

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-23

PROCEDURAL HISTORY

On February 13, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the [REDACTED] School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On February 13, 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 February 19, 2020, the District requested an extension of time to respond to the complaint. OSPI granted the request and asked the District to respond by March 13, 2020.

On March 11, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on March 12, 2020. OSPI invited the Parent to reply. The Parent did not reply.

On March 30 and April 1, 2020, OSPI requested clarifying information from the Parent. The Parent did not reply.

On March 31, 2020, OSPI requested clarifying information from the District and received the additional information on April 2, 2020. OSPI forwarded that information to the Parent the same day.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on February 14, 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 the investigation period.

ISSUES

1. Did the District follow procedures for developing and amending the Student's individualized education program within the last year (since February 14, 2019¹), including:

¹ Please note, per WAC 392-172A-05025(2)(d), OSPI can only investigate potential violations that occurred "not more than one year prior to the date that the complaint is received." The complaint alleged the Student has had the same IEP for two or more years. Parents may file a request for a due process hearing on allegations that occurred in the past two years. An administrative law judge may extend the two-year timeframe if the Parent can show specific misrepresentations by the District that it had resolved the problems forming the basis of the Parent's due process request, or that the District withheld information

- a. Developing the Student's annual IEP in a timely manner;
 - b. Updating the Student's behavioral intervention plan (BIP) as appropriate; and,
 - c. Amending the IEP with a properly constituted IEP team?
2. Did the District follow procedures to implement the Student's BIP?
 3. Did the District follow procedures to address the Parent's concern about the Student's "suicide comment?"

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. 34 CFR §300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, 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.

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student's learning. 34 CFR §300.324; WAC 392-172A-03110. Part of the information the IEP team considers when reviewing and revising a student's IEP is the result of the most recent evaluation. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

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); any

from the Parents that it was required to provide under the special education regulations. Please review the enclosed procedural safeguards for more information about due process and complaint procedures.

individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's 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 that 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). A functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP team has decided that a BIP is appropriate, the IEP team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

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.

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 a free appropriate public education (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. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2). The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

FINDINGS OF FACT

2018-2019 School Year

1. During the 2018-2019 school year, the Student was in the fifth grade, attended a District middle school, and was eligible for special education services under the category other health impairment.
2. The Student's most recent evaluation occurred in October 2017. The Student's October 2017 evaluation noted he had attention deficit hyperactivity disorder (ADHD), which impacted his ability to focus and stay on task and found the Student eligible for special education under the other health impairment eligibility category. The evaluation report recommended the Student receive specially designed instruction in behavior—noting the Student was "currently not successful in his general education classroom"—and math, as well as "small group paraprofessional support."
3. The District's 2018-2019 school year began on September 5, 2018.
4. On November 13, 2018, the Student's individualized education program (IEP) team met and developed the Student's IEP. The IEP included the following annual goals, with progress reporting due at the trimester:
 - **Math:** "By 11/14/19, when given an addition, subtraction, multiplication or division problem that contains a decimal [Student] will correctly solve improving calculation skills from 0/10 to correctly solving 9 out of 10 problems as measured by monthly progress monitoring data."
 - **Math:** "By 11/14/19, when given a written addition or subtraction expression consisting of two fractions with unlike denominators, [Student] will generate equivalent fractions with like denominators for each fraction and calculate the sum or difference by adding or subtracting the numerators and leaving the denominators as is improving Number Operations from 0 out of 5 expressions to 4 out of 5 expressions as measured by monthly progress monitoring data."
 - **Social emotional:** "By 11/14/19, when given an independent practice portion of a lesson or another specific time in the school day when [Student] previously displayed off-task behavior [Student] will use an individual behavior tacking chart to identify 2 on-task behaviors ex. Re-reading a question or prompt when student doesn't understand, ask self why the work matters for success in school or life when student is disinterested and demonstrate the 2 on-task behaviors by refraining from engaging in off-task behaviors improving self-management from 10-20 minutes to 40-50 minutes for 2 out of 3 times when beginning to disengage. As measured by weekly progress monitoring data."
 - **Social emotional:** "By 11/14/19, when given a time when teacher is giving instructions or during independent work time [Student] will decrease blurting out improving social skills from blurting out once every 10-20 minutes to blurting out no more than one time every hour as measured by weekly progress monitoring data."

The IEP included two accommodations (multiplication table, separate environment) and provided the Student with the following specially designed instruction in the special education setting:

- Math: 50 minutes, 5 times per week (delivered by a paraeducator, monitored by a special education teacher)

- Behavior: 50 minutes, 5 times per week (delivered by a paraeducator, monitored by a special education teacher)
- Behavior: 30 minutes, once per week (delivered and monitored by a special education teacher)

The IEP noted the Student would spend 83.9% of his time in the general education setting and would participate in general education physical education (PE). The IEP also noted: Student "currently has a shortened day schedule but is working toward a full day schedule."

5. On December 7, 2018, the Student's IEP team met again and amended the Student's IEP. The amended IEP changed the minutes of specially designed instruction the Student was to receive as follows:
 - Math: 30 minutes, 5 times per week (delivered by a paraeducator, monitored by a special education teacher, in the general education setting)
 - Behavior: 30 minutes, once per week (delivered and monitored by a special education teacher, special education setting)
 - Behavior: 60 minutes, once per week (delivered by a paraeducator, monitored by a special education teacher, special education setting)

The IEP noted the Student would spend 94.8% of his time in the general education setting. The prior written notice documenting this meeting noted the IEP team "determined that [Student] was ready for a full day schedule and would participate in all general education classes with support in math. He will receive behavior instruction 2 times a week."

The Complaint Investigation Timeline Began on February 14, 2019

6. In February 2019, the Student's schedule was as follows:

• 1 st : PE/Art/[Social Emotional Learning (SEL)] group	• 4 th : Opportunities ² with general education/Advisory SEL once a week
• 2 nd : Science (general education)	• 5 th : English Language Arts (ELA) (general education)
• 3 rd : Math (general education)	• 6 th : ELA (general education)
• Lunch/Recess	
7. On March 8, 2019, the middle school behavior interventionist emailed the principal, stating the Student had been written up for "constantly disrupting the class" and that this was the Student's third write up. The Student received a "lunch lesson."

In response, the Student's special education teacher also stated that she needed to talk to the Parent and Student "about how behaviors can lead to the [least restrictive environment] of being in my room more. I hope that will help [Student] back to a manageable level." The special education teacher also stated she would give the Student a heads up about the "lunch lesson" because "giving him a heads up helps him not explode the day of."

² Opportunities or "opps class" is a 30-minute period offered four days a week during which students have an opportunity to take an "elective type of class." According to the District, "this time is also used by the different grade levels for additional grade appropriate levels...for example the first trimester of 5th grade is title, 'Welcome to [District middle school] and students are assigned this class." Other options during this period included credit retrieval for students or social emotional lessons based on behavior needs.

8. On March 19, 2019, the behavior interventionist emailed the special education teacher to confirm that the Student was "no longer [allowed to] have lunch recess." The special education teacher confirmed and stated she would let the Student know "that he has had too many write ups from recess to keep it, and that he can earn it back."
9. On March 21, 2019, the principal emailed the middle school teachers and staff regarding "students of concern." This list included the Student, noting: "[paraeducator] will remove from classroom when he is disrupting the learning of others. He has lost his lunch recess..."
10. On March 21, 2019, the Parent met with the special education teacher and one of the general education teachers during spring conferences.
11. Also, on March 21, 2019, the Student's schedule changed, as follows:
 - 1st: PE/Art/SEL group
 - 2nd: Science (general education)
 - 3rd: Math (special education)
 - Lunch/Recess
 - 4th: Opportunities with general education/Advisory SEL once a week
 - 5th: English Language Arts (ELA) (general education)
 - 6th: ELA (general education)
12. The last day of the District's 2018-2019 school year was June 13, 2019.
13. In its response, the District provided the Student's 2018-2019 report card, which noted the Student's grades and recorded his absences. The report card did not provide information about the Student's progress on his IEP annual goals.
14. The District also provided documentation regarding the Student's behavior referrals during the 2018-2019 school year, of which the Student had one major referral and 10 minor referrals.

2019-2020 School Year

15. During the 2019-2020 school year, the Student attended a District middle school and continued to be eligible for special education services.
16. The District's 2019-2020 school year began on September 4, 2019, and the Student's schedule was as follows:
 - 1st: ELA (general education)
 - 2nd: PE/Art (general education)
 - 3rd: ELA (general education)
 - Lunch/Recess
 - 4th: Opportunities (general education)
 - 5th: Math (special education)
 - 6th: Science (general education)
17. On September 17, 2019, the Student was suspended for a half day for fighting.
18. On September 19, 2019, the Parent and special education teacher had a phone conference to discuss the Student, the incident on September 17, 2019, and strategies for the future.
19. On September 24, 2019, the special education teacher emailed the principal and stated the Student's behavior was escalating. She stated the Student was:

Not listening to very many directions...If he is going to continue like this, then I can see us needing to restrict his schedule more. Not sure how I could manage that, but it's been bad enough lately I'm going to start looking at how to make it work. I had a good convo with him at the end of today so we will see if that gets us a few good focus days.

20. According to notes kept on the Student's behavior, the following was recorded for September 2019, summarized in relevant part:

- **September 24:** Student was late; Failed to listen to directions; Threw items and left class – "would not follow directions and kept interrupting and disrupting the class with comments. He was asked to leave...;"
- **September 26:** Argued with other students and teacher; "I pulled [Student] out of class to chat one on one, and he listened;" Throwing items, yelling; Room clear; Inappropriate language; "I gave him ten minutes to think before we talked because he was still yelling, and arguing. He calmed down, we talked, and headed to talk to [general education teacher]. [General education teacher] and I decided to have him work in the blue building³ to catch up on the work he has missed...He calmed down about 15 minutes till the end of the day, but would not do science.";
- **September 27:** "Great day 5th"; and,
- **September 30:** "3rd asked to leave [general education teacher's] class, tore paper and blurting out comments."

21. On October 2, 2019, the special education teacher and principal emailed several times, discussing paraeducator support in the classroom and support for students with behaviors. They discussed the Student and the principal stated, "We need to come up with a period by period plan for [Student]. Teachers need to know the options for what to do with him." The special education teacher mentioned they had a meeting schedule with the Parent to "work on making a new behavior plan because he has regressed from last year."

22. On October 3, 2019, the principal emailed the general education teachers, special education teacher, PE teacher, art teacher, and paraeducator working with the Student, stating she and the special education teacher met with the Parent that morning. She stated the following Monday (October 7, 2019), the Student would start a new schedule:

- | | |
|--|---|
| • Before school – as usual | • 3 rd : BB – Humanities with paraeducator (special education) |
| • 1 st : Blue Building (BB) – Humanities with paraeducator (special education) | • Lunch – As usual |
| • 2 nd : PE/Art – we will be switching Student to the other section general education | • 4 th : Opportunities – as usual (general education) |
| | • 5 th : As usual (special education) |
| | • 6 th : As usual (science general education) |

The principal stated they were working on the Student's "ability to receive feedback and redirection. If he continues to struggle, then we will tighten up his schedule more. As he succeeds, we will add classes back starting with 1st period." The principal stated they should report issues to the special education teacher and that they were working on a plan for recess.

³ The blue building or "BB" is the building that houses the special education department.

23. On October 8, 2019, the special education teacher emailed the principal about a meeting she had with the Parent and the Student's father. The special education teacher wrote she thought the Parent "liked the plan." According to the email, the Parent was very focused on the Student being bullied by another student. The special education teacher also wrote she would "work with [Student] on how he earns [general education teacher's] class back."⁴
24. On October 21, 2019, the special education teacher stated she needed a paraeducator in her room for students that need additional behavior support. She stated the Student was "not completing work or listen [sic] to us, and we have no consequences right now except a phone call home, but those don't work." She stated, "it would be nice to be able to keep them in at recess to work on building those listening skills, and to have a consequence. Can we make this work starting tomorrow?"

The behavior interventionist responded, asking who she wanted to work with the Student, and they discussed—via email—with the principal paraeducator staffing for behavior support.

25. On October 29, 2019, the special education teacher emailed the principal, following a meeting with the Parent. The special education teacher stated it was "more or less to debrief from yesterday and to tell her how we are tightening up his schedule." She stated she talked to the Student's science teacher and they discussed "how we will be pulling him from class." The special education teacher stated this was so the Student could get caught up on work and to make sure "his behavior is improving for the classroom." The Student would also have a paraeducator with him in the lunchroom.
26. Also, on October 29, 2019, the District invited the Parent to an IEP meeting scheduled for November 12, 2019.
27. On October 30, 2019, the principal emailed the special education teacher and stated the Parent left the behavior interventionist a message, requesting a meeting. The principal stated the Parent "is disagreeing with his new 'plan' and wants to have a meeting." The special education teacher responded, stating the Parent was fine with the plan the day before.
28. Also, on October 30, 2019, the Student filled out a "recess reflection." The Student wrote he could have reacted differently by "asking if I could have help, and flat out doing the work." Also wrote that next time he was triggered, he would use the strategy of "asking for help."⁵
29. According to notes kept on the Student's behavior, the following was recorded for October 2019, summarized in relevant part:

⁴ Several days later, the principal responded, stating "we need to document the interactions between the Student and one of his peers as it would be bullying."

⁵ The documentation provided by the District also included examples of recess reflections from October 23 and November 4, 2019. It is unclear if these are the only times the Student filled these out, or if these were just the examples included in the District response.

- **October 10:** Student walked out of class; Yelling; Not listening to directions or working – “He left the...classroom again and went into main building to go to the office without permission. He came back to blue building when sent away from the office and did not start any classwork.”
- **October 18:** Left science 15 minutes before class was over;
- **October 21:** “1st – 5th periods did not listen to directions”; Refusing to work; Principal came to talk to him and “He started yelling, and the other students had to work in another room;”
- **October 22:** Student yelled about not doing work; Left the classroom; Yelled “‘You’re an idiot’, ‘I want to be normal’...‘I hate it here’...He grabbed iPad from the cart and he hit the desk with it multiple times. He threw a book off the desk. ‘I don’t want to be here, I want to die;’”
- **October 28:** Stepped on a paraeducator’s foot; Refused to work; “Stood outside classroom and threw rocks...tossed a pumpkin back and forth...Continuously walked into wall outside of classroom door;” Inappropriate language; Left the building; Refused to listen to directions; Threw items; “Called mom to come get him and schedule meeting to create new [plan];”
- **October 30:** Refused to work and follow directions; Yelling; “Left blue building without permission to go to opps class. He came out of class when asked, but went to office and signed himself out. He almost left but I said make the choice between going back or leaving. He chose to stay...;” Threw supplies; and,
- **October 31:** Refused to work; Threw supplies at staff; Called staff names and said “‘I hate you’...‘You’re the reason I’m in here. You’re the reason I hate my life cause I have to be in here with you everyday.’”

30. Regarding the comments the Student made about hating life and wanting to die, the Parent alleged in her complaint that the District failed to respond to the Student’s comments about suicide. In its response, District stated:

Unfortunately, the staff member that [Student] made that comment to was unclear about how to properly respond. While the administration initially thought that she had questioned [Student] about the seriousness of the comment and whether he had a plan to carry out his comment; we learned recently that she had not. The staff did immediately reach out to [Parent], and we knew that he was seeking a counselor. We were confident that [Parent] would bring that up with the counselor. This year the [District] has developed a *Suicide Ideation or Attempt Response* protocol. Staff are being trained in this protocol and it is being implemented.

31. On November 5, 2019, the Student was suspended.

32. Also, on November 5, 2019, the special education teacher emailed several of the Student’s teachers and stated she would be pulling the Student from art, PE, and “opps class.” The special education teacher stated, “depending on how fast he makes progress will determine when we will get him back into the building.”

33. On November 6, 2019, the Student had a “reengagement meeting” following his suspension and started a new schedule:

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| • 1 st : Blue Building (BB) English Language Arts (ELA) (special education) | • 3 rd : BB ELA (special education) |
| • 2 nd : BB Art, PE (special education alternative PE) | • Lunch/Recess – delivered, recess: paraeducators bring lunch back (special education) |
| | • 4 th : BB (special education) |

- 5th: BB (special education)
- 6th: BB science escorted (special education)

34. On November 12, 2019, the Student’s IEP team—including the District’s director of special services (director), school psychologist, special education teacher, and Parent⁶—met to develop the Student’s annual IEP.⁷ The IEP included updated reading and math standardized assessment scores from the fall of 2019 and noted the Student’s behavior had been escalating. The IEP included the following annual goals, with progress to be reported at the trimester:

- **Behavior:** “By 11/13/2020, when given verbal direction by an adult [Student] will follow a verbal direction by complying improving responsibility and decision making from taking longer than 5 minutes to comply to complying within 20 seconds of receiving the direction for 4 out of 5 direction following opportunities as measured by weekly progress monitoring data.”
- **Behavior:** “By 11/13/20, when given a stressful task or situation [Student] will choose a self-calming object/activity improving self-regulation from 0 out of 3 opportunities to 4 out of 5 opportunities given minimum cues as measured by weekly incident data.”
- **Math:** “By 11/13/20, when given a one step equation with an unknown variable (addition, subtraction, multiplication or division) [Student] will solve for unknow variable improving Algebraic sense from 0 out of 10 equations to 8 out of 10 equations as measured by monthly progress monitoring data.”
- **Math:** “By 11/13/20, when given a division problem that contains a decimal [Student] will correctly solve improving calculation skills from 0/10 to correctly solving 8 out of 10 problems as measured by monthly progress monitoring data.”

The IEP included several accommodations and modifications: more time on assignments; multiplication table; separate environment; and, modified assignments. The IEP also provided the following specially designed instruction in the special education setting:

- Adaptive PE: 63 minutes, 5 times per week (special education teacher)
- Math: 65 minutes, 5 times per week (special education teacher)
- Behavior: 220 minutes, 5 times per week (special education teacher)

The IEP noted the Student would spend zero percent of his time in the general education setting and would be in a self-contained classroom. The IEP noted the Student would

⁶ The IEP was not signed by the Parent, a hand-written note stated: “Mom attended, but did not sign until we had final copy. She did not come back to sign.”

⁷ The District’s response noted the IEP team did not include a general education teacher and stated that while the Student was not participating in a general education math class, the Student qualified in the area of math, thus a “general education math teacher should have been in attendance or officially excused through the use of an Excusal form.” The District stated it took steps to evaluate this practice, “as well as all of our practices” and stated: “The special education staff from ESD 101 have been consulted and will be providing a random file review, and examine our special education processes...Additionally, the Special Education Director and Special Services Secretary will perform monthly random file reviews (approximately 5% of files). All special education staff will review special education procedures as outlined in [District policy] by 6/11/2020.” In additional information provided by the District, the superintendent noted the ESD visit was delayed by the school facility closures, but that they were working with the ESD to reschedule.

participate in “an adaptive PE class because his behaviors make it unsafe for him to participate in a general education PE program.”

35. On November 20, 2019, according to the District response, the special education teacher, director, and several other special education staff members visited another school district in Washington to “visit their program(s) to support middle school aged children who have challenging behaviors.” The other district shared their “program of implementing behavior programs and behavior tracking,” wherein “all special education students are tracked using a 1 through 4 level system.” The District stated it began to implement a behavior tracking level system similar to the other district’s model at the middle school. The District stated, “the behavior tracking system and the ability to move from one level to another was shared with [Parent] during several of our meetings. The tracking system was explained to [Student].” The generic level system was as follows, in relevant part⁸:

Level 3:

- Student integrated into general education classroom with pull outs for special education services
 - With added supports, plans, and strategies put into place by [students of concern (SOC)] meetings, weekly special services [multi-disciplinary team (MDT)] meetings, meetings with parents and student
- Tracker in place
 - Weekly incentive (depending on student’s preference) given for 4/5 days with 80%, 80% - 29/36 points on tracker
- Move back to Level 4
 - 10 consecutive days → with 8/10 days with 80% of points (29/36) on tracker.
- Level drop to Level 3
 - Determined by office referrals, 50% (18/36) of points or less on majority of days on tracker, SOC meeting or IEP behavior meeting with teachers and parents, special service MDT meetings

Level 1:

- Student in alternative placement
 - Classroom alternative placement in resource room for all classes
 - Loss of mornings, lunch and recess, and after school
- Tracker in place
 - Weekly incentive (depending on student’s preference) given for 4/5 days with 80%, 80% = 29/36 points on tracker
- Social Emotional Curriculum
- Move back to Level 2
 - 30 days → 10 consecutive days student can earn back class or loss if 8/10 days are 80% of points (29/36) on tracker
- Drop down could be to half day program

Movement Between Level Incentives

To celebrate movement between levels, student will have choice of incentives to celebrate their movement between levels. Choice are, but not limited to:

⁸ In the District’s documentation, the Student was only recorded at being at a level 1 or level 3; therefore, for brevity, the description of level 2 and level 4 are omitted from this decision.

- Movie or free period in a class period of their choice
- Special lunch
- Large candy bar

The tracker allowed students to receive points: a zero ("off task and did not meet expectations after warnings/redirections/reminders from teachers"), one ("on task some of the time and met expectations after many warnings/redirections/reminders from teachers), or two ("on task and met expectations with 1 or no warnings/redirections/reminders from teachers"). Points could be earned in each period in the following categories: safe ("hands and feet to self; good choices when angry"), respectful ("follows directions; uses kind words"), and responsible ("on task; completing work well").

36. On November 25, 2019, the Student received a suspension for kicking other students.

37. According to notes kept on the Student's behavior, the following was recorded for November 2019, summarized in relevant part:

- **November 4:** Student told a paraeducator "Shut up no one wants to hear your stupid voice;" Refused to work; Yelled; Threw a chair;
- **November 6:** Threw items and chairs; Tipped over table; Yelled; "Hit microwave, tore off counter cover, broke white board in 2 pieces, and threw book;" Refused to follow directions;
- **November 12:** Student "did not listen to direction to stay on task and his own work;" Tore up assignments; "Hit iPad on head, walked into walls, hit head on wall;"
- **November 15:** Refused to complete work; Punched a wall; Refused to follow directions; Called teachers names; Threw things; Yelled;
- **November 18:** Distracting behavior; Yelled and argued with another student; "Kicked the wall and hit a chair against the wall;" and,
- **November 20:** Yelled at substitute teacher – "'I'm not working with her', 'Stupid'..."

38. On December 9, 2019, the special education teacher emailed the principal and several paraeducators regarding the "plan in place for [Student]." The teacher stated that over the past three weeks, the Student had earned recess back and the attached plan was in place, which she went over with the Parent during conferences. The teacher stated she would go over it with the Student that day, and the plan "should be tight enough to make sure he only gets recess if he is using his strategies." The attached plan stated:

[Student] Plan

December 9, 2019

- Earned recess back.
- May go out to lunch and recess if work is completed in his classes, he speaks respectfully, and follows directions.
- Lunch and Recess losing behavior: throwing anything in class out of anger or snowballs at the building, swearing and or yelling at a teacher, choosing not to do any work because he does not want to do it (must see effort if not completed)

Steps for Earning back PE and Art

- 2 consecutive weeks of 4/5 days with at least 4/6 classes with a mark in all three areas.
- At the end of the week he will get a prize if he received 4.5 starred days.

39. As of December 9, 2019, the Student's schedule was as follows:

- 1st: Special Education
- 2nd: Special Education (alternative PE)
- 3rd: Special Education
- Lunch/Recess (general education)
- 4th: Special Education
- 5th: Special Education
- 6th: Special Education

40. On December 11, 2019, the principal responded to the special education teacher's December 9, 2019 email and stated they were "very close to an attendance contract with [Student]" so, "Do NOT send him home for behavior. Remember...I must approve all suspensions prior to calling parents."

41. On December 18, 2019, the Student was sent home because he "climbed up the wall, drew on a desk, and was punching walls and the water fountain." The special education teacher planned to meet with the Parent when she arrived to pick the Student up. According to the special education teacher's calendar, she and the director met with the Parent.

42. On December 19, 2019, following the behavior incident on December 18, 2019, staff filled out a "critical debrief form" and recorded the following:

- **What went well?:** "Refocus and redirect Student. Student was very upset with missing recess due to lack of work. Throwing, yelling, very physical."
- **Factors leading to success:** "Let him get some frustration out and refocused him on something different."
- **Duplicating success:** "Reminding how important work is to get done so recess is an option."
- **What could have been done differently:** "We can learn different ways to redirect."

43. According to notes kept on the Student's behavior, the following was recorded for December 2019, summarized in relevant part:

- **December 2:** Student was told he could not go on computer, then he "went to mat room and spilled mop bucket water on floor and mats. Threw dish rack with dishes in it on floor;" Refused directions; Threw snowballs at the windows and building; Threw a football at another student; Student received a write up;
- **December 3:** Student had a hard time listening and following directions; Threw sand everywhere; Left class without permission; "Slamming doors and went outside...started to pound on the door so someone can open it;"
- **December 11:** Refused to do work or follow directions; Pushed computer items off desk; "Kicked the door, slammed door, and kicked washing machine and slammed desks together;" Threw supplies and a broom; Yelled insults; Threw snowballs; "Got on ALEKS, I said the other 6th graders were working in another room because he had been getting made a lot. [Student] said 'F*** you, I'm going home.' Playing games on computer, texting...";
- **December 13:** Refused to do work; Refused to listen to directions and redirections; Hit things with a yardstick; Fighting with another student; Threw snowballs at the building and threw snow inside;
- **December 16:** Refused to work, on his phone; Yelled at teachers and students; Threw phone; Threw and broke a cup; "Pried closet door open and broke lock. Sprayed board with [cleaning solution] and hand prints on board;"
- **December 17:** Punched the wall; Yelled at teacher; Refused to listen to directions; "Turned it around and earned gym time;"

- **December 18:** Went to wrong class, and refused to work; Kicked things and climbed on desks; Drew on desk; Punched wall; "He de-escalated when he was where he wanted to be;" Refused to go to class and argued; Threw snowballs; Broke supplies and threw things; Sent home; and,
- **December 19:** Refused to follow directions; Yelled; Called home without permission; Said he "did not want to work."

44. The District was on winter break from December 23, 2019 through January 3, 2020.

45. On January 9, 2020, the Student escalated after he lost his recess and broke a door. Following the behavior incident, staff filled out a "critical debrief form" and recorded the following:

- **What went well?:** "Stayed calm and let him vent. He was able to get frustrations out by throwing and punching things...Calm demeanors, enough staff and communication. Students were kept safe."
- **Factors leading to success:** "Staying calm and letting him vent and regroup...Knowing communication chain, enough people in building to fill in, locked door, alternate exit."
- **Duplicating success:** "By always trying to stay calm and use a calm voice...Continuation of ample staff and communication. Continuation of closing doors and having 2 exits."
- **What could have been done differently:** "Communicating better. Having work out and explain what needs to be accomplished to earn recess...Reminders throughout class of what is expected to earn recess."
- **Learning and application for the future:** "Trying to communicate better about work that needs done...Reteach every period what is expected."

46. Also, on January 9, 2020, the special education teacher and director met with the Parent. According to the notes from the meeting, they went over the level system and behavior tracker. The notes stated, "This plan was similar to the one implemented in December, but was more black and white and layed [sic] out." According to the notes, the Parent shared concerns about the plan and two weeks being too long for the Student. Regarding the length of time, the notes summarized "that the length of time would show the necessary use and growth of coping skills to earn his way back into the building."

47. On January 15, 2020, according to text messages between the special education teacher and director, they met with the Parent and Student that day to "go over his behavior tracker and introduce the level system." The text messages also indicated they planned to meet with the Parent on January 17, 2020.

48. On or around January 17, 2020, the Parent attempted to transfer the Student to a different Washington school district.⁹ The Parent's transfer application included a letter, which included concerns regarding bullying that she felt was not being handled appropriately by the District. The Parent stated the previous year went well, and the Student went to behavior therapy and improved until the bullying this year. The Parent, in the letter, stated because of the bullying, the Student "was even upset enough to make a comment to his teacher about wanting to kill himself." The Parent wrote:

⁹ On January 17, 2020, the other school district rejected the transfer request for the following reason: "The reason for denial is that space is not available as the grade level programs are at capacity."

I immediately put him back in behavior therapy so he could figure out how to cope with the situation better before he were to actually make a suicide attempt. The school dismissed this comment as if it didn't even happen; when it was his teacher that informed me of what he said to her. Because of his weekly therapy sessions along with physical therapy, and the school sending him home frequently (because it was just easier than dealing with him) he was flagged per the truancy policy...For the month of December [Student] missed most of his behavior therapy sessions due to holidays and his father being home from work. So he has now been fired as a patient from that facility...

The Parent stated in her transfer request that she wanted the Student to receive counseling services from a male counselor and go to a school with a male principal. She stated, "I do not condone my son's chosen response coping behavior, but the actions by the school to correct this are even more disturbing."

49. On January 27, 2020, the District held a "truancy and Behavior Plan meeting" with the Student, Parent, principal, director, special education teacher, and nurse. During the meeting, they created and signed an attendance contract. Then the team had an IEP meeting to discuss the Student's behavior plan, which according to the notes (recorded in a Google document: "[Student] Plans" or "plans document"), included a discussion of the following:

- Parent wanted to "challenge" the IEP, "specifically the behavior plan and placement of [Student] is not working, causing him anxiety;"
- Director shared incorporating more project based and community work in the Student's day to "get him out of the Blue Building;"
- Principal suggested having the Student attend lunch, recess, and science "in order to give [Student] a less constrictive schedule to see if it will help behavior;"
- Parent agreed and it was agreed to initiate this plan; and,
- Parent will come to a meeting every Friday for a week review, and to discuss the IEP.

The plan discussed included:

- 1st: Blue Building (Special Education)
- 2nd: Blue Building (Special Education)
- 3rd: Blue Building (Special Education)
- Lunch/Recess: lunch server or lunch/recess with support
- 4th: Blue Building (Special Education)
- 5th: Blue Building (Special Education)
- 6th: General education science

The plan also included that the principal would meet with the Student every Friday afternoon to "review how week went with write ups and trackers, and to assess schedule and plan based on the weeks behaviors." The notes from the meeting also included the following:

- **Ideas to initiate:** "Help [staff]: clean lunch room, help repair and do projects ([Student] did not like the idea of helping clean up the lunch room, but did want to help fix)."
- **De-escalation plan:** "[Student] can have phone on desk and can call home if he is escalated, he can request to talk to [behavior interventionist] if she is available."

50. On January 27, 2020, after the school day ended, changes were made to the Student's plan based on behavior that day. The plan document noted the principal, director, and special education teacher brainstormed "ways to better support [Student] and his behavior throughout the day. The Blue Building is not currently a successful placement, and we want to

see if he can be successful being back in the building throughout the entire day.” The principal called and left a voicemail for the Parent, explaining the changes.

51. On January 28, 2020, the special education teacher emailed the paraeducators and stated they were going to try a new schedule for the Student, as follows:

- 1st: General education class with special education teacher
- 2nd: Art/PE with special education teacher
- 3rd: Math with special education teacher in the blue building or computer lab
- Lunch and Recess: lunch serving this week and recess with staff support
- 4th: Special education teacher in Blue Building (SEL/Opps)
- 5th: General education ELA class with special education teacher
- 6th: General education ELA class with special education teacher

The special education teacher stated, “It is not working in the blue building, and we are going to try putting him back in the classes to see what will happen, and maybe the observations and data we get will help gain us more support from home.” She stated that this schedule was for the current week and they would revisit it Friday afternoon with the Parent.

In the plan document, the notes indicated the principal and special education teacher went over this new schedule with the Student on the morning of January 28, 2020, and that the Student “said he was excited.”

52. Also, on January 28, 2020, the principal sent an email to staff regarding the new plan for the Student. The principal stated: “He will be in the main building with sped support. As with every student in this school, if you have an issue that requires an office referral please make sure to send it to the office.” The principal stated the Student’s office referrals would be reviewed every Friday with the Parent. The principal also stated, “Please remember we are in the business of de-escalation. It is ok to disengage and talk to the student at a later time.”

53. On January 31, 2020, one of the general education teachers emailed the principal regarding the Student:

This week [Student] has returned to the classroom. On Monday, he was in my afternoon class and for the rest of the week, he has been in my first period class. [Student’s] attitude has been poor all week. He doesn’t work even when prompted by [special education teacher] or myself. He is distracted and distracting. On Wednesday, my students were taking a test and [Student] was supposed to be working on an assignment to help him get caught up...He spent more time twirling papers on his table and spinning them off the table then he did working...Even though I had a talk with...about his seating assignment, [Student] grabbed a chair from his table and dragged it to the front of the room smacking it around and off my garbage can to try to sit with his group of friends. I said, ‘[Student], you need to move to your assigned seat.’ He immediately was defiant and said, ‘Why?’...He marched out of the room and was followed by [special education teacher]. He returned to class, but didn’t do much. [Special education teacher] took him out of the classroom because he was disrupting the testing environment in the room.

Ever since [Student] has returned, I've noticed the atmosphere has changed. Students are going back to their shell shocked, almost PTSD like coping mechanisms. They seem on edge like they are waiting from him to blow up...These kids should have a safe environment to share and learn with each other and with me. When [Student] is in the room, he tries to take over the focus and attention...He requires a lot of attention and blurts out constantly...He has no control over his mouth. He says things at times that are inappropriate and then waits for students to pay attention to him. I find myself constantly trying to redirect him, refocus him, or trying to keep him in a manageable state. However, the rest of the class loses out on my attention...Having [Student] back has been trying on the entire class. If he can't manage his behavior, he will continue to have a negative impact on the learning of his classmates.

54. Also, on January 31, 2020, the principal emailed a different general education teacher and stated they were meeting with the Parent that day. The principal asked for an "email that describes what [Student] has done to the culture of your classroom." The general education teacher responded with the following, in relevant part:

January 28

When [Student] came to 5th period I had him come in with me by himself. We went around the room and I explained our class procedures/rules. He remembered everything from when he was in class this fall. When we began to do an assignment he got up and went to the bathroom...During individual reading time he didn't care for the books in the classroom. He asked if he could read a book with another students. I told him this was silent individual reading time. He was mad and said 'what am I supposed to read, a stupid dictionary'...I brought him to our class library and told him he could pick out something from the shelf. He eventually picked a book out and returned to his seat but didn't read...

January 29

...[Student] became very frustrated on the ipad and started typing VERY HARD on the keyboard. He also was playing with it roughly. I told him that is not how we treat the ipads...6th graders do not use ipads in that way. He said 'well I'm special' I said 'No you are a 6th grader like everyone else in this room and you will have the same rules as them.' Then I sat with him and reset his grade level reading...to first grade reading level hoping this would ease his frustration. He eventually did 2 questions...I caught him...looking up random stuff online...Then it was time to write a friendly letter. He stabbed himself in the palm with a pencil then proceeded to get out of his seat and yell and make a huge ordeal out of this. I looked at his palm and I didn't see any injury so I told him to wash his hands. He got made and said 'there's led in my hand' and then stormed out of the room without permission...He later came back and sat down. He did write a letter...It was not very friendly. During our class book reading time I play the audio and the students followed along in their books. He NEVER even looked at the pages. He eventually put his book away and got out his library book. I told him during this time he needed to follow along with our class book and put his library book away. He slammed his book shut.

(Emphasis in original.)

55. Later, on January 31, 2020, the two general education teachers emailed the principal and asked if they could join the meeting that day with the Parent. The principal responded and stated the Parent was "telling us that we don't listen to her and she wants a say in the IEP. She

requested to have it reopened. So part of the meeting will be on if there's anything in the general IEP that she wants changed." The principal further stated he took the general education teacher's emails and "broke down the behavior to 'task avoidance' and 'defiance'" and stated he was going to share the information with the Parent to come up with a plan for the Student. The principal stated there would be "expectations for the disruptive behavior to cease with consequences laid out if it doesn't."

56. In the Student's plan document, notes were added on January 31, 2020, including: "went over teacher email and feedback, ideas for walking out?" and "new implementations:"

- "Lower noise and disruption in class ([special education teacher] tally disruptions);"
- "Defiance office referral;"
- "Remove from class to work on assignment 1:1 if too disruptive. If [Student] walks out of class, step into library to cool off not walk down hallway NEEDS TO ASK FIRST;"
- "Try and send things home;"
- "Phone in locker;" and,
- "No Blue Building."

57. On February 3 and 4, 2020, the District "tallied" the Student's behaviors in all periods. Behaviors recorded included: Not wanting to go to class; making noises; interrupting, talking over people, and blurting out; walking out of class; destroying property; throwing and hitting things; calling Parent and father; and, refusing to work. The tally also included a few times the Student worked on class work, worked with a partner, and participated or transitioned appropriately.

58. On February 6, 2020, the Parent, special education teacher, general education teachers, and director met to discuss the Student's behavior plan. Based on documentation in the complaint, the Parent shared that she thought the director was a "trigger" for the Student.

In the Student's plan document, notes were added on February 6, 2020, which stated the group reviewed the Student's behavior and "set into place no recess (go to lunch and recess in computer lab with [staff], trial with friend) and waiting a few minutes after class before going to the next class to make sure there are less students in the classroom." The notes also indicated the following:

- The Parent was concerned Student would be frustrated with no recess and shared concerns about "just throwing him back in all the classes instead of transitioning."
- The special education teacher and Student would "talk about past bullying issue."
- "Told [Student] about recess and hallway passing, he took it well."
- "Half math half recess to get him some recess time."
- "Online work program if pulled from gen ed class."
- "FBA: signed..."
- "Emergency Response Protocol: prepare one to be ready to sign..."

59. Also, on February 6, 2020, the Parent signed consent to conduct a functional behavioral assessment (FBA) for the Student.

60. Later, on February 6, 2020, the Student was involved in a fight during PE. In an email from the director to the superintendent and principal, the director stated he notified the Parent of the incident and Student's suspension. The director stated that after he called the Parent, the Student threw a calculator at him, striking him in the chin and chest. The director wrote that because the Student was reaching for another item to throw, he restrained the Student's hands until he was calm. A few minutes later, the Student flipped over the conference table and was again restrained. He wrote the Parent arrived shortly thereafter to pick up the Student.¹⁰
61. Later, on February 6, 2020, the director emailed the special education teacher and another staff member and asked if they had time to help do observations of the Student for the FBA.
62. On February 13, 2020, the Student underwent a threat assessment following the fight that occurred on February 6, 2020. The threat assessment noted, among other behaviors, that the Student had made "comments about wanting to kill himself, wishes he wasn't born, wonders why everyone thinks he's a bad kid." The threat assessment noted the Student's team would review his educational plan, noted he was "supervised in every setting," and stated they would "continue to look for a schedule that makes him successful." The threat assessment also indicated they were reaching out to a counselor and conducting an FBA.
63. Also, on February 13, 2020, the special education teacher emailed the principal regarding the Student's positive behavior reinforcements. The special education teacher wrote:
- These are the positive reinforcements and strategies to focus on behavior implemented throughout this year so far. They are not in order, but the discussions are ongoing. The discussions have become more challenging because he escalates when we talk about behavior and dismisses he has done anything wrong or he will not say he doesn't want to try anything.
- Reflection forms (what happened and what could have been done differently) for behavior when he lost recess on occasion earlier in the year, but when he lost recess long term and had to earn it back he had alternative free choices in the blue building for recess.
- Discussions about strategies to use when mad: use a red card before leaving class when frustrated, daily morning check ins with [staff person] to see how he was doing that day, walking out of class and calling mom, reading a book or picture search and find book for a break, ask for a break when frustrated, discussions about how we were there to help and

¹⁰ The District hired an outside investigator to investigate the restraint that occurred on February 6, 2020 based on allegations made by the Parent, including improper use of restraint, failure to follow the Student's IEP or BIP, and failure to support the Student while he was bullied. According to the investigator's report, the Parent called the police following the incident. Also, according to the report, the director was often the staff person called when the Student is escalated and the director "has successfully been able to de-escalate [Student] without using physical restraint." In sum, the outside investigator found: the restraint was not improper; that the Student was not allowed to call the Parent when escalated on February 6, 2020 in contradiction to agreement on January 27, 2020 that this would be part of the Student's behavior plan, but otherwise followed the Student's IEP and BIP; and, that the District responded to the Student's reports of bullying.

support him, focused on giving praise when he completed work, used kind words, and followed directions.

Finish a worksheet then 10 minutes of preferred time (he wasn't transitioning back to work after preferred time)

Ability to earn basketball in the gym 5th period

Earn candy if he got 10 ALEKS topic done

Earn a prize at the end of the week if 4 out of 5 days were 80% on tracker, and after two weeks of 4 out of 5 days he would earn back a class of his choice or recess.

64. Also, on February 13, 2020, OSPI received the Parent's request for a complaint investigation and opened this complaint.

65. On February 19, 2020, the special education teacher's calendar listed a meeting with the Parent.

66. On February 19, 2020, one of the general education teachers emailed the principal and the other general education teacher regarding expectations for the Student. The teacher stated he had the "same expectations for [Student] as I do for all of my students." These include: "1. Be a positive member of the classroom. 2. Do not interfere with the learning of others or with the teacher's ability to teach. 3. Do your work. 4. Follow directions and redirections without arguing."

67. Also, on or about February 19, 2020, a behavior plan "at-a-glance" was created for the Student, for the behaviors of: "verbal (insults and yelling) and physical (punching, kicking, and throwing things in the classroom) aggression." The plan encouraged the Student to use a strategy: "ask for break, walk away to designated place" and outlined the following:

Prevention	Teaching New Skills	Responding to Behaviors
<ol style="list-style-type: none"> 1. Social Emotion Curriculum Taught (Brainwise) 2. Tracker to earn back recess/lunch and classes with weekly prizes if 80% shop for shoes, candy, have friend come out for recess 3. Provide work that is easier to build confidence 4. Project based learning to help get him engaged: 	<ol style="list-style-type: none"> 1) Brainwise curriculum 2) Discuss strategies and provide him with new ones <ul style="list-style-type: none"> • Walk away to mat room • Use red, yellow, green cards • Set timer for when he walks away for break, 5 minutes, then ask to come back • Punching bag 	<p>If [Student] engages in target behavior</p> <ul style="list-style-type: none"> • Document behavior • 0's on tracker if not re-directed • Continued physical aggression (punching, kicking, throwing classroom items) • Call [principal] • Call 911 and [Parent]¹¹ <p>If [Student] engages in expected behavior</p>

¹¹ According to additional information provided by the District, the police were called multiple times "after the February 6th incident when [Student] acted out aggressively."

<p>chalkboard paint, flower-beds, lunch server</p> <p>5. If work completed earn time at end of class for free time or piece of candy</p> <p>6. Meetings Friday afternoon to review week</p>		<ul style="list-style-type: none"> • Positive feedback • 2 or 1 on tracker which leads to prize at end of week • Good phone call home • Bright spot when in bulletin
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68. Later, on February 19, 2020, the special education teacher emailed the paraeducators working with the Student and the principal regarding the plan for the Student. The special education teacher wrote, for reference:

- Always close doors completely behind you to ensure they lock.
- At this point he is not in the main building for anything except with me in the weight room if we go there for PE.
- [Paraeducator] works with [Student] 1st, I will be there with him the rest of the periods, and [paraeducator] will be with him at lunch and recess in the blue building with [paraeducators].
- If he is escalated I will come ask for assistance so do not approach.
- If he is escalated, [principal] is out there for support and the police have been called, everyone is to go to the library if not already there.
- [Student] walks around the main building after school, and does not go into the building, and he is dropped off at the blue building in the morning.
- [Paraeducator's] lunch is now 3rd so she can be in the blue building 4th.
- [Another paraeducator] is with the 8th grade math group.
- [A different paraeducator] is with the 5th grade reading group.

69. Finally, on February 19, 2020, the Student's plan document was updated with notes, including that counseling appointments were set up and a release for communication was signed between the school and counselor's office.¹² And, the Student had a new schedule:

- | | |
|--|--|
| <ul style="list-style-type: none"> • Before School: Dropped off at blue building • 1st: Special education (paraeducator) • 2nd: PE with special education teacher (weight room, outside) • 3rd: Special education teacher • Lunch/Recess (special education) | <ul style="list-style-type: none"> • 4th: Opps (outside or mats) (special education teacher) • 5th: Special education teacher • 6th: Special education teacher • After School: Walk out around with paraeducators and not go into main building |
|--|--|

70. On February 27, 2020, the special education teacher's calendar listed a meeting with the Parent.

71. Also, on February 27, 2020, the Parent submitted "intent to home school" paperwork. According to the Parent, they moved and the Student is now attending school in a different school district in Washington.

¹² In additional information provided by the District, the District clarified that this was a private counselor the Parent was in the process of setting up for the Student. The District noted the Student had previously seen a behavior counselor outside of school.

72. On March 13, 2020, the District's second trimester of the 2019-2020 school year ended. In its response, the District provided a "student guidance" document, which recorded the Student's scores on District standardized testing. The student guidance tracker did not include information about the Student's IEP annual goals.¹³ The District also provided the Student's academic history record (transcript), which recorded his grades in each class. The transcript indicated a general decline in grades since the start of the 2018-2019 school year.
73. The District also provided additional documentation regarding the Student's behavior referrals during the 2019-2020 school year, of which the Student had three major referral and 47 minor referrals. Generally, between September 2019 and February 2020, the referrals escalated from a few in September and October 2019, to multiple referrals a day on many days in January and February 2020. Referrals were for behaviors such as: physical contact/physical aggression, disrespect, defiance, disruption, inappropriate language, and property misuse. The referral forms had a section to record staff interventions—many of the forms had nothing listed, but several forms noted: other (not specified), other-out of school suspension, verbal cue, re-teach expectation, seating change, contact parent, loss of privilege.

The documentation also included examples of the point sheets and level system tracker the District used. In January and February 2020, the Student was usually recorded at being at a "level 1" (although there was one day he was at a "level 3") and ranged from earning zero to 31 points out of 36 points. These tracking sheets also included notes when the Student received a referral or lost recess.

On a different tracking sheet, the District tracked when the Student completed work, followed directions, and used kind words between October 23, 2019 and January 10, 2020.

74. According to the Parent's complaint, the District failed to update the Student's IEP and behavioral intervention plan (BIP) when necessary and amended the IEP without the IEP team. The Parent also alleged the Student has had the same IEP for the past two years.

75. According to the District's response, the District:

Continually updat[ed] and modifi[ed] [Student's] behavior plan throughout the time period in question. [Parent] and [Student] were a part of the overall development of the behavior plan. Several changes were made to the Behavior Plan based upon input from [Parent] and [Student]. [District] met with [Parent] and [Student] at least weekly sometimes biweekly as the District sought to adjust the program for [Student].

The District further stated it "continued to modify and update [Student's] behavior plan. At times, the plan was modified multiple times a week depending on the [Student's] behaviors." The District stated, "the necessity to frequently modify his behavior plan made including it as

¹³ In additional information provided by the special education teacher, she stated she creates progress reports at conference time, at the trimester. The special education teacher stated the Student's IEP meeting was held around conference time (November 2019), and that progress was reviewed. The special education teacher stated she met with the Parent during the fall and spring conferences to go over progress. The District was not able to provide copies of the progress reporting for review in this investigation.

part of his IEP impractical.” The District stated the Parent and staff were “all closely involved with the development and implementation of this behavior plan.”

The special education teacher also provided further information regarding the implementation of the Student’s IEP; she stated:

The specially designed instruction focused on teaching self regulating strategies to use when frustrated or mad. We structured class time to incorporate breaks, and encouraged the [S]tudent to ask for breaks using the self-regulating strategies priorly [sic] discussed with the [S]tudent (walking away, reading/looking at a book, use of red card, calling mom). The idea was to make sure the student knew he could get a break if he asked for one. The replacement behavior was asking for a break or using a self regulating strategy.

CONCLUSIONS

Issue One: IEP Development/Amendment – The Parent alleged the District failed to properly develop the Student’s annual individualized education program (IEP), amended the IEP without a properly constituted IEP team, and failed to amend the Student’s IEP and behavioral intervention plan (BIP) when necessary.

Annual IEP

The Parent, in her complaint, stated the Student’s IEP had been the same for the last two years. A student’s IEP must updated annually to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student’s anticipated needs; or any other matters. In general, if a student is making expected progress, this means a student’s IEP will change from year to year.

The Student’s previous IEP was developed on November 13, 2018, meaning the annual IEP deadline was November 13, 2019. The Student’s annual IEP meeting was held on November 12, 2019, within the required timeline. The Parent’s allegation that the Student’s IEP had been the same for the last two years was not supported by the documentation. In comparing the 2018 and 2019 IEPs, the present levels were updated, information about the Student’s escalating behavior included, the Student’s annual goals in math and behavior updated, and additional accommodations added. The Student’s annual IEP was updated; however, upon investigation, it appears the more pressing concern was whether the IEP was updated to address the Student’s escalating behaviors, which is addressed further below. Here, OSPI finds no violation with respect to the timely development of the annual IEP.

The Parent also alleged that the IEP was amended without a properly constituted IEP team. A 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; a representative of the school district; an individual who can interpret the instructional implications of evaluation results; any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the student.

At the November 12, 2019 annual IEP meeting, the IEP team consisted of the Parent, the District's director of special education services (director), the school psychologist, and the special education teacher. The District acknowledged that a general education teacher did not attend the meeting and that they did not follow excusal procedures. Because the Student had previously participated in general education and likely would in the future, based on his behavior plans a general education teacher should have attended the meeting. Thus, OSPI finds the District in violation.

The District stated it reviewed its practice and proposed corrective actions, and planned to have special education staff from the educational service district (ESD) consult, conduct a file review, and review the District's processes. And the District stated the director and special services secretary would perform monthly random file reviews, and special education staff would review District special education policy and procedures. OSPI accepts these proposed corrective actions.

Amending the IEP and BIP to Address Behavior

The Parent alleged the Student's IEP and BIP were not updated when necessary to address the Student's escalating behaviors, and alternately that the District amended the behavior plan without the IEP team. A student's IEP must be reviewed and revised periodically, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions, strategies, and supports for a student whose behavior continues to impede the student's learning. A district should use a functional behavioral assessment (FBA) and BIP proactively, if the IEP team determines appropriate.

Response to Student's Behaviors Generally

The District stated, in its response, that it continually updated and modified the Student's behavior plan, that the Parent and Student were part of the development of the behavior plan, and that the District met with the Parent and Student on average weekly to address the Student's behavior and adjust the plan. This is evident from the documentation—the District frequently met with the Parent and Student and worked to address the Student's behaviors as they escalated in frequency and severity throughout the 2019-2020 school year. The documentation shows that the District and Parent met or had phone calls to discuss behavior, behavior incidents, and strategies on at least: September 19, October 3, October 29, November 6, November 12, 2019, January 9, January 15, January 31, and February 6, 2020. The District discussed, as early as of September 2019, additional paraeducator staff support for the Student. The District also sent staff to another Washington district to learn about and observe its behavior program. The documentation indicates that at times, the Parent agreed with the behavior planning being done and at other times, expressed concern. On this point, the District should be given credit—it was aware of the Parent's concern and worked diligently to address the Student's behavior.

Amending the IEP

An IEP team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. This means that in most cases in which a student's behavior impedes his or her learning or that 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. This could be in the form supports, accommodations, and services in an IEP or a BIP. The special education regulations emphasize the consideration of *positive* behavior interventions—strategies and instruction that can be implemented in a systematic manner 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 own behavior.

Here, the Student's IEPs included social emotional or behavior annual goals and specially designed instruction in behavior. However, the IEPs did not include any accommodations, supplementary aids and services, related services related to behavior, or positive behavior strategies or supports (beyond the annual goals). (This does not mean supports and services were not provided to the Student, as discussed below.) However, despite increased paraeducator support throughout the 2019-2020 school year, the Student's IEP was never modified to document this support. And, while the Student's various behavior plans included different strategies, including schedule changes, an attendance contract, weekly meetings, project-based learning, allowing the Student to call the Parent to deescalate, and increased one-on-one support from the special education teacher—none of this was included or referenced in the IEP.

The District stated in its response that "at times, the plan was modified multiple times a week depending on the [Student's] behaviors...the necessity to frequently modify his behavior plan made including it as part of his IEP impractical." While OSPI understands the reality of this and the need at times to have the flexibility to try different behavior strategies, this does not mean the behavior should have been addressed outside of the IEP process. There are ways to address this reality; for example, an IEP or BIP could have a menu of behavior strategies with the understanding that different strategies would be tried at different times to deal with changing behaviors.

Given the Student's behaviors and Parent's concerns and requests to amend the IEP (e.g., on January 27, 2020 the Parent, at a meeting, stated she wanted to "challenge" the IEP, specifically the behavior plan and placement), the Student's full IEP team should have met to discuss and collaborate on how to address the Student's behaviors. It must be noted that despite the frequent meetings, most of these meetings were not IEP meetings as a general education teacher was not present—generally the Parent met with some combination of the special education teacher, principal, and director. Thus, OSPI finds the District in violation for not meeting as an IEP team to address the Student's behavior and for making changes (placement, discussed below, paraeducator support, etc.) without an IEP team meeting or amending the IEP.

Schedule Changes & Placement

The behavior planning done for the Student focused primarily on changing the Student's schedule and ultimately increasingly restricting the Student's placement—the Student's schedule was changed on October 3, November 6, November 12, December 9, 2019, January 27, February 6, and February 19, 2020. The behavior plans also largely centered around "consequences", such as the Student losing access to recess and the general education setting, and needing to earn these classes back.

Districts are required to provide services in a student's least restrictive environment to the extent possible. Thus, services shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs *only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.*

Here, the schedule changes—and ultimately the change of placement in the Student's IEP—meant the Student was for parts of the school year in a more restrictive setting. It appears this was done in good faith as staff were attempting to find a setting that worked and was productive for the Student. However, there is no indication the Student was provided supplementary aids and services or other supports *in the general education setting* prior to being placed in a more restrictive setting. (It appears the Student did receive additional paraeducator support, but the Student's IEP was never amended to reflect this.) Instead, it appears the Student's setting was restricted, and the Student was required to "earn" back general education time, without the provision of positive behavior strategies or supports. This represents a failure to appropriately address the Student's behavior and a violation of the IDEA.

Further, the Student's placement was significantly changed between the November 2018 and November 2019 IEPs. In November 2018, the Student's IEP stated he would spend 83.9% of his time in the general education setting on a shortened school day. In December 2018, the IEP was amended as the Student began participating in a full day of school and spent 94.8% of his time in the general education setting. In November 2019, the Student's IEP stated he would spend zero percent of his time in the general education setting and would be in a self-contained classroom. In reality, based on the Student's schedules—which were changed to address his behavior—his placement seemed to fluctuate without the IEP being amended. This represents a significant change in placement. The IDEA requires that a reevaluation occur prior to a significant change in placement, which may require the IEP team to meet to determine whether a proposed change would constitute a significant change in placement (i.e., a change that would substantially or materially alter the student's educational program).¹⁴ It does not appear a reevaluation was

¹⁴ See *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016); *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010); See also, *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994) (Summarizing that the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same

completed before changing the Student's placement. OSPI reminds the District that a reevaluation should be completed prior to a significant change in placement—such as a move from 95% to zero percent in the general education setting—and strongly recommends the District review guidance on changes in placement, including OSPI's Technical Assistance Paper (TAP) 5.

Behavior Intervention Plan (BIP)

Finally, for all the behavior planning the District did, it is not clear the Student had a behavior plan that met the definition of a "BIP," as outlined in State special education regulations. A BIP should, at minimum, describe: 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.

In late November 2019, District staff visited another Washington school district to learn about their behavior support program and the District began implementing a similar level and behavior tracking system with the Student. The level system—at level 1 (which the Student was generally recorded at being at)—included: the loss of mornings, lunch and recess, and after school; an alternative classroom placement; weekly incentives and points to earn in a tracking system; a social emotional curriculum; and the ability to move back up a level or drop. The level system also included rewards as incentives. While a level system could be part of a student's BIP, alone it did not include all the elements of a BIP.

It was not until February 19, 2020 that a behavior plan "at-a-glance" glance was emailed out for the target behaviors of insults, yelling, punching, kicking, and throwing things in the classroom. The plan encouraged the Student to use the strategy of "ask for break, walk away to designated place." The plan included prevention (social emotional curriculum; tracker to earn back recess/lunch and classes or earn a prize; provide easier work to build confidence; project based learning; rewards for completed work; and weekly review meetings), teaching new skills (social emotion curriculum; strategies: walk away, use cards, timed breaks, punching bag), and responding to behaviors (document behavior; zeros on tracker; call principal, 911, and Parent if continued physical aggression; for expected behavior positive feedback, 1 or 2 on tracker, prizes, good phone call home, bright spot in bulletin).

Even this does not include all the elements of a BIP as it is missing the instruction or environmental circumstances and does not clearly specify the skills that would be taught and monitored. Here, given the Student's behaviors and the Parent's concerns, the IEP team should have considered

extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements).

whether developing a full BIP would have been appropriate for this Student. It likely would have been beneficial to the Student and staff to have the target behaviors, setting information, positive behavior strategies, etc. outlined in a single document that the IEP team—including the Parent and general education teachers—helped develop. Ultimately, the District made moves in this direction when the Parent signed consent for an FBA in February 2020; although, it appears the Parent withdrew the Student from the District prior to the completion of the FBA. However, given the fact that some of the behavior strategies did not appear to be effective (discussed below) and that the Student’s behaviors were escalating during the fall, the District should have considered conducting an FBA and developing a BIP earlier.

Overall, given the above discussion and the fact that the District addressed behavior largely outside the IEP process, improperly restricted the Student’s placement, and did not timely consider an FBA and BIP, OSPI finds the District in violation. The District will be required to conduct training on responding to student behaviors and positive behavior interventions.

Issue Two: BIP Implementation – The Parent alleged the District failed to implement the Student’s BIP and provoked behaviors that the IEP/BIP was established to address. A district must ensure it provides all services in a student’s IEP—including behavior accommodations, behavior instruction, or a BIP, consistent with the student’s needs as described in the IEP and BIP.

As discussed above, the Student did not have a BIP as defined by State regulations; however, there are examples of the District implementing various strategies to address the Student’s behaviors, including: Recess reflections, which required the Student to think about how he could react differently and strategies to use when triggered; providing the Student opportunities to express frustration; efforts to refocus and redirect, verbal cues; seating changes; being allowed to call the Parent; and providing reminders of and reteaching expectations. The special education teacher further stated the following positive reinforcements and strategies were used throughout the school year:

- Discussion of strategies to use when mad: red card when leaving class, daily morning check-in with staff, calling the Parent, asking for breaks (reading a book, picture search, find a book);
- Instruction on using kind words and following directions;
- Discussions with staff about their role to help and support Student;
- Praise for completed work;
- Giving preferred time when work completed; and,
- Ability to earn basketball in the gym, candy, prize at end of week (related to levels system and earning points on the tracker).

The documentation indicates the levels system was used and the Student was generally recorded as being at a level one and earned between zero and 31 out of 36 points on any given day. The District also tracked when the Student completed work, followed directions, and used kind words between October 23, 2019 and January 10, 2020.

The special education teacher also stated, regarding the Student’s specially designed instruction in behavior:

...instruction focused on teaching self regulating strategies to use when frustrated or mad.
We structured class time to incorporate breaks, and encouraged the [S]tudent to ask for

breaks using the self-regulating strategies...(walking away, reading/looking at a book, use of red card, calling mom). The idea was to make sure the [S]tudent knew he could get a break if he asked for one. The replacement behavior was asking for a break or using a self regulating strategy.

Overall, the District made an effort to address the Student's behavior and was trying and implementing a variety of strategies and supports. Based on the investigation, OSPI believes the question is not whether the District was implementing behavior plans and the IEP, but whether the implementation was effective.

The District did not provide any progress reporting, so it is unclear how much—if any—progress the Student made on his IEP annual goals in social/emotional and behavior. The documentation did include notes and behavior referrals that documented the Student's increasingly frequent and escalated behaviors, which resulted in three major referrals and 47 minor referrals during the 2019-2020 school year (compared to one major referral and 10 minor referrals during the 2018-2019 school year). Generally, between September 2019 and February 2020, the referrals escalated from a few in September and October 2019, to multiple referrals a day on many days in January and February 2020. Referrals were for behaviors, such as: physical contact/physical aggression, disrespect, defiance, disruption, inappropriate language, and property misuse. Given the lack of progress reporting and the increase in referrals, it appears the specially designed instruction in behavior and other strategies were not effective.

Further, there is documentation that certain specific strategies were ineffective. For example, there was discussion among staff that the various schedule changes and a more restrictive placement was not working. The special education teacher noted it had grown difficult to implement positive behavior strategies because the Student "escalates when we talk about behavior and dismisses he has done anything wrong or he will not say he doesn't want to try anything." And, the strategy of taking recess away escalated the Student further—losing recess did not seem to motivate the Student to work, but instead seemed to frequently cause him to escalate *because* he had lost recess (as opposed to losing recess because he was escalated).

However, because some of the elements of the plan implemented were ineffective, this does not mean the District is in violation for a failure to implement the Student's IEP or behavior plans. As discussed above, in issue one, this is more accurately an IEP development issue—the District should have amended the Student's IEP and conducted an FBA earlier to address the potentially ineffective strategies. But, overall, the documentation indicates that while imperfect, the District implemented the Student's IEP and OSPI finds no violation related to the implementation of the IEP as written.

Issue Three: Response to Concern about Suicide Comment – The Parent alleged the District failed to respond to her concerns about the Student's comments about suicide. In late October 2019, the Student made comments about wanting to die. In its response, the District acknowledge that it did not handle this situation properly as, the "staff member that [Student] made that comment to was unclear about how to properly respond." The District stated it did immediately reach out to the Parent. The District also stated it developed a *Suicide Ideation or Attempt Response*

protocol and that District staff were already being trained in this protocol and the protocol was being implemented.

However, there is no specific duty in the IDEA or State special education law to address suicidal ideations. While serious, it is not a special education specific concern. Here, the District told the Parent about the Student's comments. There is no indication the Parent requested an IEP meeting or asked the District to address this concern through a special education process. Thus, OSPI finds no violation.

CORRECTIVE ACTIONS

By or before **June 19, 2020, July 31, 2020, September 4, 2020, September 30, 2020, October 30, 2020,** and **November 30, 2020,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

File Review & Audit

By or before **August 28, 2020,** the District will have special education staff from ESD 101 visit and conduct a random file review, examine the District's special education processes, and make recommendations. *Note:* The District is welcome to complete this step earlier, depending on District building access or if some review is possible using remote technology.

By **September 4, 2020,** the District will provide OSPI with documentation that the ESD visited and conducted its review, including documentation of any recommendations the ESD provided. The District will also provide OSPI with its proposed next steps, if any, based on the ESD's recommendations. OSPI will determine at that point if further monitoring deadlines are necessary.

The Special Education Director and Special Services Secretary will perform monthly random file reviews of approximately 5% of files. On **September 30, 2020, October 30, 2020,** and **November 30, 2020,** the District will provide OSPI with documentation of the file review:

- A list of the Student files reviewed;
- Any errors identified; and,
- Steps taken or planned steps to correct the error.

Training

By **September 25, 2020,** the following District staff will receive training from a trainer who is not an employee of the District: special education administrators, the principal, special education certified staff, including educational staff associates (ESAs), and paraeducators at the District middle school involved in this complaint. The training will cover the following topics:

1. Required IEP team members and excusal procedures.

2. Options for responding to student behaviors through special education processes.
3. Functional behavior assessments and behavior intervention plans.
4. Positive behavior interventions.

The training will include examples. The District is encouraged to work with ESD 101 to identify a trainer and develop the training.

By **June 15, 2020**, the District will provide the trainer with a copy of this decision.

By **June 19, 2020**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By **July 31, 2020**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by August 14, 2020.

By **September 25, 2020**, the District will conduct the training regarding the topics raised in this complaint decision.

By **September 30, 2020**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

Dated this ___ day of April, 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.)