 - He may cry during this time and self-deprecate about being a bad person
 - Do not re-engage (staff or bringing in other students) until the student slumps his shoulders/changes location into the quiet room.

The BIP required the following alternative behaviors be taught:

- "Ask for a break"
- "Use Social Skills lessons and positive action Strategies when frustrated. Have a conversation about embarrassing moments. (Apologize if required)."

The BIP included the following instruction for teaching the alternative behavior:

- "When in need of a break, the student will vocalize to staff that he needs a break. Staff will give him options...Upon return if he is calm and option to communicate, have a conversation with [Student] to ask detailed questions to determine which aspect of the task was deemed difficult or the reason for the break. If he is not calm, but has decided to return, encourage him to complete a less challenging task to boost confidence. If he completes the task, attempt to have the conversation. Teaching the positive action strategies is within the social skills curriculum."

- "Negative feelings due to home/Embarrassing moments conversation should involve listening. Staff shall ask questions about the incident to encourage dialogue. [Student] will express his feeling about the incident when he initiates."
- "Staff will take notes and record alternative ways to communicate with [Student] in times of crisis."
- "[Student] will make suicidal comments/drawings in his de-escalation phase, this should be addressed cautiously (please say: I know you feel this way right now due to the situation, but this will pass and things will get better in a calm, soothing voice."

The BIP included the following consequence response plan for target behavior:

- "Reassurance from staff in a soft, calm tone."
- "Alternative staff (not the one who gave the consequence) will give student options of a desired activity (quiet room, walk, or sit at desk)."
- "Allow wait time for student to process the incident (do not engage the student in any way)"
- "When the student begins to talk to others, he has calmed."
- "Alternative staff (not the one who gave the consequence) will engage the student to assist in completing task."
- "Staff who gave the consequence will not engage the student until the student engages. At that time, he is back to baseline and can discuss the incident to start to repair the relationship."
- "If behavior escalates and the student is being unsafe to self or others:
 - Clear other students from the room to remove the audience
 - Seclusion/isolation: Call administration/security officer. Contact mom via phone – leave message...Contact Dad...Call 911."

The BIP included the following teaching critical related skills and de-escalation/calming strategies:

- "Allowing wait time is best option for de-escalation"
- "Provide replacement words that can be used instead of curse words"
- "Instruct on positive self-talk (I can handle this, I can rock this, I got this)"
- "Foster open lines of communication."
- "Encourage to communicate feelings when he is not escalated."

For data collection procedures, the BIP required anecdotal notes to be kept, a "classroom tier" system to be used, and that data be analyzed and reported bi-annually with regular report cards.

15. On January 7, 2019, the District issued PWN that it was proposing to continue the Student's IEP. The PWN provided notice the Student was no longer receiving speech services and that the Student had a new BIP. The PWN documented the Parents' concerns that the Student required a physical outlet, but there were "concerns" with physical education.
16. On January 17, 2019, the case manager emailed the Parents an update on the Student's progress at school and attached data the paraeducators had collected regarding the Student's behavior each week since the Student had been attending the Achieve program. In her email, the case manager explained the behavior instruction she was providing the Student during social skills, which the Student had second and seventh period:

- “[Student] and I are working together the first 20 min of 2nd period to work on ‘social skills 101’, this curriculum guides discussion and activities that help students learn social skills, how to have meaningful conversation, communicate effectively, and build relationships. Then the class gets a 5 minute break. And then we have a small group discussion/activity as a class to work on handling our behavior when we are under stress, it’s called ‘Starving the Stress Gremlin.’”
 - “7th period social skills [Student] is participating in class discussions and activities, he is eager to give examples and share stories, and he is earning a paycheck each week for meeting classroom expectations and doing his ‘job’ in our classroom. We are working through the Zones of Regulation and [Student] is familiar with this curriculum so his participation has been meaningful and positive addition to our group. Over all [sic] I think [Student] is doing a great job adapting to his new school and making new friends. The other students in our program enjoy having [Student] in our class...”
17. On January 29, 2019, the case manager emailed the Parent and rest of the Student’s teachers that she was consistently noticing the Student’s behavior “slowly fall apart during 7th period.” She wrote that on January 29, 2019, the Student “said he was hyper and said he could not control himself, including his mouth,” and ended up saying several explicit words while also choosing to disregard the replacement words used in the classroom. The teacher asked the Parent if there was an adjustment that could be made to [Student’s] medication timing to prevent [Student] from falling apart at the end of the day.” The Parent responded the same day that she would speak to the Student’s psychiatrist at his appointment the following day.
 18. Also on January 29, 2019, according to a bus incident report, “While attempting to calm students before departure, [Student] said ‘F’ you and presented finger to driver multiple times. When leaving he was told he would be sitting up front now and written up. He repeated his previous behavior.”
 19. On January 30, 2019, the case manager and Parents exchanged emails regarding concerns about the Student’s behaviors both at school and at home. Both the case manager and Parent agreed the Student was exhibiting behaviors in an attempt to go home from school. The case manager included the bus write up in response to the Student’s behaviors from the previous day. The case manager explained that when she asked the Student about the incident, the Student said the bus driver was a “dick” and was “rude” and then made many threatening comments.
 20. On January 30, 2019, the District issued PWN that it was proposing to change the Student’s placement to the Achieve-Autism program at the middle school in order to best implement the Student’s IEP. The PWN further stated the Student was promoted to 6th grade as of January 7, 2019.
 21. On February 14, 2019, according to a bus incident report, the Student and another student “were insulting each others mothers (sic). [Student] instigated a fight w/[other student]. [Student] repeatedly asked to be let off to walk home. [Bus driver] diverted route to let [Student] off early and asked him to be quiet. [Student] left and said ‘F’ you to driver.” The incident resulted in 1 day of in-school suspension (ISS), which the Student served on February 15, 2019.

22. On February 20, 2019, the assistant principal emailed the Parent an incident report, noting the Student "fought with another student on the bus. He punched the other student once which initiated a physical altercation." The Student received 1 day of ISS for a "fight with no injury."
23. On February 21, 2019, the Student spent the day serving an ISS. That afternoon, the Student was involved in another incident on the bus with another student, which resulted in an ISS, which the Student served February 22, 2019.
24. On March 5, 2019, the Student made threats to hurt himself, his father, and his brother while at school and received a five-day out-of-school suspension. According to behavior notes maintained by his case manager: "During this event, [Student] focused his anger and attention on his father...This was [Student's] most dangerous and longest lasting event that I have witnessed at [school]. The aggressive behavior has a negative impact on his safety and those at school..." The Student served his suspension from March 5-8, 2019.
25. On March 7, 2019, the case manager emailed the principal and assistant principal that she had concerns about the Student's behavior and believed he was "at risk." She stated the Student would be out of school for the rest of the week. The teacher requested a risk assessment be put in place for when the Student returned to school and that it be completed with both parents due to the Parent and the Student's father living in separate households and reporting different behaviors.
26. On March 12, 2019, the principal emailed the school counselor, director, and case manager a copy of the threat assessments the District completed for the Student. In his email, he stated:
We will begin implementing our new plan today,¹² with regards to clearing the room if [Student] has another episode like last week. I have also notified [school safety officer] about mom's concerns regarding [school safety officer] being first on site if there is a call, and that admin and security will do everything they can to arrive before him. She understands that this will not be possible in every situation.
27. Also, on March 12, 2019, the Parent emailed the principal that she had not yet received an incident report for the March 5, 2019 incident or a copy of the Student's suspension paperwork. The principal responded the same day to the Parent that the suspension letter was being sent home in the mail, and that a summary of the incident report would be included in the body of the email. In his email, he wrote that "[Officer] has been out the last two days, but he and I will debrief about his role in future calls to [case manager]. [School safety officer] and

¹² According to the District's new safety plan, staff will call a "Code Blue" if the Student "is not safe to himself or others at that time" and need "immediate support." The safety plan noted that cursing is often the first indicator the Student is triggered and is becoming escalated. As soon as the Student curses, the plan requires a room clear to occur, the school psychologist is to be called to the room, (if the school psychologist is unavailable, the school security officer is called, if no school security officer is available, the school administration is simultaneously to "isolate while observing"). The special education teacher will then determine the trigger, if the special education teacher is the trigger, she is to leave the room. The paraeducator will then come to the window to be the observer/witness for the counselor and Student. The Student will then go to "Green Tube."

I will go over the procedure with him when we meet tomorrow morning at our security meeting” and stated he “did share that information with the rest of our counseling and security team, as well.”

28. On March 26, 2019, according to the incident report, the Student “became frustrated with another student, and punched him. [Student] then made threats that he would kill [other student]. He tossed chair, postured at teacher, as well as he made sexual accusations towards a staff member.” The Student received a short-term out-of-school suspension for 3 days for “assault/battery with major injury” at school.¹³ According to the behavior referral form completed by the case manager, prior to the referral the Student was warned and staff attempted to redirect the Student.
29. Also on March 26, 2019, the Parent emailed the transportation supervisor concerns she had due to the lack of a paraeducator on the bus. She wrote that students with IEPs and behavioral problems were experiencing “bullying, physical assaults, and uncontrolled and unsafe behavior.”
30. On March 27, 2019, according to the case manager’s notes, the Student got into a fight with another student during lunch and received a two-day out-of-school suspension, which the Student served from March 27-29, 2019.
31. On March 27, 2019, according to a PWN, dated April 9, 2019, the District offered the Student 10 hours of tutoring services.
32. On March 28, 2019, the director emailed the Parent, that to prepare for the Student’s return to school on April 8, 2019¹⁴, the school would have a paraeducator added to the Student’s classroom to provide direct support for the Student. She added that “in the event of escalations that result in disciplinary action, the para will be able to provide supervision during In School Suspension, to keep [Student] in school.” The director additionally noted that the team would “discuss alternatives to clearing the classroom when [Student] swears, to determine if there’s a response that gives him less control. We will discuss what behaviors would be considered ‘big ticket.’” She also told the Parent the District would continue collecting data on the Student’s behaviors, including how the Student was doing with additional support to inform the team’s decisions morning forward.
33. Also on March 28, 2019, the Parent responded to the director’s email that she would like to “quantify/clarify” the director’s statement regarding using ISS. She added that the most recent suspensions went beyond the 10 days of out-of-school suspension permitted during one school year and requested an IEP meeting. The Parent also asked if the District would be

¹³ Prior to the incident, the Student had been suspended eight days during the school year.

¹⁴ From April 1-5, 2019, the Student was on spring break.

helping to coordinate tutoring, as the Student had been out of school on out-of-school suspension for seven days since starting at the middle school that semester.

34. On March 29, 2019, the District mailed the Parents and Student notice that a manifestation determination was scheduled for April 9, 2019. A calendar meeting invitation also was sent via email. The following individuals were also invited: the special education teacher, case manager, district representative, school psychologist, and school counselor. On the manifestation determination invitations, the case manager was listed as the general education teacher.
35. Also on March 29, 2019, the director emailed the principal and case manager the following disciplinary plan for the Student:
 1. Send packet of work home 3/29/19
 2. Addition of para direct supervision for [Student]
 3. Discipline will result in [in school suspension] ISS with para for supervision
 - a. Unless behavior is deemed significant
 4. Manifestation meeting will be scheduled at mom's earliest availability by case manager
 5. Make up tutoring hours
36. On March 29, 2019, the school psychologist emailed the assistant principal and the principal that the Student was overdue for a manifestation determination meeting and had been out of school for 11 days.
37. On April 1-5, 2019, the District was on spring break.
38. On April 8, 2019, the case manager emailed the District's autism and behavior facilitator to schedule a consult on collecting new data for the Student.
39. On April 9, 2019, a manifestation determination meeting was held to discuss the incident that occurred on March 26, 2019. The meeting was attended by the IEP team, including the Parent, a District representative, general education teacher, school counselor, special education teacher, and the school psychologist. At the meeting, the Student's conduct was determined to be a manifestation of the Student's disability, but not the direct result of a failure to implement the Student's IEP (including the BIP). According to records kept at the manifestation determination, the Parent "discussed that she feels the IEP may not be appropriate at this time. She questioned that it may be more appropriate for [Student] to have more general education time and 1:1 paraeducator."
40. Following the manifestation determination on April 9, 2019, the District issued a PWN, stating that during the manifestation determination, it was determined the Student's behavior was due to his disability and that the Parent reported she would "like [Student] to spend more time in the general education classroom with a 1:1 paraeducator for behavioral support." The PWN indicated the IEP team would need to meet to discuss the Parent's concerns. The PWN documented that 10 hours of tutoring was offered on March 27, 2019. When asked by OSPI to clarify when and how the Student received tutoring, the District stated between April 17, 2019 and May 29, 2019, the Student accessed 12 hours of 1:1 tutoring from the special education teacher.

41. On May 2, 2019, according to behavior data maintained by the case manager, the Student became escalated from 11:05 am through lunch at 12:15pm, which resulted in a room clear.
42. On May 3, 2019, the case manager emailed the Parent that the Student had a "blow up" the previous day. She noted that there were no disciplinary reports, but the Student "threw a chair and hit" her, but that there was no actual harm or damage.
43. On May 13, 2019, in response to an email from the father, asking if the case manager knew if the Student's behavior was related to his disability, the case manager emailed the father that she:

honestly [does not] know why or what is causing the extreme changes in [Student's] reactions/temperament. My data collection of when they happen, what he does during, and then after...are the facts I have gathered and that give me a hypothesis of when it could happen and what it might look like. I have been able to see the changes in his behaviors, the events and duration of the event. All of the data helps us build ideas for predicting and preventing these from happening as best as possible. But I honestly feel it is a mixture of his body's make up, timing of the week/day, environmental anxiety, teacher reaction, and medication...

In her email, the case manager added that the behaviors did not occur in the general education classes, which she explained meant the Student "knows the appropriate place to explode." She also wrote she felt the Student consistently also has "great days at school" and that she was "proud of his growth."

44. On May 31, 2019, the case manager emailed the Parent the agenda for the upcoming IEP meeting. The Parent responded the same day, and copied the principal, special education teacher, father, school administrator, art teacher, physical education teacher, and science teacher, and said: "Thank you, [case manager]. See you all then." The father responded that he could not take the day off but would attend via phone.
45. Also, on May 31, 2019, the case manager emailed the Student's art teacher, health and physical education teacher, and science teacher regarding the June 6, 2019 IEP meeting. In her email, she asked each teacher if they could write a "quick blurb [sic]" about the Student's progress in each of their classes and added that their "input is very important but its not necessary for you to actually stay for the whole meeting. So if you can attend and share with parents at the beginning that would be great but in writing will also be great."
 - On May 31, 2019, the art teacher responded that she "[had] not seen [Student] for over 6 weeks which is 1/3 of the semester. So I really don't know what to contribute. You would probably get better feedback from his paras. He is nice, VERY insecure, always seeking feedback and guidance. [In my opinion] he was way too young to be in Middle school, showed no behaviors while in my class...with me..."
 - On June 3, 2019, the health and physical education teacher responded, "[Student] has done a fantastic job this year! He is polite, hardworking, and a pleasure to have in class. He currently has a B- but is able to raise his grade if he completes some make up work...[Student] is pretty independent and has only needed a few reminders from the para supporting him in PE..."

- On June 6, 2019, the Science teacher wrote: “[Student] has been doing great in science. His scores usually are right at or just below standard. He participates in all class activities including group discussions. It seems to work well just having the paras check in on him for a few minutes everyday. [Student] communicates with me when he is feeling upset/irritated with others (and he is very mature and matter of fact in how he does so.”
46. On June 5, 2019, the Student’s father emailed the case manager and requested a copy of all the data she had compiled on the Student.
47. On June 6, 2019, the Student’s IEP team convened to discuss the Student’s placement and services for the following year.¹⁵ According to the District’s response, at the meeting, the IEP team discussed the Parent’s request that the Student’s time in the general education setting be increased and that the Student receive a dedicated 1:1 paraeducator. According to the District’s response, the IEP team decided “that [Student’s] behaviors had been improving and that paraeducator support for the Student in general education with a plan to fade support would be appropriate for the following school year.” The IEP team determined the Student would return to the District middle school he was currently attending as a sixth grader for the 2019-2020 school year.
48. On June 6, 2019, the District issued PWN that the District was refusing to change the Student’s services. According to the PWN, behavior data was shared with the Parent about “escalation throughout the year and progress that [Student] has made in decreasing time, duration, and explosivity of escalations.” The PWN documented the IEP team’s recommendation that the Student continue to receive shared paraeducator support in classes in the Achieve setting at the beginning of the next school year and have the services “faded to check-in as progress continues to improve.” The PWN noted the Student continued to exhibit a lack of self-esteem and self-worth, and that the Parent agreed to speak to the Student’s therapist and make it a priority over the summer. The PWN also stated the IEP team determined that “due to age and the need for social growth, [Student] will participate in the 6th grade curriculum for the 2019-2020 school year.” The PWN the IEP team agreed the Student would have access to the 7th grade art class “if his academic schedule permits.”
49. Also, on June 6, 2019, the case manager emailed the Parents a copy of the daily observation notes paraeducators had been taking when they were with the Student in his classes outside of the Achieve classroom. The observation notes, which were attached to the email, included the following data:

¹⁵ Because the IEP team did not amend or sign the IEP and the PWN issued after the IEP meeting does not document who attended the meeting, there is no official documentation of the participants for the June 6, 2019 IEP meeting. The May 31, 2019 email lists the invitees for the meeting and on February 24, 2020, the District’s attorney emailed the OSPI investigator that the principal recalled the following people being in attendance: himself, the Parents, the special education teacher, case manager, and general education science teacher. However, there is no documentation to confirm or disprove the principal’s recollection.

- First: Teachers name (general education teacher)
- Then: Date
- S: Was the student safe in class?
- P: Did the student participate in the class
- W1: First warning
- W2: Second warning
- T: Tier drop
- Comments: description of what was observed that class periods or reason for WWTD

50. On June 7, 2019, the case manager emailed the Parents with data collected on the number of "tier drops" the Student had at the end of the each week. She noted in her email the Student had been making "MAJOR progress in this area."

51. On June 11, 2019, the Student "heard another student say something inappropriate to him, and then punched him in the face." The Student was sent home early from school that day and received an ISS of 3 days for "Fight Without Major Injury." The same day, the principal emailed the school psychologist that the Student had been involved in a fight at school and the school would need to hold a manifestation determination. He added, "We will be following his updated discipline plan, and he was out today for [short-term suspension, and will be in ISS for the rest of the week."

52. From June 12-14, 2019, the Student served an ISS.

53. On June 12, 2019, the administrative assistant emailed the school psychologist, special education teacher, case manager, art teacher, science teacher, and health and physical education teacher, asking to "please send work for [Student]. He will be in ISS for the rest of this week, any work that keeps him busy for three days will be great."

54. On June 12, 2019, the District mailed the Parents and Student notice that a manifestation determination was scheduled for June 14, 2019. The school psychologist also emailed the notice to both Parents and told them the IEP team would be meeting to conduct the manifestation determination. The school psychologist also told the Parent moving forward, "after the 10 day mark the IEP team has to meet every time a student gets suspended (no matter if in school or out of school)."

55. On June 13, 2019, the Parent forwarded her email, dated March 26, 2019, regarding concerns about the lack of a paraeducator on the special education bus the Student rode to the transportation supervisor because she had not yet received a response to her previous email. In the email, she highlighted the multiple write-ups the Student had received while on the bus and other incidents the Student had reported.

56. On June 14, 2019, the District conducted a manifestation determination meeting to discuss the behavior incident that occurred on June 11, 2019. The Parent, case manager, general education teacher, special education teacher, district representative, and school psychologist attended. The team determined the Student's behaviors were a manifestation of the Student's disability, but were not the result of the District's failure to implement the Student's IEP

because the Student "had shared paraeducator support during the time of the incident." The District accordingly determined that changes to the Student's BIP were not necessary at that time. However, the documentation from the meeting noted a "possible pattern of significant behavior at transition periods (big breaks from school)."

57. On June 17, 2019, the District provided a progress report for the Student. The progress report included the following information:

- **Reading** – "[Student] currently has not displayed any explosive behavior due to being triggered during reading."
- **Math** – "[Student] currently has had 1 to 2 outbursts during math period (achieve), he has only utilized the sensory room 1 of 2 times after multiple prompts."
- **Written Expression** – "Currently [Student] has had no explosive outburst within the writing period."
- **Behavior/Social Skills (goal 1)** – "[Student] is making progress towards following reasonable requests pre escalation, once [Student] is escalated he needs time to come down again before he will comply with reasonable requests. The duration of that time frame has decreased since he started school at [school]. The shortest duration of an explosive event about [sic] 25-40 minutes."
- **Behavior/Social Skills (goal 2)** – "[Student] is making slow progress towards this goal, he is more aware of the negative behaviors he displays during times of escalation, [Student] will apologize, use replacement words, and/or use coping skill to deescalate [sic] his behaviors."

58. June 21, 2019 was the last day of the 2018-2019 school year for the District.

59. The Parent told the OSPI investigator on February 27, 2020, that during the spring of 2018-2019 school year, the District called her several times to pick up the Student or to come to school and help restrain the Student, which she stated was not reflected in the Student's attendance records or in the multiple documents provided to OSPI by the District. She noted that she missed over 100 hours of work during the 2018-2019 school year, and that the Student missed this time for school, because she was asked to keep the Student home from school or to pick the Student up from school prior to the end of the school day. The Parent additionally reported being asked to keep the Student home on days when the class had a substitute teacher.

2019-2020 School Year

60. September 4, 2019 was the first day of the 2019-2020 school year for the District. The Student returned to the same middle school as a sixth grade student in the Achieve program. The program had the same built-in behavior supports as the previous year, which included the tier-system and a behavior contract.

61. At the commencement of the 2019-2020 school year, the Student's schedule changed to reflect the decisions made at the June 6, 2019 IEP meeting to increase the Student's time in the general education setting with ongoing shared paraeducator support. The Student's schedule included one 47-minute class period per day in the Achieve classroom, where according to the District, the Student received specially designed instruction in behavior while

simultaneously receiving support in academics. For the remainder of the day, the Student was in general education classes with shared paraeducator support. The paraeducator sometimes provided specially designed instruction in behavior, but also provided other behavior supports. Because the Student's IEP had not been amended following the June 6, 2019 IEP meeting, it also was not clear how much specially designed instruction the Student's IEP team intended the Student to receive.

62. On September 12, 2019, according to a bus incident report, the Student "argued with two other students, and kicked each of them on the bus." The Student received a one-day ISS for "dangerous behavior," which he served on September 13, 2019.
63. On October 10, 2019, the PT emailed the Student's general education teachers and case manager to inquire if they noticed the Student exhibiting any signs of possible sensory related behaviors in class. She provided examples of the behaviors she considered sensory behaviors.
64. On October 11, 2019, the case manager and English language arts (ELA) teacher responded to the PT's email. The case manager noted she felt the Student had always "been super wiggly," and in the previous year, used a "band on the bottom of his chair," as well as a "sensory tube" when upset, but that he had decided he did not want or need those supports this year and has instead wanted to talk through his frustrations. She explained the Student still struggled with loud noises and chaotic environments and could become frustrated easily. The ELA teacher did not notice the Student wiggling or moving in his seat, but commented on the Student's lack of confidence and need for reassurance.
65. On October 15, 2019, the case manager documented an incident where another student was bothering the Student by talking to the Student and touching his things. The report noted the Student asked the other student multiple times to "leave him alone," then told the other student that he was going to "beat his ass." The case manager then wrote she and the Student "went for a long walk and talked," and the Student "vented about his frustration." The Student then "went back to class."
66. During the week of October 21-25, a paraeducator's note stated the Student received two warnings and dropped one tier during period 5 of one of the days for "excessive use of the word "f***". The Student also refused to participate in physical education.
67. On October 24, 2019, the Parent emailed the ELA teacher to thank her for "talking to [director] and [special education teacher] about [Student] not needing a para in your class." She said "It was a really big deal for Student (and for [her]) and a huge confidence booster for [Student]."
68. On October 30, 2019, the District collected data on one of the Student's IEP behavior goals. The Student also had a paraeducator with him who recorded behavior notes. According to the paraeducator notes, the Student received three warnings and dropped a tier that day for "blurting off task rude to teacher, asked to leave, count as break, last 10 minutes."
69. On November 4, 2019, the District collected data on the Student's IEP behavior goals.

70. Also, on November 4, 2019, during 4th period, a paraeducator reported giving the Student six warnings and dropping the Student two tiers and having to take the Student out of class for "cursing – on table – broke pencil – called [special education teacher]." During 6th period, the Student received two warnings and dropped another tier for "Instigating [another student]. Making inappropriate sound, [saying] 'F you' [another student]." The Student dropped another tier during 6th period for "throwing pencil and bumping on [student] twice – saying to [student] 'you're autistic as "F"' – told to [another student] "F" you, [another student]."
71. On November 5, 2019, the Student "called [the] assistant principal a sexually explicit word. He also refused to follow directions not to climb on the staircase." The Student received a one-day ISS for "Abusive/Disrespect[ful]" behavior, which he served on November 6, 2019.
72. On November 7, 2019, according to behavior records, the Student "was not complying with staff requests. He was climbing up the outside railing of the staircase and jumping down. He also used sexually explicit language toward multiple staff members." The Student additionally received two warnings and dropped a tier during first period for "saying 'F' you" to another student, "doing disruptive stuff in class (standing up, walking in front while [case manager] was giving instruction, climbing in the stairs, saying 'mind your own business, you have a brain damage...'" According to an incident report, the Student was sent home from school early and received a 2 day short-term out-of-school suspension for "dangerous behavior."
73. On November 8, 2019, the Student was absent for the second day of suspension received on November 7, 2019.
74. On November 12, 2019, according to an incident report,¹⁶ the Student "pushed [teacher] up against a wall today in class. He also used inappropriate language toward staff, and failed to follow directions from [teacher] or the principal before being picked up by his parent." The student was sent home from school and received a four day short term out-of-school suspension for "dangerous behavior."¹⁷
75. From November 12-15, 2019, the Student was suspended.
76. On November 13, 2019, the Parent emailed the principal that she had asked for schoolwork to be gathered for the Student because "He's lost quite a bit of class time these past 2 weeks

¹⁶ Behavior records maintained for the week of November 11-15, 2019 indicate that during period 3 for one of the dates, the Student received eight warnings and three tier drops. He "stayed in class with [case manager.] In rare form. Swearing – sexual context – throwing things at students. Pushed [case manager]." Although there is not a specific date on the behavior form, it appears the incident was from November 12, 2019.

¹⁷ A manifestation determination, dated November 22, 2019, noted that this short term suspension was converted; however, it does not mention the number of days. It appears from attendance records it was converted to five days.

and I don't want him to fall behind." She asked when his schoolwork would be ready to pick up.

77. On November 14, 2019, the principal responded to the Parent that work would be ready for her to pick up that day. He also stated that he spoke with the District's special services department the previous day and they had "a couple ideas" that he and the special education teacher were going to discuss that day. The principal wrote that he would call both Parents that day with ideas for getting the Student back into school.
78. On November 15, 2019, the Parent received notice of the Student's out-of-school suspensions from November 12-15, 2019. The Student signed the notice of short-term suspension and indicated that he chose to provide the Parent with notice of the hearing.
79. On November 18, 2019, the case manager collected data on the Student's IEP behavior goal. The form reported no incidents of arguing, name calling, cursing or teasing. However, in the comment section, the case manager documented the Student came in agitated and stated his goal was to "kill someone." The case manager wrote that she called the principal and removed the audience. The Student then "picked up stool & gestured" at her, threw the door stop at the principal, walked into the hall, and then climbed on lockers.
80. Also, on November 18, 2019, the Student "threatened to hit [teacher] with a stool. He also climbed the hand railings of the staircase and second floor divider, threatening to jump." The incident resulted in an emergency expulsion from November 18 through December 3, 2019, which was later converted to a five-day out-of-school suspension.
81. On November 19, 2019, the case manager emailed the school psychologist that there had been conflict with the Student's family over the last 3 weeks and she had talked with the director and would not be attending the next two meetings nor have any further interaction with the Student's family.
82. On November 20, 2019, the Parent emailed the principal and the director that she believed the Student had received 13 days of suspension during the school year and she had not yet received any tutoring for the Student.
83. On November 20, 2019, the District mailed notice to the Parents and Student that a manifestation determination meeting was scheduled for November 22, 2019.
84. Also, on November 20, 2019, the special education teacher emailed the Parents that she had been assigned to begin tutoring for the Student. She indicated she was available on Fridays from 3-5:30pm and could begin directly after the manifestation meeting. The same day, the Parent replied that time would work and she would bring the Student to the office at 3:00pm.
85. On November 22, 2019, a manifestation meeting was held to discuss the Student's emergency expulsion on November 18, 2019, as well as the behavior incidents that had transpired prior

to November 18, 2019.¹⁸ The Parent, district representative, school psychologist, special education teacher, general education teacher, school counselor, ELA teacher, science teacher, and executive director attended. The father participated by phone. At the meeting, the team determined the Student's behavior was a manifestation of his disability. The manifestation team did not indicate whether the behavior was the result of a failure to implement the Student's IEP, but the Parents expressed concern that during the incident, the Student's case manager took a photo of the Student while escalated, which they felt further escalated the Student.¹⁹ The manifestation team agreed to conduct an FBA to develop a new plan for the Student. The Parent consented to the FBA and gave permission for the school to exchange medical information with the Student's mental health providers.

86. On November 22, 2019, the District mailed a PWN to the Parent regarding the outcome of the manifestation determination and the decision that an FBA was needed to gather information to develop a behavior plan to reduce the likelihood the Student would face discipline in the future. It also documented the Parent's provision of consent and for the District to exchange medical information.

87. On November 22, 2019, the Student received 2.5 hours of tutoring by the special education teacher. There is no documentation regarding what instruction the Student received during tutoring.

88. Also, on November 22, 2019, the special education teacher developed a plan ("█ Plan," "reintegration plan" or "plan") to address the Student's behaviors and to help facilitate the Student's reintegration back into school. The top of the plan read:

Disclaimer: This plan is a recommended intervention in which [school] staff, Department of Special Services for [school], [Student] and the parents of [Student] agree to implement, track progress, and revise when deemed inappropriate by data collected. It is not an addendum to the Individualized Education Plan (IEP) in any way, nor does it supersede the IEP, District Policy, OSPI, or Federal Law.

The plan included four parts: Daily Plan, Communication, Boundaries (communication with case manager)²⁰, and discipline.

¹⁸ The November 22, 2019 manifestation determination referenced the following behavior incidents, which together resulted in the disciplinary action on November 22, 2019: September 12, November 5, November 7, November 12, and November 18, 2019.

¹⁹ This incident resulted in the case manager being removed as the Student's case manager and being replaced by the special education teacher.

²⁰ Due to the physical altercation between the Student and the case manager, and Parent's accusation regarding an inappropriate action committed by the case manager, the director required the "boundaries" section be included in the plan, and that the Parents agree to sign the plan prior to the Student being permitted back at school. The District and Parent later agreed to attend mediation on this issue. The mediation agreement was never finalized. In the Parent's reply to the District's response to this complaint,

89. On November 23, 2019, the special education teacher sent the supplemental plan to the director, principal, and new case manager (special education teacher) and asked them to review before she sent to the Parents.
90. On November 24, 2019, the special education teacher emailed the plan to the Parents. She wrote:
This is an extensive plan for [Student's] return to [school]. We have incorporated the steps that will be taken to de-escalate as well as Discipline outcomes for negative behavior. There is a disclaimer which outlines that this plan is an intervention and is not a part of the IEP. There is also a section requested by [director]. It is Section III – Boundaries. She will communicate with you separately in regard to this section.
91. On November 24, 2019, the Parent responded with her concerns to the special education teacher's email and draft plan. In particular, she expressed concerns that the plan was not a formal BIP and that the Parents were not included in its development. While the Parent stated the "plan is fine with outlining steps for staff to take if [Student] is escalated," she wrote "it doesn't seem focused on [Student's] successes. It also lacks any real new plans to ease [Student] back into school since being out for nearly 3 weeks." The Parent expressed concerns about the "Boundaries" section which, the Parent wrote was "inappropriate."
92. On November 24, 2019, the special education teacher responded to the Parent that the plan was "an extensive plan for [Student's] return to [school]. We have incorporated the steps that will be taken to deescalate as well as Discipline outcomes for negative behavior. There is a disclaimer which outlines that this plan is an intervention and it is not part of the IEP."
93. On November 25, 2019, according to behavior records, the Student:
was "playing with scissors, threaten (sic) to hurt himself/students. He left room went to [teacher's] room, picked up chair threaten (sic) to throw it. Went into hall climbing on top of locker, sliding on banister provoking students in hall. Went to math last 45 secs. provoking students on the way banging his head on his binder when he arrived to math class.
94. On November 26, 2019, according to an incident report, the Student "became physical with [teachers 1, 2, and 3]. He kicked/stomped [teacher 1] and [teacher 2] and elbowed [teacher 2] and [teacher 3]. [Student] also used a pair of scissors to cut his leg." The Student was sent home from school and received a 2-day out-of-school suspension.
95. On November 27, 2019, the Parent emailed the principal and special education teacher, requesting they consider adding a 1:1 to the Student's IEP at the next manifestation meeting on December 2, 2019. She stated she did not feel having a paraeducator check in during general education times was enough "when he's having more escalated times as he is now."

the Parent continues to assert her disagreement with the [REDACTED] Plan and its existence as a separate document from the Student's BIP.

96. On December 2, 2019, the Student did not attend school because he was suspended as a result of the behavior incident on November 26, 2019.

97. On December 2, 2019, the District mailed the Parents and Student notice a manifestation determination was scheduled for December 3, 2019.

98. Also, December 2, 2019, the Parent emailed the special education teacher, the director, and the principal and asked for clarification on the [REDACTED] Plan developed by the special education teacher. She wrote:

[C]an someone please explain again what the purpose of this plan is? It seems to me everything should be included in [Student's] BIP or IEP, but this doesn't appear to be either of those (and we didn't come up with this as a team, nor have all parties agreed on it.) The top portion (Section I [daily plan]) seems quite appropriate for his BIP and IEP and I welcome the opportunity to discuss adding this in at a team meeting set up for that purpose.

As far as sections II [communication]-III [boundaries], I have a few concerns...

Regarding section IV [discipline] there are also a few concerns. It doesn't seem to be in compliance with the current district or state disciplinary rules. Also, compensatory education is to be determined together as an IEP team, not a pre-determined amount.

In closing, I am requesting that Section I be added to [Student's] IEP/BIP where it would be most helpful, that Section II removes [Student's] name, and that Sections III-IV be completely removed.

99. Later on December 2, 2019, the special education teacher and Parent exchanged several emails in response to the Parent's concerns. In her emails, the Parent requested that the Parents be included in developing behavior interventions for the Student and that all relevant components to the Student's [REDACTED] Plan be incorporated into his BIP or IEP and not be maintained in a separate plan. The Student's special education teacher explained that the plan contained interventions that were being tried or that were still in the collection of having data collected on them. She wrote, "The BIP was created by the team with you and [Student] included and I want to make sure that this has sound documentation before we reconvene to add to BIP." The special education teacher also added that portions of the discipline plan were similar, but just had more "user friendly language." The same day, the Parent formally requested an IEP meeting.

100. On December 2, 2019, the Parent also exchanged emails with the principal, director, and special education teacher, requesting that at the manifestation determination, the team discuss the Student's need for a dedicated 1:1 paraeducator. The Parent wrote:

I want [Student] to be able to return to school as soon as possible, however, I'm nervous about having [Student] restart without having a chance to discuss changes prior to the day he is starting. This pattern of [Student] being suspended and then restarting with no significant change and then being suspended again isn't healthy. Not academically, emotionally, or socially for him...Again, as I have verbally, I am asking for the team to consider a 1:1 for [Student] for a limited period of time for all of [Student's] time at school.

As his behaviors have occurred in all settings...I believe it is important for us to have a plan for him taking all of that into consideration. Having a behavior management trained one to one would not only help to catch [Student's] warning signs and help him manage his behaviors, but also can help obtain data for a new FBA, which we discussed at our last Manifestation meeting on 11/22/19. Also, [principal] or [special education teacher], can you please advise me on who will be present at the meeting tomorrow.

The Principal responded by email the same day: "Finishing [the plan] before the start of the day will allow him to attend school tomorrow. [Special education teacher] is building 'unstructured time' unto the plan, so it's going just going (sic) to be an addition."

101. On December 2, 2019, the principal also emailed the Parents to confirm the manifestation determination would be held on December 3, 2019.

102. Also, on December 2, 2019, the Parent additionally emailed the director and other members of the special services department, requesting an independent FBA be conducted and formally requesting an IEP meeting.

103. On December 3, 2019, the District held a manifestation determination meeting in response to the behavior incidents on November 7, 12, and 18, 2019. The manifestation meeting was attended by the Parent, principal, ELA teacher, math teacher, science teacher, and special education teacher. The father attended by phone. It was noted that the Student was currently on an emergency expulsion. At the manifestation determination, the Student's conduct was found to be a manifestation of the Student's disability, but not the result of the District's failure to implement the Student's IEP. There was a discussion among those present that "social interaction [was] an issue; no adult supervision is hard for [Student]." The Parent questioned the level of paraeducator support, noting that when in the general education setting, the Student was "basically 1:1" because he was the only student with a paraeducator, but that in unstructured times of lunch/recess, he had a shared paraeducator. It was noted on the manifestation determination document that the manifestation determination team agreed that during unstructured times, the Student would be prioritized by the shared paraeducator.

104. On December 3, 2019, the District issued a PWN that at the manifestation determination, it was determined the Student's behavior was a manifestation of his disability because the Student was believed to have "become frustrated with another student during his unstructured social interaction time at recess." According to the PWN, the Parent questioned the use of shared paraeducator support and it was agreed the use of the shared paraeducator would be more accurately specified in the IEP as to where the support would take place. Specifically, "[Student] will receive shared paraeducator support in his general education classes." The PWN noted the "support is basically one to one as [Student] is the only student who will need to be supported in those classes," and added that "During the unstructured time of lunch/recess, a shared paraeducator will be utilized to prioritize support for [Student]."

The PWN documented the Parents' "disagreement with Section III titled Boundaries of the attached plan named [Student's] Plan." According to the PWN, "The school psychologist

clarified that [Student] is entitled to attend school effective immediately but [Student's] mother stated that she is choosing to keep him out of school due to safety concerns regarding Section III of [Student's] Plan.²¹ She and [Student's] father have requested an immediate discussion with the Special Services department to rectify this situation."

105. Also, on December 3, 2019, the Parent emailed the special education teacher, the director, and the principal, noting she disagreed with the [REDACTED] Plan, writing, "this 'plan' seems to have zero legal merit (it is not an IEP, BIP or FBA)." The Parent requested no one mention the plan to the Student and indicated she would be keeping the Student home from school that day and that she would be returning the Student to school the following day. She indicated she did, however, agree with the interim plan of more paraeducator support. She requested a copy of the updated [REDACTED] Plan, which had been revised. A revised copy of the [REDACTED] Plan was emailed to the Parent that afternoon.
106. On December 4, 2019, the Parent requested a copy of the Student's IEP and BIP. The school psychologist provided the Parent with a copy the same day.
107. On December 5, 2019, the director emailed the Parent that the District would be proceeding with its own FBA prior to granting the Parent's request for an independent FBA.
108. On December 6, 2019, the executive director emailed the Parents to confirm that the change in case manager would not impact the delivery of services to the Student. She further confirmed that the no contact directive in the [REDACTED] Plan was to avoid increasing tension or further conflict, and was not connected to the Student's receipt of services.
109. On December 10, 2019, the Parent emailed the director and requested the District's policy on compensatory education, noting the Student did not receive tutoring or work when the Student was out on suspensions the past 10 days.
110. On December 12, 2019, according to behavior records, the Student received a ten-minute break before class, went to math and worked on a test in the hall. Later that same day, he received two warnings after he "threw pencil three times in the hall on the way to class." The paraeducator documented that he "worked with [Student] alone at back table." It was noted the Student was sitting on the table several times and was only able to stay in math class for 15 minutes.
111. On December 13, 2019, the Student was removed from school for unsafe behavior. According to emails exchanged between the Parent and principal, the Student's absences were excused and not coded as a "suspension."

²¹ In the Parent's reply, the Parent noted that the District expected the Student to return to school immediately following the manifestation to follow a new plan ([REDACTED] Plan) without time to prepare. The Parent indicated that it was not in the Student's best interest to attend without have time to process a new plan. The Student's absence was recorded as unexcused.

112. On December 16, 2019, the Parent emailed the principal, noting the Student was unable to be seen over the weekend by his doctor to get a "medical clearance," as required by the District following the events on December 13, 2019. The Parent asked for an incident report describing what occurred on December 13, 2019, to explain what the paraeducators were doing during the Student's escalation.

113. On December 16, 2019, the Student was absent from school due to his unsafe behaviors on December 13, 2019. The same day, the special education teacher emailed the Parents, principal director, and executive director a summary of the events that occurred on December 13, 2019. According to the special education teacher's email, the Student's behaviors included self-injury, suicidal gestures and threats, threats to others, hitting others, elopement, cursing, and other behaviors. In her email to the Parents and principal, and which she copied the director and executive director, the special education teacher described the following events that day:

[Student] was scheduled to complete a repair conversation with [teacher]. He was anxious about it and did not want to do it. One of our student leaders tried to encourage him...It went great...[Student] went to lunch and was successful. He returned to class and asked me what to do. I explained that he had graphing to do for science. He refused. He was then given the choice to read or to practice his Khan Academy. He did not want to do either. He asked about choice time on PlayStation. I explained that he was not at the appropriate Tier for Classroom games. He mumbled something. I did not hear what he said. Another student heard him and made the comment, 'man don't, that is how you get kicked out of class.' [Student] told the student 'I am going to kill you!' The student responded with, 'I don't think so.' I told them both to cease communication...[Student] continued with the threats. I asked the students to go to our buddy room with a para. [Student] stated they didn't have to leave, he would. He walked out into the hall and lay under the stairs. I maintained line of sight but did not engage. He then went up the stairs and was sitting on the rail. He came down the stairs and walked toward me. He asked why I was ignoring him. I explained that I would give him positive attention only. He said, 'Well I am leaving.' He walked out of the back door and down the sidewalk. I maintained line of sight. He went over to the QFC parking lot and climbed a tree. Nurse came out with meds – he refused. I went over to him and encouraged him to get out of the tree. He complied. He had a cut on his arm and I asked what happened. He stated that a man in all black cut him in the tree. When asked about that, he said, 'Well he wasn't in the tree, he was passing by and cut me!' We entered the building and the classroom. He wanted to talk about the issue. I asked about the 6 hour rule. He stated 'I do not want that. That is my mom's idea. She came up with that s***. She is such a B****.' He walked out into the hallway and it was passing period. The student from the earlier incident was going to his class. [Student] walked over to him and said, 'I am going to kick you're a**!' I told the student to ignore and continue to class. The student continued walking and [Student] struck the student on the arm. The student then turned to him and [Student] was quickly walking away. I encouraged the student to ignore him and go to class. The student complied and I walked behind him to ensure that he did not turn around to retaliate. [Student] followed me and bumped me as we walked quickly by. He entered the room and asked why didn't I let the student beat him. He grabbed the pair of scissors and started pushing them into his neck. He said that he was going to kill himself. He started sawing at his wrist with the scissors, made a small cut, and I took them for him. He began looking for other objects to cut himself. I asked him about his plan. He said he

was going to shoot himself in the head. We continued to talk and he continued the treats [sic] to kill the other students and himself. When [principal] walked in, he grabbed another pair of scissors and began pushing the edge into his neck. When asked to put the scissors down, he began to jab the scissors into his stomach. He told me he was not going home with Dad. Dad arrived for pick up. We discussed the incidents of the day. I expressed that he is each 'shock' incident is growing. We have not seen this level of self harm from [Student]. As we spoke, [Student] was drawing on the board. He drew guns and himself being shot in the head by the gun. I walked out of the room and [Student] started to comply with Dad. When I would reenter the room (which gave an audience) he would start non-compliant behavior with Dad. I left the room until he and Dad were gone.

The special education teacher added that the paraeducators were "supervising/providing instruction to other students," and that she "completed the de-escalation."

114. On December 16, 2019, the school psychologist emailed the Parents the Student's progress reports.
115. From December 17-20, 2019, the District completed a weekly progress report for the Student with data collected using its "Tier" system.
116. On December 17, 2019, the principal and Parent exchange emails in response to concerns that arose following the Student's behaviors on December 16, 2019.
 - The Parent wrote that when she spoke with the principal, he had mentioned using restraint and/or isolation should the Student respond with self-harm again. The Parent also noted in her email that the Student's Achieve classroom did not have a quiet room or a "sensory tube" for coping, which were part of the Student's behavior plan. She additionally noted concerns about the plans for restraint and isolation to be "reactionary rather than preventative." The Parent again stated her belief that a "dedicated, [behavioral therapist]" 1:1 could be beneficial for [Student] and asked if it was possible to have the same paraeducator with the Student "for consistency," citing the Student's "need for predictability and consistency."
 - The principal emailed the Parent that he had spoken with the special education teacher regarding finding a quiet room and confirmed he had located one and would show it to the Student the following day. He added the sensory tube would be kept in that room. The principal additionally stated he and the special education teacher "talked about bringing someone into [Student's] schedule as a more consistent presence," but acknowledged "we don't have a final answer to that staffing right now, but we are looking at changes to para schedules that could be a modified version of the current setup." He noted the Student still had a paraeducator during unstructured times, and a paraeducator "during the courses that we all agreed were necessary." The principal also mentioned the possibility of using Right Response training, which he stated, "was talked about only in the event of [Student] potentially harming himself and [the District] wanting to keep him safe." He added that the District "would only use [restraint or isolation] in the parameters of the Emergency Response Protocol, in his IEP."
117. On December 18, 2019, according to behavior records, the Student received two warnings during lunch after he "kicked the Jenga box," and for "being noisy and called [paraeducator] 'Nazi.'"

118. On December 19, 2019, the Parent emailed the special education teacher, noting she received a hand written letter from the Student, advising that he “got into a fight with another child at lunch” and then “attempted to hit [teacher]” The Parent wrote that it “sounds like there wasn’t a para with him at lunch, a time we discussed he definitely needed a 1:1 during, and of which we agreed at the last manifestation determination meeting would occur...Did [Student] have his para with him at lunch today?” The special education teacher responded to confirm a paraeducator was with the Student at lunch and that she would review the paraeducator’s notes.
119. On December 19, 2019, the paraeducator documented the Student’s behavior in a handwritten note, which stated the following:
During math [Student] was ok several times I had to ask [Student] to stop sitting on the table, only in class for 15 minutes. During transition [Student] ran down the hall, jumped the 1st set of stairs. He cut in the lunchroom line, Got up from table 3 times without permission. [Student] asked me to get Jenga for him. He was playing Jenga with another student, they started trying to knock each others Jenga Forts down, throwing game pieces. I asked them to stop throwing. I was ignored. Then [principal] came over and asked them to stop and they ignored him. [Student] escalated and began throwing pieces at the kid, the [other student] threw back. [Student] hit kid over the head with the box. [Principal] escorted other student away. While [principal] was walking student to office [Student] hit another student passing by. [Student] was disruptive and rude to officer staff. I asked 3 times for him to enter conference room. He complied then walked out. [Student] was trying to get into [principal’s] office. Said he wanted to kick the kids ass repeatedly. He said he was going to bring a gun to school and kill him. I offered [Student] 4 breaks he refused, offered him a quiet place 3 times, refused. I offered him snacks, refused. [Student] took a key from a box on the wall in the office carved a penis in the wall. [Assistant principal] came in to office to offer additional support he made a fist and threatened to hit her. [They] tried to get [Student] back into another quiet room, he ran outside. [Principal] went outside after him in a few minutes they went back inside to [principal’s] office.
120. On December 20, 2019, the Student was suspended out-of-school for seven days following an incident during which the Student began banging his head, resulting in his head bleeding and the Student being restrained. The principal made the decision to call 911. The Student was restrained by the special education teacher. An restraint and isolation form was completed. The restraint and isolation report did not document the time of restraint, duration of restraint, or type of restraint used. The report stated the restraint was administered to keep the Student from banging his head on the closet and that the Student’s head was bleeding. It also indicated the Student received medical attention for “bruises on legs.” The report indicated the following strategies were attempted to de-escalate the Student: redirection, space/time, give choices, physical proximity, calm down break in classroom, and adult assisted problem-solving. The incident was referred to the administrator. The teacher and principal

signed the form. The form did not indicate whether the Parent was notified or whether the incident was reviewed with the Student.²²

121. On December 23, 2019, the District mailed meeting invitations to the Parents and Student for an IEP review scheduled for January 7, 2020.

122. On December 23, 2019, the principal emailed the Parent that the Student would be emergency expelled when the Student returned from winter break due to his behaviors on December 20, 2019, but noted that the coding would be decided at the mediation scheduled for January 10, 2020. He added that "it doesn't mean it will be entered as a discipline."

123. The District was on winter break from December 23, 2019 through January 4, 2020.

124. At the end of the first semester, the Student's grades were as follows:

- Robotics: F (59%)
- Math 6: F (42%)
- Science 6: 78% C+
- Fitness: 58% F
- English 6: 77% C+

125. On December 30, 2019, the Parent filed this special education citizen complaint.

126. On January 7, 2020, the District convened the Student's annual IEP meeting. The Parents, principal, general education teacher, director, special education teacher, family advocate, and PT attended. At the meeting, the IEP team decided²³ the Student required direct specially designed instruction for his behaviors and behavioral support to access core academic instruction, and the Student did not have an academic/cognitive deficit in any academic area and therefore, did not require direct specially designed instruction in any academic area. Accordingly, a new IEP was developed for the Student, which provided the Student with the following specially designed instruction:

- Behavior, for 235 minutes per day, to be provided by the special education teacher in the special education setting

The IEP also included the following consultation services for the Student in the general education setting:

- Math, 15 minutes per week, to be provided by special education teacher in the "General Education/SDI" setting;
- Reading, 15 minutes per week, to be provided by the special education teacher in the "General Education/SDI" setting; and,
- Writing, 15 minutes per week to be provided by the special education teacher in the "General Education/SDI" setting.

The IEP provided the Student with the following related services:

- Occupational therapy/Physical therapy, for 15 minutes per month, to be provided by the PT in the "Special Education/Related Services" setting;

²² Restraint procedures were not an issue raised in this complaint. However, the District is encouraged to review WAC 392-172A-02110 and RCW 28A.600.485, as the report was missing required elements.

²³ Notes from the IEP meeting were provided in the PWN issued on January 8, 2020.

- Shared Paraeducator support, 235 minutes per week, to be provided by a shared paraeducator in the "Special Education/Related Services" setting;
- Paraeducator support, 1,650 minutes per week, to be provided by a shared paraeducator in the general education setting; and,
- Transportation, to be provided 5 days per week to school and home.

The Student's IEP indicated he would spend 86.57% of his time in the general education setting.

During the IEP meeting, the Parent requested an "independent educational evaluation [(IEE)] to include occupational therapy/physical therapy and FBA." According to meeting notes maintained by the District, the IEP team agreed to an "IEE – full." The IEP team additionally discussed the Student's behavior and schedule, including the Student's 9 out of 12 escalations, which all occurred during science, and the one calendar year of sixth grade completed by the Student. The IEP team recommended the Student be removed from science and placed in an alternative class at the end of the semester. During the meeting, the Parent and PT disagreed over whether the Student was having sensory issues in the general education setting. The PT stated she had not seen evidence of any sensory issues, while the Parent expressed concern that the Student did have sensory needs. According to the meeting notes, the IEP team agreed to provide the Student with a 1:1 paraeducator instead of a shared paraeducator during the evaluation timeline and to reach out to "all agency connections to find a [behavior therapist]."

127. On January 8, 2020, the District issued PWN to the Parents, stating it was proposing to "continue the IEP," to conduct a comprehensive reevaluation of the Student in "all qualifying areas," to provide an individual educational evaluation in "[occupational therapy]/[physical therapy] and FBA," and to provide "1:1 support during the evaluation period." The PWN additionally stated the PT would support building schedules and help support staff with "manual physical activities goals [where] addressed" and that all other IEP goals would remain unchanged.
128. On January 10, 2020, the District and Parent participated in mediation to address reintegrating the Student back into school. According to the District and the Parent's advocate, the parties did not discuss the citizen complaint, but focused on the █ Plan.
129. On January 12, 2020, the Parent provided consent for the District to complete a reevaluation of the Student in the following areas: Intellectual/cognitive functioning, academic performance, emotional/social/behavioral, adaptive skills, and communication.
130. On January 13, 2020, the District sent the Parent notification that it had ended the Student's emergency expulsion as of that day and that a manifestation meeting was to be held as soon as possible. The notification indicated the "paraeducator plan" would be implemented per agreement with the Parent, including that the District would set up a meeting with the

Parent to meet with the paraeducator prior to the paraeducator working with the Student and that the District would staff the position with a highly skilled paraeducator.²⁴

131. Also on January 13, 2020, the Parent emailed the District, noting disagreement with the draft IEP, citing concerns with the Student's present levels of performance in reading, writing and math: "It is important to note, however, that this does not preclude [Student] from accessing the general education curriculum with non-disabled peers once successful integration can occur." The Parent additionally requested sensory supports.

132. On January 14, 2020, the District issued an updated PWN that it was refusing to change the Student's educational placement. The PWN also confirmed the IEP team at the January 7, 2020 IEP meeting had agreed to temporarily provide "1:1 paraeducator support through the completion of the pending evaluation." The PWN clarified that with respect to the 1:1 support:

- Highly trained paras would be used to staff this position.
- In the meantime, the district would post an open sub position to ensure dedicated support is provided to the Student.
- District agreed to having the Parent meet with the highly trained para before starting with Student.

The PWN documented the District's agreement to implement the comprehensive evaluation using an outside provider. It further indicated the IEP team's decision to reduce the Student's specially designed instruction minutes in reading, writing, and math to 15 minutes per week of consultation services in the general education setting, and support the Student with 235 minutes of shared paraeducator support per week in the special education setting and 1,650 minutes of shared paraeducator support in the general education setting. The PWN stated no changes were made to the Student's related services in occupational and physical therapy or transportation. The PWN included notice that visual supports were added as an accommodation to the IEP.

The PWN stated "no other areas of the IEP were discussed, reviewed, or changed because the team determined to wait for the results of the upcoming evaluation to amend these areas in the IEP, if necessary." The PWN stated, "This includes, but is not limited to: present levels of performance, goals, FBA and BIP (even though both an FBA and BIP were drafted.)"

The PWN additionally addressed emails sent by the Parent following the January 7, 2020 IEP meeting. It rejected the Parent's request to change the present levels in reading, writing, and math and referred to the January 8, 2020 PWN, and confirmed the IEP team's decision to wait to make decisions on the Student's present levels until after completion of the reevaluation.

The PWN also included a status update as of January 14, 2020, which included the following information:

²⁴ The January 14, 2020 PWN stated that at the January 7, 2020 IEP meeting, "a highly trained paraeducator was not promised to be ready upon the first day of [Student's] return due to the need to obtain staffing for the position. However, the District confirmed that they would set up a meeting with the paraeducator prior to his start with [Student]."

- The District's has made progress on its efforts to obtain a highly trained paraeducator and was working on setting up a meeting with the Parent.
- The District confirmed that the psychologist it had contracted with to complete the reevaluation was available at the end of January and it was in the process of verifying her qualifications. The District team had completed an FBA and the District was prepared to move forward to schedule a meeting with the parent to review. The District offered to make the FBA it completed available to the outside psychologist to review.
- As of January 14, 2020, the Student had missed 21.4 days of school, meaning the Student had missed an additional 12 days of school past the 10 permitted days. The District stated it offers 3.5 hours of 1:1 compensatory instruction with a certificated staff member per week of school missed. According to the District's calculations, it owed the Student a total of 9 hours of compensatory instruction (3.5 hours per week x 2.5 weeks = 8.75 hours, rounded up to 9). Because the general education teacher had already provided the Student 2 hours of 1:1 tutoring for the initial days of missed instruction, the District offered an additional 7 hours of 1:1 compensatory instruction with a certificated staff member. The District contacted its tutoring staff on January 8, 2020. As of January 14, 2020, the District does not have an update on who will provide the Student's tutoring.

133. On February 18, 2020, the Parent submitted her reply to the District's response to her complaint. In her reply, the Parent expressed that although the District provided data regarding the Student's behaviors, she felt the data was descriptive of what the Student did and not show consistent usage or monitoring of the behavior interventions in the Student's BIP. The Parent brought attention to the following portion of the Student's BIP: "[Student] thrives on positive reinforcement. He wants to know that he is doing well. Small successes go a long way with him. He does not like to get into trouble. He refers to himself during his episodes as 'bad [Student]. He has the desire to do well."

In her reply, the Parent submitted additional documentation of medication errors/discrepancies brought to her attention on January 21, 2020 by the District's nurse supervisor following a medication audit and investigation. The errors and discrepancies included medication not being given to the Student as indicated in his health plan (missed doses), medication not being accounted for in the Student's medication administration record, and documentation suggesting the Student may not have received the correct dosage of medication following a change in dosage having been reported to the school. These errors were believed to have occurred on the following dates:²⁵

²⁵ In an email to the Parent from the nurse supervisor, dated January 21, 2020, the nurse supervisor explained the errors for medication inventory counts by noting the Student had "multiple missed days," and that "it is not easy to do a thorough check for each day of school quickly when each school day (even those the student is absent) is not clearly marked on the MAR. Without documenting each school day, the nurse would have to reference the student's attendance and I suspect because the count of medication matched the inventory, she did not dig further. Documenting each day, even when the student is absent, has been explained to both the nurse and the HRA and will happen from now on. I can see that [school nurse] did sign off on the MARS in Sept, Oct. and January." The nurse supervisor further noted that she spoke to the principal on January 21, 2010 to make sure he was aware of the audit and her findings to reinforce the interventions she had put in place to "ensure this doesn't happen again." She added that the principal "expressed that the health room is busy at the time [Student] comes in for medication." The nurse supervisor

- November 4, 2019
- November 6, 2019
- November 26, 2019
- December 4, 2019

CONCLUSIONS

IEP Development: The Parent alleged the District did not follow procedures for developing the Student’s individualized education program (IEP), including developing measurable annual goals, ensuring that each IEP team meeting was attended by a properly constituted IEP team, and ensuring the Parent was provided proper prior written notice.

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student’s current IEP. If changes are made to the student’s IEP, the school district must ensure that the student’s IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

In June 2019, the Student’s IEP team met and decided to increase the amount of time the Student was spending in the general education setting by changing his schedule to remove him from two 47-minute periods of social skills—where the Student had been receiving specially designed instruction—and instead, enroll the Student in general education courses where the Student would be with a paraeducator receiving behavioral support as a related service, but not specially designed instruction. Although in some communications, the change was described as a “trial,” the Student followed the new schedule, which was not reflected in his IEP, for the entire first semester of the 2019-2020 school year. In its response, the District acknowledged the IEP team changed the Student’s placement without following procedures to amend the Student’s IEP, and recommended training for staff on IEP amendment procedures. OSPI finds the District in violation and accepts the District’s proposal for training on IEP amendment procedures.

Measurable annual goals: IEPs must include a statement of the student’s measurable annual goals, including academic and functional goals designed to meet the student’s needs that result from the student’s disability so that he can be involved and make progress in the general education curriculum; and, meet each of the student’s other educational needs that result from the student’s disability.

In December 2018, the Student’s IEP team developed goals in the areas of writing, reading, math and behavior, which were included in the December 2018 IEP. Although the Student’s December

noted that she troubleshooted with the principal and they developed a plan so that the Student could have his medications administered individually if necessary, while other students wait outside.

2018 evaluation did not show any academic or cognitive deficits or delays posing an adverse educational impact, it concluded from behavioral data the Student “demonstrates significant work avoidance behavior in the classroom.” This work avoidance behavior required the Student to receive specially designed instruction targeted at specific academic areas, in addition to general behavior instruction in order to access the general education curriculum and setting. Thus, the Student’s math, reading, and writing goals all related to eliminating explosive outbursts during math, reading, and writing time, and the Student had two additional general behavior goals. When the Student’s IEP team met in January 2020, it specified that the nature of the specially designed instruction provided to the Student in each qualifying academic area was behavioral in nature, as reflected in the language of his goals. Each goal contained a quantifiable benchmark and provided information on how data on the goal would be collected in each qualifying area. The District accordingly developed measurable annual goals for the Student in accordance with his needs, as identified in his evaluation, as necessary for the Student to access and make progress in the general education curriculum and setting. No violation is found.

However, IEPs should clearly reflect the nature and amount of services a student is receiving so it can be properly implemented. While OPSI finds no violation, the January 2019 IEP, including its goals, was written in a confusing manner, especially because not every provider reading the IEP had access to the evaluation upon which the IEP was based. While not necessarily a violation, it is confusing because the Student has an IEP with all behavior goals while being qualified for an IEP in academic areas. The Student’s IEP team acknowledged this confusion when it amended the Student’s IEP in January 2020 to more clearly reflect the nature of the Student’s services and supports the Student was receiving.

Properly constituted IEP Team: The Parent alleged the District did not follow procedures to ensure there was a properly constituted IEP team at IEP meetings. Not less than one of the student’s general education teachers must participate as a member of the IEP team, if the student is, or may be, participating in the general education environment. The general education teacher who serves on the IEP team should be one who is, or may be, responsible for implementing a portion of the IEP. Parents and districts can agree in writing that an IEP team member’s participation is not necessary and that the team member may be excused from attending the meeting, in whole or in part, if the team member’s area of curriculum or related service is not being modified or discussed at the meeting. If the meeting involves a modification to or discussion of the team member’s area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting. At the discretion of the parent or district, the IEP team may also include any individuals who have knowledge or special expertise regarding the student, including related services personnel.

At the January 7, 2019 IEP meeting, the IEP team added occupational therapy/physical therapy as a related service to the Student’s IEP to address the recommendations in the Student’s evaluation. Because the IEP team was discussing adding a new service to the Student’s IEP, it would likely have benefitted the Student to have had an occupational or physical therapist with special expertise of the Student’s sensory needs at the meeting who could have interpreted the Student’s

evaluation and helped develop the Student's IEP. Either the Parent or the District could have invited one to attend. However, it does not appear one was invited and instead, the evaluation was interpreted by the other IEP members from the District in attendance and a recommendation for services was made. No violation is found.

However, no general education teacher attended the January 7, 2019 IEP meeting. At the meeting, the IEP team discussed the Student's transition to the Achieve program at the middle school where the Student would be accessing the general education curriculum and environment. Accordingly, a general education teacher from the middle school should have been present at the meeting to help develop the Student's IEP. Because a general education teacher did not attend the January 7, 2019 IEP meeting, it did not contain a properly constituted IEP team. The general education teacher also did not obtain consent from the Parent prior to not attending the meeting and excusal procedures were not followed. OSPI accordingly finds the District to be in violation and it will be required to complete training on who is required to be present at IEP meetings and on excusal procedures.

Members of the Student's IEP team also met on June 6, 2019. Although a PWN was generated after the meeting, reflecting that the IEP team had met and general education teachers submitted statements regarding the Student's progress, there was no sign-in sheet for the meeting or documents showing the general education teachers either participated or had been properly excused. The principal recalled all members required for the IEP meeting attending; however, there is no documentation to confirm this. OSPI accordingly is unable to confirm or deny the Parent's allegation that the IEP team was not properly constituted. However, the training ordered above addresses this potential violation.

Prior Written Notice (PWN): The Parent alleged the District did not follow procedures regarding its obligation to provide prior written notice. Prior written notice must be provided to the parents of a student eligible for special education services a reasonable time before the school district proposes to initiate or change the identification, evaluation or educational placement of the student or provision FAPE to the student or refuses to initiate or change the identification, evaluation, or educational placement of the Student. The PWN also must contain certain required elements.

The District provided the Parent with several PWNs throughout the 2018-2019 and 2019-2020 school years during the time period under review. With the exception of two PWNs issued by the District in January 2019, all met the requirements for sufficient PWN. On January 7, 2019, the District issued a PWN following an IEP meeting where the District decided to change the Student's program to the Autism Achieve program and to add occupational therapy services to the Student's IEP. As highlighted by the Parent in her complaint, these changes were not reflected on the PWN. The District did not issue PWN of the IEP team's January 7, 2019 decision to change the Student's program until January 30, 2019, which was twenty-three days after the Student began attending the middle school. While the PWN should have been provided to the Parent earlier, the Parent was in regular communication with the District about the change and was aware of it prior to having received the formal PWN. Further, all subsequent PWNs issued by the District were

provided in a timely fashion and included all substantive components. No substantive violation is found, as the District has provided the PWN.

IEP Implementation: The Parent alleged the District did not follow procedures to implement the Student's IEP, including providing the Student with his specially designed instruction. At the beginning of each school year, each district must have in effect an IEP for every student who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in the IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the IEP. A material failure occurs when there is more than a minor discrepancy between the services provided and those required by the IEP."

The Student's January 2019 IEP provided the Student with 940 minutes of specially designed instruction per week, which was provided to meet the Student's behavior and social and emotional needs related to his autism diagnosis, and which interfered with the Student's ability to make progress in, and access the general education curriculum and setting, in accordance with the Student's evaluation and IEP.

During the second semester of the 2018-2019 school year, the Student was in the Achieve classroom for 705 minutes per week (47 minute periods, 3 times per day, 5 days per week). Documentation provided by the District showed the Student was receiving specially designed instruction from the special education teacher and case manager during this time. Although the amount of minutes the Student was receiving specially designed instruction in the Achieve classroom does not equal the 940 minutes required in the Student's IEP, the District asserted, and there is documentation to show (behavior logs, staff notes, and data collection) that the Student was also receiving some specially designed instruction in behavior by paraeducators during lunch, transitions, and in his general education classes. The specially designed instruction was based on the tier behavior model designed by the special education teachers. While it is unclear how much additional specially designed instruction the Student was receiving from paraeducators in the general education setting or if it was enough to fulfill the minutes required by the Student's IEP, at the Student's June 2019 IEP meeting at the end of the school year, the IEP team remarked that the Student was making progress and his behaviors had been improving. Accordingly, any discrepancy in minutes and delivery method did not appear to be material or result in a denial of FAPE, and no corrective actions are required.

The District was, however, in violation for not providing the Student with special education services, including specially designed instruction, during the four days of ISS the Student served during the second semester of the 2018-2019 school year (February 14, March 26, March 27, and March 28, 2019). However, on April 9, 2019, District issued a PWN, stating the special services administration was offering the Student 10 hours of 1:1 tutoring. The District clarified in its response that between April 9, 2019 and May 29, 2019, the family accessed 12 hours of 1:1 tutoring from the special education teacher. Accordingly, while OSPI finds the District in violation for not offering special education services to the Student during his suspension, it acknowledges the District's efforts to remedy the violation and no further corrective actions are ordered.

During the first semester of the 2019-2020 school year, the Student's January 2019 IEP was still in effect. Following the June 2019 IEP meeting, the District issued PWN, documenting the IEP team's decision to begin increasing the Student's time in the general education classroom with increased shared paraeducator support. However, as the District acknowledged in its response, it did not follow procedures to amend the IEP to document any changes made. Because the IEP was not formally amended and the PWN was silent regarding changes to the Student's minutes of specially designed instruction, and because the Student had previously been receiving some specially designed instruction from both his special education teachers in the Achieve classroom and paraeducators based on the Achieve curriculum—which was not documented in the Student's IEP—it is unclear following the June 2019 IEP meeting if the IEP team intended to decrease the Student's total minutes of specially designed instruction or change the setting and delivery method, or both. However, the Student's schedule changed significantly during the 2019-2020 school year so that the Student was only in the Achieve classroom receiving direct specially designed instruction in behavior and social skills from a special education teacher for 235 minutes per week (47 minutes per day, 5 days per week).

While the Student may have received some specially designed instruction from his paraeducator, it is unclear how much or what the nature of the specially designed instruction was. Further, unlike during the second semester of the previous school year, the Student was not making progress (he failed almost every general education class) and his difficulties navigating social situations both with peers and adults in the general education setting became more apparent as his behaviors continued to escalate resulting in increased suspensions and removals from the classroom. OSPI finds the District in violation and the District will be required to provide the Student with compensatory instruction.

The Student's IEP provided the Student with 940 minutes (15.5 hours) per week of specially designed instruction while his schedule only provided him with 235 minutes, resulting in a difference of 705 minutes per week, (about 12 hours per week). There were approximately 15 full weeks of school during the first semester of the 2019-2020 school year. Thus, the District failed to provide the Student with approximately 176 hours of instruction in behavior based on the Student's January 2019 IEP.

In January 2020, after the timeline for this complaint, the District had an IEP meeting during which it acknowledged it owed the Student compensatory services as the Student missed 22 days of school during the 2019-2020 school year due to discipline. The Student additionally received one day of ISS during which the Student did not receive any special education services. Accordingly, the Student was denied services for 13 days of school.²⁶ The District proposed compensatory

²⁶ Per WAC 392-172A-05145, a district must only provide services during a period of removal for ten or fewer days if it provides services to a student without disabilities who is similarly removed. Here, the Student as suspended for a total of 10 days, and then his placement was changed when he was subsequently suspended for an additional 12 days. After a Student's placement is changed by disciplinary removal, "during any subsequent days of removal the student must continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum...and to progress toward meeting the goals set out in the student's IEP." WAC 392-172A-05145.

instruction. OSPI accepts the District's offer to provide compensatory instruction. OSPI calculates compensatory instruction based on the Student's IEP and individual needs. The Student's IEP provided the Student with 940 minutes of specially designed instruction per week (about 15.5 hours per week). As noted in the decision, the specially designed instruction minutes were being provided to address the Student's behavior and may be provided to the Student entirely in the area of behavior. Although the District noted the Student received 2 hours of 1:1 tutoring by a general education teacher, OSPI will not be subtracting those hours from the amount of compensatory instruction owed because it is unclear if Student was not receiving specially designed instruction during that tutoring. During the 13 days of school (2.6 weeks) the Student was suspended, had the Student been in school he would have received 611 minutes of instruction (2.6 weeks x 235 minutes per week, based on his actual schedule during that time). Thus, the District failed to provide approximately 10 hours of specially designed instruction.

Accordingly, the District denied the Student a total of 186 hours of instruction in behavior. The District will be required to provide compensatory instruction at the rate of 1/3 the amount of time missed (62 hours). The District will be required to provide the instruction 1:1 by a certificated special education teacher, or a behavioral specialist with expertise in autism. If both parties agree, the services may also be provided in a group setting, if appropriate.

Behavior: The Parent alleged the District did not follow procedures to address the Student's behaviors, including conducting and implementing a functional behavioral assessment (FBA) and all behavioral intervention plans (BIPs).

An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a BIP that will reduce or eliminate the misbehavior. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. Once the need for a reevaluation is identified, a district must act "without undue delay and within a reasonable period of time." A BIP is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive a free appropriate public education (FAPE). The BIP is required to have certain components, including the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student.

Students eligible for special education may not be improperly excluded from school for disciplinary reasons. Within ten school days of the district's decision to change the student's placement through discipline, a manifestation meeting also must be held to determine if the

Thus, OSPI is ordering compensatory services based on the 12 additional days of removal (over the original 10), plus the one day of in-school suspension during which the Student also did not receive services.

behavior that led to the removal was a manifestation of the student's disability. If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct an FBA, unless the district had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or, if a BIP already has been developed, review the plan, and modify it, as necessary, to address the behavior.

BIP Implementation

In 2018, an FBA was completed for the Student. In January 2019, the District developed a BIP for the Student, which incorporated elements from the FBA and included positive behavioral interventions such as built-in breaks and the "tiered" system behavioral supports that was built into the autism Achieve class. It also included having the Student put aside difficult tasks when frustrated, and not engaging when the Student was escalated. The BIP additionally noted the Student's behaviors were impacted by medication management. The Parents were included in the development of the BIP and the BIP included all required elements; however, it is noted the BIP was tailored to the Student's enrollment in the Achieve program. The District's response included several examples of how the BIP was implemented during the second half of the 2018-2019 school year and in the beginning of the 2019-2020 school year. For example, the District provided behavior notes, incident reports and emails demonstrating the special education teachers and paraeducators not engaging in trigger behaviors, following the "Tier" system listed in the plan, waiting to discuss the behavior with the Student until he had deescalated, and asking the Student to put aside difficult tasks to focus on something else when frustrated.

The Parent's reply alleged the Student's BIP was not consistently implemented regarding the need for the Student's medications to be properly managed at school in order to prevent behavior incidents, and that the lack of medication management may, on occasion have contributed to behaviors. In January 2020, the Parent received notification that an audit had been completed on the administration of the Student's medications and found there had been at least 4 occasions where the Student's medications may not have been administered as prescribed, including antipsychotics. The Student had serious behavior incidents on three of the identified dates (November 4, 6, and 26, 2019). While it is possible the mismanagement of medicine contributed to behaviors on these dates, there is no evidence that it was a systemic problem or that it occurred outside of the three days such that the BIP was not being regularly implemented regarding the Student's need to have medication managed while at school. Further, according to the letter the Parent received from the nurse supervisor, the nurse supervisor reviewed the audit findings with the principal to put internal controls in place to prevent the same errors from occurring again and developed a plan to have the Student receive his medications individually to prevent future errors.

Behavior and Discipline

At the end of the 2018-2019 school year, the Student had received ten out-of-school suspensions and four in-school suspensions for behaviors related to his disability. Manifestation determination meetings were held on April 9 and June 14, 2019. In both instances, the Student's conduct was found to be a manifestation of the Student's disability, but the Student's IEP was found to have

been implemented. While no further actions were taken and it was determined no changes to the Student's BIP were necessary at that point, it was noted during the June 14, 2019 manifestation that there was a trend of behaviors occurring during transition periods.

Upon the commencement of the 2019-2020 school year, the Student began engaging in similar behaviors (cursing, making suicidal threats, hitting other students, etc.) On November 22, 2019, a manifestation determination was held after the Student had been suspended from school for eleven days. At the November 22, 2019 manifestation meeting, the Student's IEP team determined the Student's behaviors were a manifestation of his disability, but determined his IEP had been implemented. The team determined the Student required a new FBA to inform revisions to the Student's BIP, but did not make any revisions to the Student's BIP in the interim. The same day the District issued a PWN documenting their decision to develop a new FBA and the Parent's consent. The District documented completion of the FBA at an IEP meeting on January 7, 2020 which was within 35 school days, as required. A second manifestation determination was held on December 3, 2019. Again, the manifestation team determined the Student's behaviors were a manifestation of his disability, but not the result of a failure to implement the Student's IEP. No revisions were made to the Student's BIP. By the end of December 2019, the Student had been suspended from school for 22 school days and had spent two days in in-school suspension. The Student did not receive any special education services or support while suspended.

Despite the Student receiving ten out-of-school suspensions during the 2018-2019 school year and 22 out of school suspensions during the first semester of the 2019-2020 school year for behaviors found to be a manifestation of his disability, the Student's IEP team did not make a single revision to the Student's January 2019 BIP and did not update the Student's FBA until January 2020 to address the Parent's concerns regarding the Student's sensory needs.

The purpose of a BIP is to provide necessary behavior support to a student whose behaviors relate to their disability and that are interfering with their learning or the learning of others so that they can access the general education curriculum and setting and make progress in light of their circumstances, as necessary to receive a FAPE. If a student with a BIP is repeatedly getting suspended due to behaviors related to their disability, even if the BIP is being implemented as written, the BIP may not be effective and should be revised. Here, the BIP was being implemented as written and had been developed to include many of the positive behavior interventions that were built into the Student's autism Achieve classroom, but these interventions were not effective for this Student. OSPI finds the District to be in violation for continuing to remove the Student for behaviors found to be a manifestation of his disability without revising his BIP.

In addition, if a student has a BIP, revisions to plans which address the student's behavior should occur within the context of the BIP, and at an IEP team meeting or as part of the manifestation meeting. Here, the special education teacher unilaterally, with support from the director, developed and revised a separate behavior plan (the █ Plan), which existed outside of the IEP. Although the █ Plan incorporated parts of the BIP, it was not a BIP and included additional provisions, including a communication plan and an additional safety plan should the Student become escalated. This created confusion, especially when the Parent was asked to agree, and to have the Student agree, to the plan prior to returning the Student to school following a

suspension. If the Student requires positive behavioral interventions and supports to receive a FAPE, including a behavior plan to access the educational environment, they should be documented in the Student's BIP and incorporated into the Student's IEP. Decisions made regarding the BIP should include the Parent and other members of the IEP team, including a general education teacher. OSPI finds the District in violation for not following procedures for developing the BIP and will be required to have an IEP meeting to discuss both the [REDACTED] Plan and BIP and to combine both documents into a BIP.

CORRECTIVE ACTIONS

By or before **March 13, 2020, March 20, 2020, April 3, 2020, May 29, 2020, and July 10, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Instruction: The District will be required to provide 62 hours of compensatory instruction in behavior.

By or before **March 6, 2020**, the District will work with the Parent to develop a schedule for delivering 62 hours in behavior and social/emotional skills. Services may occur in a one-on-one setting and be provided by a certificated special education teacher or behavior specialist with expertise in autism, or, if more appropriate for the Student's needs, compensatory services may also be provided in a group setting by a certified special education teacher or behavior specialist with expertise in autism. Compensatory sessions will occur outside of the District's regular school day, but may occur on weekends or over breaks. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. The District will provide OSPI with documentation of the schedule for services by or before **March 13, 2020**. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **June 30, 2020**.

The District must provide OSPI with documentation on **April 3, 2020** and **May 29, 2020** of the compensatory services provided to the Student. The District must provide documentation by **July 10, 2020** of the completion of the compensatory services provided to the Student. This documentation must include the dates, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation that it has fulfilled this requirement by **July 10, 2020**.

IEP Meeting: By or before **March 20, 2020**, the District will convene an IEP team meeting—consisting of the Student's current IEP team—to review the Student's IEP and discuss the following issues:

1. Revision of the Student's behavior intervention plan (BIP), including what, if anything, from the "█ Plan" does the IEP team want to incorporate into the BIP.
2. Any other behavior needs of the Student which the IEP team feels should be addressed in the BIP, including transportation.

By **April 3, 2020**, the District will submit: 1) a copy of the meeting invitation; 2) a copy of the agenda; 3) a copy of any amended IEP; 4) a copy of any related prior written notices; and, 5) a copy of the meeting notes on the topics discussed at the meeting.

DISTRICT SPECIFIC:

Training: By **March 31, 2020**, the District will conduct training for administrators and special education certificated staff at the middle school which focuses on IEP amendment procedures, and the requirements for a properly constituted IEP team, including excusal procedures.

- By **March 20, 2020**, the District will submit a draft of the training materials to OSPI for review. The training materials will include examples. OSPI will approve the materials or provide comments by March 27, 2020 and additional dates for review, if needed.
- By **April 3, 2020**, the District will submit documentation that staff participated in the training. This will include: 1) a sign-in sheet and 2) a roster of who should have attended so OSPI can verify that staff participated.

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

RECOMMENDATION

While an occupational or physical therapist was not a required member of the IEP team, the Student's IEP is not clear regarding the Student's need for sensory support throughout the school day and the nature of any support he is receiving (the Student's IEP states he requires "occupational therapy/physical therapy" and lists the physical therapist as the provider but is not clear regarding how the physical therapist is providing services). It is recommended the District and Parent consider inviting the physical and/or occupational therapist to the next IEP meeting to discuss the Student's IEP services and Student's sensory related needs.

Dated this ____ day of February, 2020

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.)