

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-15

PROCEDURAL HISTORY

On March 6, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Tacoma School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA.

On March 7, 2017, 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 March 28, 2017, OSPI granted the District an extension until April 3, 2017, for its response.

On April 3, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on April 5, 2017. OSPI invited the Parent to reply with any information he had that was inconsistent with the District's information.

On April 19, 2017, OSPI spoke with and received additional information from the Parent.

On May 2 and 3, 2017, OSPI received additional information from the District. OSPI forwarded the additional information to the Parent on May 2 and 3, 2017.

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

OVERVIEW

During the 2015-2016 school year, the Student attended a District middle school and was eligible to receive special education services under the category of emotional behavioral disability. The Student's individualized education program (IEP) included a safety plan and a behavioral intervention plan (BIP). The safety plan stated that the Student was allowed to deescalate in a room in the office with the door closed when he was angry or frustrated. Once calm, the Student would notify a trusted adult when he was ready to talk. During the 2016-2017 school year, the Student continued to attend the middle school and his November 2015 IEP was in place. In February 2017, the Student became upset on the bus, and refused to follow staff instructions to exit the bus. As a result, the Student was emergency expelled for ten school days. The District then held a manifestation determination meeting and determined the Student's behavior was a manifestation of his disability. In this complaint, the Parent alleged that the District failed to follow procedures for implementing the Student's IEP, including the Student's BIP and transportation provisions. The Parent also alleged that the District failed to follow special education disciplinary procedures. The District denied the allegations.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on March 7, 2016. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations which occurred prior to the investigation time period.

ISSUES

1. Did the District follow procedures for implementing the Student's individualized education program (IEP), including the Student's behavioral intervention plan (BIP) and transportation provisions?
2. If the District suspended or expelled the Student for more than 10 school days, did the District follow special education disciplinary procedures?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 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.

Provider Responsibility for Implementation: 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(d)(1); WAC 392-172A-03105(3)(a).

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) ESY services, if necessary for the student to receive FAPE; (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first

IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090 (effective January 29, 2016).

IEP Development: Each District must ensure that the IEP team revises the IEP, as appropriate, to address any Information about the student provided to, or by the parents, as well as the student's anticipated needs or other matters. WAC 392-172A-03110(3)(b)(iii-v). The IEP team must consider the parents' concerns and the information they provide regarding their student in developing, reviewing, and revising IEP. 64 Fed. Reg. 48 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). 34 CFR §§300.321, 300.322, 300.324 and 300.328; WACs 392-172A-03095, 392-172A-03100, and 392-172A-03110.

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related service needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. 34 CFR §300.303(a); WAC 392-172A-03015(1). A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303(b); WAC 392-172A-03015(2). When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days of receiving consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015(3). The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. 34 CFR §300.304; WAC 392-172A-03020(2)(a). The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304(c); WAC 392-172A-03020(3).

Behavioral Intervention Plan (BIP): A behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, 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 (effective January 29, 2016).

Specialized Transportation as a Component in the IEP: In determining whether to include transportation in a student's IEP, and whether the student needs to receive transportation as a related service, the IEP team must consider how the student's impairments affect the student's need for transportation. Included in this consideration is whether the student's impairments prevent the student from using the same transportation provided to nondisabled students, or from getting to school in the same manner as nondisabled students. If transportation is included in the student's IEP as a related service, a school district must ensure that the transportation is provided at public expense and at no cost to the parents, and that the student's IEP describes the transportation arrangement. 64 Fed. Reg. 48, 12479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 33); *Yakima School District*, 36 IDELR 289 (WA SEA 2002). The term "transportation" is defined as: travel to and from school and between schools; travel in and around school buildings; and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for students eligible to receive special education services. 34 CFR §300.34(c)(16); WAC 392-172A-01155(3)(p).

Disciplinary Removal that Results in a Change of Educational Placement: A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days; or, when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. 34 CFR §300.536; WAC 392-172A-05155. After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. WAC 392-172A-05145(2)(4). A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a student without disabilities who is similarly removed. WAC 392-172A-05145(4)(d). If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. WAC 392-172A-05145(4).

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents, and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or behavior intervention plan. 34 CFR §300.530(e); WAC 392-172A-05145(5).

If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct a functional behavioral assessment, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or, if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and, except for special circumstances, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan. 34 CFR §300.530(f); WAC 392-172A-05145(6).

When a disciplinary exclusion exceeds ten school days and the behavior in question is found not to be a manifestation of the student's disability, a district may apply the same relevant disciplinary procedures, in the same manner and for the same duration as it would to a student not eligible for special education, except that: the student must continue to receive services that provide a FAPE and enable the student to continue to participate in the general education curriculum and progress toward meeting annual IEP goals, even if services are provided in another setting; and receive, as appropriate, a functional behavioral assessment and behavioral intervention services that are designed to address the behavior violation so that it does not recur. 34 CFR §300.530(c)-(d); WAC 392-172A-05145(3)-(4).

FINDINGS OF FACT

Background Facts

2011-2012 School Year

1. During the fall of the 2011-2012 school year, the Student attended a private elementary school.
2. On March 16, 2012, the Student re-enrolled in third grade at a District elementary school and was eligible to receive special education and related services under the category of emotional behavior disability.

3. On March 19, 2012, the elementary school nurse sent a letter to the Student's pediatrician, requesting a current neurological diagnosis for the Student, and asking if the pediatrician wanted the school staff to report observations of the Student. The nurse stated the Student was new to the elementary school and the Student's mother had indicated that the Student:

[H]as behaviors that appear oppositional with possible tic-like movements. During a brief 20 minute observation this morning I did not see these behaviors. As he settles more into this school environment and interacts more with other students, faculty, and staff, perhaps I will be able to document behaviors of concern. Other staff have reported an altered gait with a jerking and hesitating motion¹.

4. On May 16, 2012, the District conducted a functional behavioral assessment (FBA) of the Student. The FBA stated that behaviors of concern were:

- Work Refusal: On a daily basis, the Student both openly and passively refuses to attempt to complete school work, and is most likely during math and 'walk to read,' which both occur in the am. There are periods when, with an adult physically near, he will attempt to do some work, though most work requires some amount of negotiation.
- Class disruption: Throughout the school day, the Student makes unsolicited verbal comments and "shout outs" at a high rate. These comments can be random or related to a lesson being taught. When asked by an adult to stop, the Student will not comply and if the adult presses the issue, the Student may escalate to yelling and cursing.
- Defiance: When asked to do something he finds displeasing, the Student responds with open defiance and anger. His response can include arguing, yelling, physical contact, leaving the area and/or demanding to call home.
- Negative peer interaction: A notable amount of the Student's social interactions are negative. They range from verbally picking on particular classmates to negative comment directed at peers with whom he is frustrated. Some interactions involve threats of fights, and cursing is a common response.

The FBA also stated:

- Antecedents: The Student had been late to school 27 of 47 school days. The Student's Parents expressed that he is resistant to come to school and is often angry when he arrives.
- Consequences and Educational Impact: The Student's shout outs and comments disrupt student learning and is emotionally upsetting to his peers. There are many times when the Student's behavior is so disruptive that he is removed from class. During these times, he is sent or escorted to the office (when he will comply). If he is exhibiting unsafe behavior, significant inappropriate behavior (cursing at staff), or defiantly refusing to comply with adult requests, the Parents are called and the Student is sent home.
- Other potential variables: The Parents stated that at a young age, the Student was diagnosed with oppositional defiance disorder (no verifying records). Any other medical diagnosis is unknown. The Student also exhibits physical tics at times. The Parents report this is somewhat recent and indicated that they have had some

¹ Documentation provided by the District for this complaint included a copy of the March 19, 2012 authorization for exchange of medical information signed by the Student's mother, but did not include any response from the Student's pediatrician.

related medical contact. No known diagnosis at this time. The tics seem to come and go, with no obvious signs on some days, while on other days, the Student shows significant signs in the form of a halting walking gait.

5. On June 13, 2012, the Student's IEP team formulated a behavior intervention plan (BIP) based on the FBA. This plan stated the Student was to decrease his work refusal and classroom disruptions, with negative consequences, including: ignoring the behavior when possible, removal from the setting where the behavior occurred, finishing work in the special education classroom, and calling the special education teacher if his behavior escalated with intervention. Positive reinforcements included a point system for compliance in completing work and controlling his disruptive outbursts, which could be used for reading time, computer time, and possibly tangible rewards.
6. On June 22, 2012, the Student withdrew from the District elementary school and enrolled in another Washington school outside of the District.

2013-2014 School Year

7. On February 25, 2014, the Student re-enrolled as a fifth grader at a District elementary school.
8. On June 12, 2014, the District completed the Student's reevaluation report. The report stated the Student continued to qualify for services under the eligibility category of emotional behavioral disability. The Student's assessment noted the Student's mother reported the Student was diagnosed with post-traumatic stress disorder (PTSD) two years prior, around the time of his initial evaluation. The Student's mother also reported the Student received some counseling, but was no longer going, and that the Student had struggled with depression. The mother also reported that the Student's behavioral difficulties manifested in cursing when he is really angry and immediately shutting down if he feels overwhelmed. The mother reported that the Student had taken Ritalin in the past, which helped him complete his school work, but had increased his behavioral problems. As a result, the Parents discontinued the medication. The evaluation report also stated that the Student demonstrated above average reading and math achievement scores, and below average written expression scores. The report then stated the Student had a history of behavioral difficulties in school, and had received numerous office referrals and suspensions throughout his school career.

2014-2015 School Year

9. During the 2014-2015, the Student began attending a District middle school.

2015-2016 School Year

10. During the 2015-2016 school year, the Student attended seventh grade at the same District middle school and continued to be eligible to receive special education and related services under the previous category of emotional behavior disability.

11. On September 15, 2015, the District developed a safety plan due to concerns that the Student was a target of harassment, intimidation, and bullying (HIB). The safety plan stated that the Student's BIP would be updated based on his existing FBA and the safety plan. The safety plan would be used to support the Student's behavior and build trust with adults at school as well as build a sense of control for the Student. The safety plan stated, in relevant part, the Student would use a pass to go to a room in the school office to deescalate when upset. He would report to the small office room and shut the door. When he was ready to talk, he would open the door and notify a trusted adult that he was ready to talk. The Student would also leave 6th period 2 minutes early to get to his bus prior to any other student, and would contact the bus driver if there was an issue on the bus. The safety plan also stated that the people informed of the plan would include: guidance counselor, nurse, attendance staff, assistant principal, principal, main office staff, security staff, and the Student's teachers.
12. On October 15, 2015, the Student's IEP case manager emailed the Student's IEP team, and stated the Student had been the victim of bullying in the past. She reiterated that two key points from the Student's September 2015 safety plan were: allowing the Student to use his hall pass to go deescalate in the office, and allowing the Student to leave 6th period early to get to the bus and reduce the likelihood of running into the students that have bullied him in the past. The email further stated the case manager had reviewed the safety plan with the Student and he knew it well, and was able to relay it back to her about it without prompting.
13. On November 3, 2015, the Student's IEP team, including the Parent and the vice principal, met to develop the Student's annual IEP and BIP. The November 2015 IEP stated that the Student's behavior impedes his learning and the learning of others, and that his behavior and safety plans should be followed. The Student's emotional difficulties, including symptoms associated with depression and withdrawal, adversely impacted his ability to progress with his same aged peers. The IEP stated that instances of aggressive and inappropriate behavior had markedly decreased since attending middle school, but the Student still had attendance issues due to not wanting to come to school. The November 2015 IEP included annual goals in the areas of writing and social/emotional and provided for the following specially designed instruction in a special education setting:
- Social/emotional: 55 minutes per day – 5 times weekly
 - Writing: 55 minutes per day – 5 times weekly

The IEP present levels in writing and social/emotional indicated the Student tried hard in his classes when he attended school; however, due to the irregularity of his attendance, it was hard for him to keep up with his peers. The Student's social/emotional behavior annual goals included:

- By 11/2/16, when given the opportunity to go to school, the Student will attend regularly improving attendance and social skills from attending school 3 days a week on average (60% of possible school days) to attend 4 school days per week on average (80% of possible school days) as measured by daily behavioral tracking log, attendance log.

- By 11/2/16, when given a situation which makes the Student frustrated or angry with peers, the Student will verbally express his feelings or walk away improving anger management skills from responding with appropriate verbal responses or by walking away 50% of the time to responding with appropriate verbal responses or by walking away 80% of the time as measured by teacher observation data.

Additionally, the IEP provided for the following accommodations daily, in both general and special education settings:

- Testing accommodation – give test in small setting of 1:1², frequent breaks as needed for frustration
- Testing response – scribe
- Behaviorally related – clear expectations for behavior, preferential seating, breaks available when frustration level escalates, behavior plan
- Content Area – break material into manageable parts, present information visually in front of him, scribe

The November 2015 IEP also stated that the Student attended 8% of possible school days without being tardy or late. The Student's pattern of attendance was to arrive around 9 am, 17 minutes before the end of first period, and to be tardy for at least one other class in addition to missing at least two days a week. The Student's IEP did not provide for special transportation. The summary of data in the Student's BIP stated that across all settings, the Student is able to verbally express his feelings and/or walk away 50% of the time. Contributing factors that impacted the Student's behavior included returning to school after absences, being tired, and being ill. The description of the Student's target behavior included decreasing the Student's frustration level and work avoidance behaviors. The BIP stated the Student's triggers occurred when the Student was frustrated or angry, and included intervention strategies, including passes to go to the office to deescalate and avoid stimulation, positive self-talk, and calm breathing. The crisis and recovery plan stated once the Student was calm, he would let the designated adult know he was calm and ready to talk, then would debrief and return to class when ready.

14. On March 4, 2016, due to concerns expressed by the Student's mother regarding the Student's performance in math, the Parent signed the consent for the District to conduct an assessment revision. The consent form stated that the assessment revision would include assessment in: review of existing data, academic, and math.

15. On March 4, 2016, the vice principal and the Student's mother met for a truancy conference. The vice principal explained to the Parent the Becca bill process, and the legal obligation the Parents have to ensure the Student attends school. The vice principal reduced the Student's school day so the Student would attend periods 3-6, but did not inform the Student, per the Student's mother's request. If the Student came in before scheduled class, he would work individually with the classroom paraeducator on classwork for English or math. The vice principal wrote in his notes, "[Student's mother] claimed – PTSD, ODD, Tics, general anxiety disorder – No proof of diagnosis although medical documentation was requested."

² As needed.

The Timeline for this Complaint Begins on March 7, 2016

16. On March 8, 2016, per the vice principal's notes, the vice principal received a report from a female student and her parents that the Student was sexually harassing her in math class by making sexually explicit remarks. The vice principal issued the Student a discipline referral. Per the vice principal's notes, when he interviewed the Student regarding the incident, the Student admitted to saying the things the female student had reported and "showed little remorse". The Student then spent 3-6 period in in-school suspension.
17. On March 23, 2016, again per the vice principal's notes, the Student observed two students pretending to have a verbal disagreement in the hallway. The Student mistakenly thought it was real, and since one of the student was his friend, the Student punched the other student in the back of the head.
18. On March 24, 2016, after school, the Student was approached by the student he had punched the previous day and a group of his friends, who confronted the Student outside the bus stop³. The vice principal's notes stated, "When I interviewed several other 6th grade students regarding this incident many stated [Student] had been aggressive and bullied them as well and they were tired of it⁴." The Student was suspended during 3rd period on March 24, 2016 and continued to be suspended though April 1, 2016, for a total of seven school days.
19. The District was on break April 4 – April 8, 2016.
20. On April 13, 2016, the District sent the Student's mother a meeting notice to discuss the Student's assessment revision⁵. Additionally, per the vice principal's notes, the Student's mother provided a note regarding the Student's absence, and the vice principal reminded her that the school needed documentation from a doctor, stating why the Student had been absent.
21. On April 21, 25, and 26, 2016, per the vice principal's notes, the Student's mother provided a signed absence information form that stated sick, "doctor note not present⁶."
22. On May 2, 2016, per the vice principal's notes, the Student's mother sent a note, stating the Student was absent due to car trouble, which was not a District defined absence.

³ It is unclear from the vice principal's notes if the Student was approached once during school alone and then after school by the other student and his friends, or if the vice principal is referring to one event when the Student was only approached after school.

⁴ The District did not include notes regarding these student interviews.

⁵ There is a note on the Notice of Meeting stating "Rescheduled per Parent's request."

⁶ It is not clear from the vice principal's notes what days the absences these notes were meant to excuse.

23. On May 3, 2016, the District sent the Student's mother a meeting notice to discuss the Student's assessment revision, which was rescheduled for May 10, 2016.
24. On May 4, 2016, the school psychologist emailed the District members of the Student's IEP team to confirm the IEP meeting scheduled for May 10, 2016. The meeting was scheduled to complete the Student's assessment and IEP revision, and to add math as an area of eligibility. The school psychologist also stated the meeting date and time had been confirmed with the Student's mother.
25. On May 5, 2016, per the vice principal's notes, the Parent provided a signed absence information form that stated sick, "doctor note not present." The vice principal met with office staff to review attendance notes, and discuss next steps of a Becca petition for the Student due to the family's failure to provide documentation regarding the Student's "claimed conditions."
26. On May 10, 2016, the Student's IEP team, including the Student's Mother, met for an IEP meeting. The team determined that the Student's frequent absences hindered the ability to get an accurate rating of the Student's math skills. Prior to the May 2015 IEP, the Student had not qualified for specially designed instruction in math, and was in general education math class. However, due to the amount of time the Student was absent from class, he missed a substantial amount of content and when he returned from a period of absence and could not understand the lessons. The Student would frequently sit in class and not complete his work. When the Student attempted the work, he demonstrated a partial ability to understand the basic steps, but not the higher order thinking necessary to apply the learned skills to new problems.
27. Also on May 10, 2016, the District sent the Parent a prior written notice (amendment), proposing to change the Student's IEP to include math services. The notice stated this change would be implemented on May 11, 2016.
28. On May 24, 2016, the Parent called the school and stated the Student had developed a "tic," which is why he was out of school on May 19 and 20, 2016. The vice principal sent a note home requiring a doctor's note.
29. On May 26, 2016, the Student's private pediatric neurologist sent a letter to the District and stated the Student had a diagnosis of Tourette's syndrome (TS) and Attention Deficit Hyperactivity Disorder (ADHD). The letter included handouts regarding TS and its related conditions, and listed the clinical hallmarks of TS as well as other behavioral disorders associated with TS. The letter also listed accommodations a 504 plan may include, and stated there should be no punitive responses from the school for ADHD symptoms such as impulsive behavior, disorganization, fidgeting, impatience and distractibility, etc. The private pediatric neurologist sent another letter to inform the District that the Student was late/absent from school on May 26, 2016 to attend an appointment with the neurologist, and asked the school to excuse the Student for missed days for the last "week, or so" due to tics. The vice principal stated in his notes that the Student's mother arrived

late on May 26, 2016 with the Student and a doctor's note, stating the Student had a Tourette's Syndrome diagnosis.

30. On May 31, 2016, the vice principal provided the information about the Student's Tourette's diagnosis to the Student's special education teacher, IEP case manager, and the school psychologist. The notes stated that due to the diagnosis of Tourette's, the District decided not to send the [Becca] petition regarding truancy, but reminded the Parents they would need to continue to send doctor's notes if absences continued to be excessive.
31. On June, 9, 2016, the Student was sent to the office for a uniform violation, and a verbal and physical altercation occurred between the Student and the substitute vice principal (substitute v-p). Based on an email from the front office administrator to the principal, the Student had arrived wearing a red shirt, a uniform violation. The office staff had him change into a white polo. Later than afternoon, a front office staff member went to the lunchroom and saw the Student again wearing his red shirt. The staff member then radioed the lunchroom supervisor and asked her to send the Student to the office. The Student refused, and the lunchroom supervisor then asked the substitute v-p to escort the Student to the office. The Student refused to go with the substitute v-p at first, but then complied with the request. The office staff member observed the substitute v-p ask the Student to go into the conference room in the office and the Student complied, slamming the door behind him. The office staff member then followed the substitute v-p into the conference room where he confronted the Student about his behavior, and stated his language was inappropriate, and that he made a bad choice changing back into his red shirt. The staff member then observed the Student escalating and using profanities and "threatening" the substitute v-p. The Student took out his phone to call his Parents, and the staff member observed the substitute v-p ask and reach for the phone. The Student would not comply, and the substitute v-p approached the Student to take the phone. The Student held the phone away from the substitute v-p, and stated he was going to call the police. The staff member left the room to call for security, but from outside of the room, observed the substitute v-p with his hand on the Student's shoulder (possibly reaching for the phone) and heard the Student yell for him to get his hands off of him.
32. The principal emailed the superintendent, executive director of secondary education, vice principal, assistant director of secondary education, and the director of human resources to inform them of the incident. According to the principal's email, the principal dismissed the substitute v-p when he arrived, and the substitute v-p handed the principal the Student's phone. The principal then returned the phone to the Student, and told him he could use it to call the Parent. The Student then stated, "I am going to press charges, he was grabbing my arm," and then used his cell phone to photograph his arm. The principal then allowed the Student to call the Parent from the conference room phone, and also spoke to the Parent, who stated that he was on his way to get the Student, and planned to take him to the police station to press charges. The principal then left the Student to deescalate per his "plan." The principal then spoke to the Student's mother, who came to pick up the Student, and

was told the Student would be emergency expelled for the rest of the day. The Student and his mother left. The Parent later arrived, and the principal asked the Parent if he could interview the Student regarding the incident the following day, and the Parent said, "I don't think I can let that happen right now." The principal's email to the District administration also stated that the Student had been diagnosed with Tourette's syndrome and other behavioral issues.

33. Later on June 9, 2016, the principal emailed the director of human resources and the district's counsel, stating the Parent had filed a police report with Tacoma Police Department, and provided the case number.
34. On June 16, 2016, the Student's end of the year progress reporting showed that the Student's progress in all areas was limited due to his poor attendance. The progress reporting stated the Student showed sufficient progress in his social/emotional goal regarding verbally expressing his feelings or walking away, improving anger management skills. The progress reporting stated the Student had not been provided instruction on his math goal.

Summer 2016

35. On August 24, 2016, per the vice principal's notes, the vice principal and the Student's mother discussed the Student's schedule deciding on a full schedule, placing electives in the beginning of the Student's day in case he continues to arrive to school late.
36. On August 25, 2016, per the vice principal's notes, the vice principal worked with the Student's mother and middle school staff to ensure the Student had the schedule the Student's mother had requested.

2016-2017 School Year

37. The District's 2016-2017 school year began on September 7, 2016.
38. At the beginning of the 2016-2017 school year, the Student continued to attend the District middle school and his November 2015 IEP was in place.
39. On September 8, 2016, per the vice principal's notes, the Parent requested an IEP meeting with all of the Student's teachers, a safety plan meeting, a meeting with all staff to discuss the Student, video tape from the incident with the substitute vice principal on June 9, 2016, statements from witnesses regarding the June incident, and all incidents the Student had from the prior year. In response, the Student's IEP case manager exchanged several emails with members of the IEP team to schedule an IEP meeting for September 15, 2016⁷.

⁷ The Student's special education teacher is also his IEP case manager.

40. On September 15, 2016, per the vice principal's notes, the Student's IEP team met for the IEP meeting, but the Parent was not in attendance⁸. The attending members of the team reviewed the Student's IEP, BIP, and current safety plan. Afterward, the vice principal called the Parent and the Student's mother to tell them the meeting went well, and that all of the Student's teachers were on board to support the Student.
41. On September 16, 2016, the Student's IEP case manager emailed the District members of the Student's IEP team and attached the Student's September 5, 2015 student safety plan, November 3, 2015 BIP, and his daily behavior tracking sheet from the 2015-2016 school year. The case manager stated that the team was on track to hold a meeting after school on September 17, 2016, to discuss these plans and any concerns⁹.
42. On September 22, 2016, the Student's IEP case manager emailed the District members of the IEP team, and asked if the Student's reevaluation could be scheduled sooner than June 16, 2017 to more accurately plan for his transition to high school. The school psychologist responded, "Yes." The case manager then sent another email to the District members of the IEP team, inviting them to the Student's IEP meeting on September 17, 2016. The case manager stated that the Parents had confirmed the meeting time, and asked that prior to the meeting, staff members let him know how the Student had been doing in their respective classes. The Student's class schedule and a tentative meeting agenda were included in the email. The agenda stated:
- Share out about [Student's] performance in your class
 - Accommodations
 - Present Levels/Goals
 - Review Student safety plan and BIP
43. On September 23, 2016, the middle school security officer emailed the vice principal and stated the Student had been involved in a confrontation in front of the bus loading area with another student. The security officer stated that the situation might have started the day before during lunch, because he recalled seeing the two arguing over a seat.
44. On September 27, 2016, a middle school staff meeting took place. Per the vice principal's meeting notes, the principal reviewed the Student's safety plan protocol at the staff meeting, and mentioned "a student diagnosis of Tourette's with cussing, diabetes, Autism and Asperger's and how staff should handle situations should they arise¹⁰."

⁸ Documentation provided by the District did not include a meeting invitation or contact attempt report to substantiate when/how the District notified the Parent of the September 15, 2016 meeting.

⁹ Documentation provided by the District indicated that this September 17, 2016 meeting was canceled and rescheduled for October 26, 2016.

¹⁰ This appears to address multiple students in addition to the Student.

45. On September 28, 2016, per the vice principal's notes, the Student's mother provided a note excusing the Student for being sick on September 26 and 27, 2016.
46. On October 5, 2016, the District sent the Parent an invitation for an IEP meeting on October 26, 2016. The purpose of this meeting was to discuss annual goal progress, review the current IEP, and review the Student's instructional needs.
47. Also on October 5, 2016, per the vice principal's notes, a female classmate in the Student's art class corrected the Student for using inappropriate language, and the Student then yelled at the student. Later, the classmate approached the Student at lunch and stated he needed to apologize. The Student then, "got in her face and stated he had no problem hitting her," and began yelling and swearing until the lunchroom supervisors separated them. As a result, an incident report was generated that stated the Student had created a substantial disruption in the cafeteria. The report stated the Student got into a verbal altercation in 2nd period and it continued to lunch where profanity was used by both parties. Lunchroom supervision was able to step in before the exchange escalated to a fight.
48. On October 7, 2016, per the vice principal's notes, the Parent came in and wrote a note to excuse the Student's absences on September 16 and 19, and October 3 and 6, 2016. The notes also stated the vice principal spoke with the Parent in his office regarding the Parent's concerns as to why the Student did not want to attend school. The notes further stated the two discussed strategies and incentives the Parent and school could implement to increase the Student's attendance.
49. On October 14, 2016, per the vice principal's notes, the Student had another incident where he was cursing and yelling at other students in his art class. The art teacher separated the students, but the argument continued at lunch time. The lunchroom supervisor then separated the students and the Student reportedly cursed at the lunchroom supervisor. The District created an incident report that stated the Student had created a "substantial disruption and fought without major injury." The report stated two students were involved in a verbal altercation, and the Student stated vulgar words at staff when they asked him to sit down. The Student was issued a short term suspension for one (1) day.
50. On October 16, 2016, per the vice principal's notes, the Parents provided absence information forms for October 17 and 18, 2016, and stated the absences were due to medication the Student was taking. The vice principal's notes also stated, "We have not received any documentation of any medication he is on or the side effects."
51. On October 26, 2016, the Student's IEP team met to develop the Student's annual IEP. The October 2016 IEP stated that the Student's behavior impedes his learning and the learning of others, that his behavior and safety plans should be followed. The IEP also stated that when the Student attends, he is polite and hard working. The Student's frequent absences, some due to his choice not to attend, negative reactions to doctor prescribed medication, and sleep irregularities result in emotional difficulties, including symptoms associated with depression and withdrawal, which

adversely impacted his ability to progress with his same aged peers. The October 2016 IEP included annual goals in the areas of writing and social/emotional and provided for the following specially designed instruction in a special education setting:

- Social/emotional: 55 minutes per day – 5 times weekly
- Writing: 55 minutes per day – 5 times weekly
- Math: 55 minutes per day – 5 times weekly

The IEP adverse impact summary stated:

- Writing: The Student's slump in attendance caused the Student anxiety in trying to catch up and when he gets too far behind, he tends to give up. Absenteeism plays a great role in the Student's progress.
- Math: The Student is in a math resource setting consisting of 13 students, a special education teacher and a paraeducator. The Student is attentive and polite, prefers to work alone listening to music, and will work on classroom assignments, though rarely completes homework.
- Social Emotional: The Student is interested in learning to grow food and is keenly interested in self sufficiency and survival. He is a hands on learner and over the last year, the Student attends an average of 3 days of school per week. When given six classes and the expectation to complete his work, the Student has a work completion rate of 40%. When the Student is upset he follows the safety plan by disengaging from the environment and going to the office to sit in a self selected location. The Student benefits from being able to talk through incidents once he is calm, which can take a few to 30 minutes.

The October 2016 IEP also did not provide for special transportation. The summary of data in the Student's BIP stated that the Student is frequently absent or tardy for a portion of the day (first period and a half). The Student's family is working with his doctors to ensure he is on the right medication. The Student is prone to insomnia. When the Student is in class, he participates and follows directions that are "just to him" and suits his perceived needs at the moment. The Student has the option of leaving class to calm down, but rarely accesses that plan.

52. Also on October 26, 2016, the District issued a prior written notice, initiating the IEP. The notice stated the IEP team agreed that, despite the Student's frequent absences and tardies, he should still attempt to attend all six periods of classes as scheduled, because removing the expectation of attendance for a period is not going to enable the Student to attend a full day. The notice also stated the IEP team acknowledged that the Student's evaluation was due near the end of the school year, and asked the school psychologist to conduct the evaluation sooner than mid-June so it could adequately plan for the Student's transition from middle school to high school.

53. On November 11, 2016, per the vice principal's notes, the vice principal discussed the Student in a Student review team (SRT) meeting. The team discussed shortening the Student's day due to the Student's mother's concerns regarding the Student's attendance, but the SRT team decided not to shorten the Student's school day because the Student's electives were in the morning, and were "Ok to miss, but we wanted to provide him with the opportunity should he arrive on time at school."

The SRT team also discussed the Student's transition to high school, and the possibility of him attending a smaller high school instead of the more "comprehensive" District high school.

54. On November 14, 2016, per the vice principal's notes, the vice principal, a member of the administrative staff, the Student's mother, and the Student met to discuss the Student's attendance. The vice principal stated the Student needed to continue to improve his attendance, and asked the Student's mother to provide doctor's notes for the Student's excessive absences. The Student's mother stated she would get the doctor's notes turned in. The vice principal provided the Student's mother with an application to one of the smaller District high schools, and encouraged her to apply on behalf of the Student.
55. On November 16, 2016, the Parent brought in an absence information form that stated the Student was absent on November 4 and 10, 2016, due to his medication.
56. The District was on break November 23 – November 25, 2016.
57. On December 5, 2016, the Parent brought in another absence information form that stated the Student was absent due to his medication on November 11, 17, 28, 29, 30 and December 1, 2 and 5.
58. The District was on break December 19, 2016 – January 2, 2017.
59. On January 13, 2017, per the vice principal's notes, the Parent requested an IEP meeting. An IEP meeting was then scheduled for January 26, 2017, 7:30 am.
60. On January 26, 2017, the Student's IEP team met at 7:30 am; however, the Parent and the Student's mother were not initially present. The team discussed the Student's attendance and transition to high school, and the general education teachers and counselor left at 8:10 am. The vice principal called the Parent at 8:15 am to remind him of the meeting, and the Parent arrived at 8:45 am. When the Parent arrived, the special education teacher explained that because the general education teachers and counselor were no longer present, changes could not be made to the Student's IEP. The school psychologist then asked about conducting the Student's reevaluation earlier than the June 2017 due date, and the Parent agreed. The notice also stated that during the IEP meeting:
 - The team members discussed the safety plan.
 - The team stated overall the Student is checking in and has a positive relationship with staff and peers.
 - The Student has a designated area in the office where he can use a pass to go cool down for 10-15 minutes when upset.
 - The Parent asked for clarification on when the Student could call the Parent on his cell phone when the Student was in his de-escalation space, and the vice principal stated he would prefer the Student use a land line to call the Parent.
 - The special education teacher asked about the need for a signal to communicate with the Student and the team reinforced that the Student has hall passes and will

not react if someone greets him while he is moving [toward his de-escalation space in office].

- Parent and teachers agree the Student would need to review his IEP to contribute later in the spring.
- The team members discussed the Student's present levels and stated the Student was accessing the de-escalation room less than last year, and agreed that adding math services last year made a positive impact.
- The emergency response protocol box on the Student's IEP was erroneously checked 'yes' prior to this meeting, and the team changed it to 'no.'

61. Also on January 26, 2017, the District sent the Parent a prior written notice, proposing to change the Student's IEP. The notice stated that the IEP team had reviewed the Student's safety plan, IEP, and BIP and agreed to make the following changes (in relevant part):

- Accommodations were updated to allow the Student to sit where he needs to sit in the classroom in order to be successful.
- Emergency response protocol (ERP) was changed to indicate "no" as intended by the previous team.

62. On February 10, 2017, the Student had an incident on the bus, during which he reportedly yelled and cursed at other students, the bus driver, and the vice principal. Based on statements from the bus driver, the vice principal, and multiple students who witnessed the event on the school bus, the following occurred:

- The bus driver arrived late to pick up the students from school.
- After boarding, the students were loud and the bus driver told the students she could not safely drive the bus with the students being so loud.
- Some students then turned on music, and the bus driver instructed them to turn it off, but they did not.
- The bus driver then pulled the bus in front of the school and turned the engine off.
- It is unclear whether the Student was involved in the initial noise, but once the bus was stopped, multiple witnesses stated the Student began to yell and curse at the bus driver.
- The Student has an assigned seat on the bus, and the bus driver reported this was the Student's first day back on the bus after several weeks.¹¹
- The bus driver then called dispatch, stating she needed help.
- The bus driver then called dispatch a second time.
- The vice principal came out to the bus and asked what was going on. The bus driver reported that students were yelling, the Student was yelling and swearing, and she did not feel comfortable driving the bus.
- The vice principal told the Student that he needed to get off the bus, and that he would call his Parents to come get him. The Student refused. The vice principal then stated he was going to call the police and the Student began cursing at the vice principal.
- The vice principal then left the bus to call security and the police from inside the middle school.

¹¹ The bus driver's report stated the Student had an assigned seat due to unsafe behavior to others and herself, but the District did not provide documentation in this complaint regarding the Student's assigned seat, or if and why he had an assigned seat.

- The bus driver reported that the Student then called someone while the vice principal was inside and the volume from all of the students on the bus continued.
- The bus driver and multiple witnesses on the bus stated a vehicle arrived and stopped in front of the bus.
- The bus driver told the Student to wait for his Parents to come and get him, but the Student pushed the bus doors open, continued cursing at the driver, and got into the vehicle waiting in front of the bus.
- The vice principal returned to the bus, but the Student had already departed.

63. Also on February 10, 2017, the District transportation department issued an “incident warning report” and a bus discipline suspension report, which suspended the Student from the bus for sixty (60) days beginning in March 2, 2017. The incident warning report stated the Student’s first major incident description occurred on February 10, 2017. Incident details included:

- Consistently cursing at the driver and a student on the bus
- Making sexual gestures
- Would have caused a serious distraction to driver

The incident warning report indicated the transportation department spoke to the Student’s mother on March 2, 2017. The transportation department staff told the mother about the incident in detail, let her know she could make a public records request on the District’s website, and informed her of the Student’s bus suspension. The report stated the Student’s mother said the bus suspension probably would not be a problem because the Parents were likely going to be transporting the Student for the rest of the school year.

64. On February 13, 2017, the District took statements from several of the students who had been on the bus during the incident with the Student.

65. Also on February 13, 2017, District school patrol delivered the emergency expulsion form to the Parents, with a copy of the appeal process. The form had also been sent to the Parents via regular and certified mail, on February 13, 2017. The emergency expulsion form stated that the Student was emergency expelled from February 13 – February 27, 2017 (10 school days), based on threats to harm the bus driver, profanity towards administration, refusing to comply with administrative requests, and threats of endangerment to self and others. The emergency expulsion notice stated that the District was requesting a conference with the Parent on February 27, 2017.

66. On February 17, 2017, per the vice principal’s notes, a meeting was held where staff discussed the Student and the bus incident, and determined when a manifestation determination meeting would occur. The vice principal also met with the Student’s IEP case manager during third period, and attempted to reach the Parent and Student’s mother, but was unable to leave a message on either voice message account. The vice principal asked the case manager to draft a letter to both Parents to inform them of the manifestation determination meeting, and to send it via email and regular mail.

67. The District was on break on February 20, 2017.
68. On February 22, 2017, the vice principal emailed the Student's IEP case manager and stated the Student's manifestation determination meeting had been scheduled at the District office for February 27, 2017, at 2:30 pm and that the Parents needed to be contacted and given the time. The vice principal stated, "As we discussed at our meeting at [District high school], [the Student's] evaluation from the school psychologist needs to take place and he may qualify for enough additional minutes that he needs to be transferred to another school site in [District]."
69. Also on February 22, 2017, per the vice principal's notes, the Student's pediatric neurologist called the school office and stated that the Student attended appointments on September 22, 2016, November 22, 2016, and February 21, 2017, and therefore was absent from school. The vice principal then met with the principal and the Student's IEP case manager to review the Student's emergency expulsion. Per the vice principal's notes, the vice principal stated the emergency expulsion needed to be converted to a suspension.
70. On February 27, 2017, the District middle school counselor emailed the principal, the director of student life, and the assistant director of student services, and stated the Parent had called him at 11:01 am, and stated neither he, nor his wife, would be attending the manifestation determination meeting, because Parent's legal counsel could not be present¹². The Parent asked that someone notify the Student's mother and reschedule the meeting. The Parent also called the assistant director of special education at 1:10 pm and stated he could not attend the manifestation determination meeting, and requested a meeting with the director of student services.
71. On March 1, 2017, the District rescheduled the manifestation determination meeting for March 7, 2017, so the Parent's attorney could attend.
72. Also on March 1, 2017, a District teacher on special assignment (TOSA) emailed the school psychologist and asked him to confirm that he mailed out the consent document regarding the Student's reevaluation.
73. On March 6, 2017, the Parent filed this citizen complaint.
74. Also on March 6, 2017, the Student's pediatric neurology clinic sent another letter to the District, stating that the Student was under the care of a pediatric neurologist/epileptologist, and was diagnosed with Tourette's syndrome, which was associated with anxiety, obsessive compulsive disorder (OCD), and ADHD.
75. On March 7, 2017, the District held a meeting to determine whether the Student's behavior on the bus was a manifestation of his disability. The director of student services, the vice principal, the Student's IEP case manager, the Parent and his counsel, and the TOSA attended the meeting. The IEP team determined that the

¹² It is unclear from documentation provided by the District when/how the Parent received notice of this meeting.

Student's conduct was a manifestation of his disability. The District's manifestation determination form stated that the Student had an IEP and an emotional behavior disability. The form also stated that a functional behavior analysis (FBA) had not been completed, but that the Student did have a BIP as part of his IEP. The form stated the behavior addressed in the BIP was to "decrease frustration level and work avoidance behaviors." The manifestation determination team reviewed the Student's BIP and stated on the manifestation determination form that, "although [Student's] safety plan is not a part of the IEP document, the team questioned if the plan was followed. [Student] was offered to call his mom or dad." The team considered if the Student's conduct was a direct result of the District's failure to implement the Student's IEP, and the Parent stated that he believed the Student's conduct resulted from the District not implementing the IEP due to the Student, "not being offered to practice his calm breath techniques." The manifestation determination form also stated that a letter had been provided by the Student's neurologist, which stated the Student had a diagnosis of Tourette's syndrome, and associated with it OCD and ADHD. The Parent also reported the Student has a diagnosed sleep disorder and often did not sleep well at night, or could only sleep for a few hours. Additionally, the Parent reported that the Student was prescribed different medication every three months to combat the TS, and some of the medication made him sleepy. The Parent also provided information that the Student had been bullied the last three years while attending the District middle school.

76. At the manifestation determination meeting, the team also discussed the following:

- The Student's removal from school had ended on February 27, 2017, and he was in attendance 4 out of the 6 last school days.
- Special education transportation was offered and declined due to the Student not wanting to stand out from peers.
- Family agreed to transport the Student for up to two weeks while the team creates a plan for the Student's success.

77. Also on March 7, 2017, the District issued a prior written notice regarding the manifestation determination meeting. The notice stated the team had met and determined the Student's behavior had been a manifestation of his disability. The notice also stated, "Everybody except [the Parent] agreed that the behavior was not a result of the District's failure to follow and implement the IEP. [The Parent] believes that this behavior happened [as a result] of the District's failure to implement the Student's IEP." The notice also stated:

- The Student had been removed for ten days on emergency expulsion due to the incident, and had been removed previously for one academic day.
- The behavior in question "correlates with one of the five characteristics of EBD student."
- The Parent's believed the IEP was not implemented because calm breathing had not been suggested to the Student.

The notice stated that the team would meet again on March 14, 2017 to create a BIP for the Student to safely ride the bus, and until then, the Parent agreed to transport the Student. Special transportation was offered, and refused by the Student. Lastly,

the notice stated the Parent had been given a consent form for the Student's reevaluation at the manifestation determination meeting.

78. On March 14, 2017, the IEP team met at the District office to develop the Student's IEP and BIP. The vice principal, special education teacher, the Parent, the Student's mother, the Student's IEP case manager, and counsel for both the District and the Parent attended the meeting. According to the vice principal's meeting notes, the Student did not want to discuss the bus incident, and the Student's mother stated that the Student's incidents seem linked to changes in his medication. The IEP case manager stated that the Student was typically somewhat escalated at the end of the school day. The team discussed deescalation strategies for the bus, and planned to discuss the plan with the Student. The Parent did not return the reevaluation and FBA consent form at the meeting, but the Student's mother stated she would return the consent form the following day. The Parent and the Student's mother also stated the Student's Tourette's diagnosis was provided to the school in May of 2016.
79. On March 15, 2017, the District administrative intern emailed the principal, the supervisor of pupil transportation, transportation supervisor, assistant director of student services, and the vice principal that the Student's IEP team had determined the bus incident was a manifestation of the Student's disability, and instructed that the Student's bus suspension be lifted. The administrative intern also stated that "protocols and cues" for the Student were being identified by the Student and administration in the event the Student could not demonstrate safe behavior. The email also stated the Student currently had access to general transportation, and once the "plan" had been formalized, a copy would be shared with the expectation that the bus driver would be informed. The administrative intern also stated that the Parent asked that the Student be identified as having Tourette's syndrome and information regarding disability be shared as well.
80. Also on March 15, 2017, the Student's mother signed consent for the Student's reevaluation and FBA during a meeting with the vice principal. According to the vice principal's notes, they discussed the medical records the Parents had provided the previous year, and documents the District requested this year, in order to excuse some of the Student's absences. The Student's mother asked the District to treat her and the Parent as separate guardians, and stated she agreed that the vice principal should talk with the Student about the bus incident, and review the revised BIP with the Student once it was completed. Later that same day, the vice principal met with the Student during fifth period to ask him his point of view regarding the bus incident.¹³
81. On March 22, 2017, the District sent the Parent a prior written notice, proposing to change the Student's IEP. The notice stated the IEP team met to add a bus safety plan to the Student's BIP and agreed on the following changes (in relevant part):

¹³ The vice principal's notes stated he documented the conversation with the Student and had the Student initialed the statement. The District did not provide this signed document.

- Update BIP to create a target behavior plan for bus safety.
- Added diagnoses of Tourette's syndrome, as reported by medical professional to the medical information section of the present levels of educational performance of the amended IEP.

The notice stated the reason for proposing the action stated (in relevant part):

- The BIP needed to reflect the Student's needs while riding the school bus.
- Parent's requested and team agrees that Tourette's diagnosis be added to the IEP.

The notice stated the team reviewed the current IEP, BIP, evaluation, teacher data, and that the Parent and the Student's input was included in the development of the bus plan and changes to the most recent IEP. The notice also stated the team agreed that the Student's input was key in developing a successful plan, and since the Student did not attend the IEP meeting, the Parent agreed that school administration and the Student's IEP case manager could meet with the Student during school. During the planning discussion at school, the Student was not receptive to strategies discussed (code word rather than phrase, etc.). The team agreed the school would proceed with implementing the BIP while an FBA was conducted, and data was gathered as part of the reevaluation process. The notice stated the team would revisit the BIP after the evaluation.

82. Also on March 22, 2017, the vice principal met with the Student to review the draft BIP. Per the vice principal's notes, the Student confirmed he did not want to ride the special education bus, and although he became agitated when he was told the bus driver would select his seat, he said he understood. The Student also stated that riding a different general education bus would increase his chance for success and he agreed to switch busses if one was available.

CONCLUSIONS

Implementation of the Student's Individualized Education Program (IEP) –

June 9, 2016 Office Incident: The Parent alleged that the District did not implement the Student's IEP, including the safety plan and BIP, during the June 9, 2016 office incident. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Additionally, the District must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other staff member who is responsible for its implementation.

Based on the documentation in this complaint, the District failed to implement the Student's November 2015 IEP, which included the Student's BIP and September 2015 safety plan, which was in place in June 2016. The Student's November 2015 IEP stated that if the Student exhibited behavior that caused concern to a staff member, the staff member was to contact the assigned guidance counselor. Additionally, the IEP provided that when the Student needed to deescalate, he would be allowed to use a pass to go to a room in the office where he would shut the door, and deescalate alone. When he was calm and ready to talk, he would open the door, and indicate to a trusted

adult that he was ready to talk. On June 9, 2016, a staff member noticed the Student was not in school uniform and asked the lunchroom supervisor to send the Student to the office. The Student escalated in response to the lunchroom supervisor confronting him about his uniform violation, and the supervisor then asked the substitute vice principal to escort the Student to the office. Documentation provided by the District in this complaint does not indicate that the substitute vice principal had been aware of the Student's IEP safety plan. After escorting the Student to the office, the Student went into the conference room and slammed the door. The substitute did not follow the Student's IEP by allowing the Student to deescalate, but instead followed the Student into the conference room along with another staff member, confronting him about his behavior, which resulted in the Student further escalating, screaming, and threatening the substitute. When the Student then took out his cell phone to call his Parent, which documentation in this complaint indicated the Student was allowed to do on prior occasions, the substitute vice principal attempted to physically take the phone from the Student. Based on documentation provided by the District, the Student's behavior during the June 9, 2016 incident was in compliance with his IEP safety plan. He entered a room in the office, shutting the door behind him to isolate himself, and attempted to call the Parent on his cell phone. The District, however, failed to properly implement the Student's IEP when the lunchroom supervisor confronted the Student regarding his uniform violation instead of calling the guidance counselor as stated in the IEP, and when the substitute vice principal and another staff member continued to confront the Student in the office conference room when the Student was supposed to be allowed to de-escalate by himself. Had the District ensured the lunchroom supervisor and other regular school staff were aware of the Student's plan and contacted the school counselor, it is likely the June 9 incident could have been avoided. Additionally, due to the frequency with which the Student interacts with the middle school's regular vice principal, the District should have informed the substitute vice principal of the Student's IEP, so the substitute vice principal would have understood how to implement the IEP if necessary. Therefore, the District failed to implement the Student's IEP during the June 9, 2016 incident.

February 10, 2017 Bus Incident: The Parent also alleged that the District failed to implement the Student's October 2016 IEP, including the safety plan and BIP, during the February 10, 2017 bus incident. On February 10, 2017, the Student was seated in his assigned seat when he began to experience frustration due to the delay in the bus departure. The Student escalated, frustrated that the bus was late and would not depart, and yelled at the bus driver to drive the bus. Documentation provided by the District failed to substantiate that the District had informed the bus driver of the Student's IEP. The bus driver confronted the Student about his inappropriate language instead of first calling dispatch. When the Student further escalated, the vice principal came out to the bus and attempted to get the Student to leave the bus, stating he was going to call the Parent. When the Student refused, the vice principal stated he was going to call the police, and left the Student on the bus where he further escalated and called the Parent on his cell phone. The District failed to properly implement the Student's IEP when it failed to inform the bus driver of the Student's IEP and when the vice principal further confronted the Student and then left him in an escalated state on the bus while he left to call the police. Additionally, in documentation provided by the

District, the bus driver stated February 10 was the Student's first day back on the bus after a string of absences. Had the District informed the bus driver of the Student's IEP, she would have known that the Student is more prone to behavioral issues after a string of absences and that the Student's outburst were in fact, related to his disability.

OSPI also notes that although the District received relevant medical information from the Parents on May 26, 2016, which confirmed that the Student's symptoms of tics and outbursts, known to the District since 2012, were due to his Tourette's syndrome diagnosis, the District did not incorporate this information into the Student's November 2105 IEP, BIP, and safety plan, or initiate a reevaluation to address whether the Student's eligibility category should be change to other health impairment to more accurately reflect the Student's disability. Further, the District did not include information about how the Student's diagnosis of Tourette's syndrome affected and or caused his behavior in his May or October 2016 IEP, BIP, or safety plan. Based on documentation provided by the District in this complaint, the Student's removals from school, throughout his enrollment in the District, have generally been related to the Student's defiance and use of profanity. During the 2016-2017 school year, the Student was suspended from the District middle school for 11 days. Additionally, the Student has had very high rates of absenteeism since he began attending the District schools. During the 2015-2016 school year, the Student attended 24 full days of classes out of 176 (14%). During the 2016-2017 school year, the Student attended 1 full day of classes out of 112 days (<1%). When the District received confirmation of the Student's Tourette's syndrome diagnosis from his physician on May 26, 2016, the IEP team should have convened to determine whether the IEP needed to be updated, or if the District needed to conduct a reevaluation in consideration of the Student's diagnosis of Tourette's syndrome. A district must conduct a reevaluation in all areas of suspected disability, and the evaluation must be sufficiently comprehensive to identify all of a student's special education needs and any necessary related services. Here, as early as 2012, the District school nurse wrote to the Student's neurologist and stated the Student demonstrated oppositional behavior with tics. The Student's 2012 FBA noted the Student demonstrated frequent outbursts and defiance, and also noted the Parents stated that the Student had been diagnosed with oppositional defiance disorder, but had provided no records to verify the diagnosis. However, the Parents are not required to provide records, or secure diagnoses to receive services from the District. The District failed to inform the Student's IEP team of medically relevant information it received from the Parents and the Student's doctor regarding the Student's disability and symptoms, which resulted in an IEP to sufficiently address the Student's needs.

Transportation Provisions: In determining whether to include transportation as a related service in a student's IEP, the IEP team must consider whether the student's impairments prevent the student from using the same transportation provided to nondisabled students, or from getting to school in the same manner as nondisabled students. Based on the documentation provided by the District, prior to the February 2017 bus incident, the Student's IEP team had not addressed whether the Student's disability prevented him from using the same transportation as nondisabled students. The Student had ridden the bus with a designated seat, and documentation provided by the District in this complaint indicated the February 2017 incident was the Student's first

bus discipline suspension. It is not clear from the documentation provided by the District why the Student had an assigned seat on the bus, but the Student's IEP provided for regular transportation. During the Student's suspension from the general bus transportation, while the manifestation determination review was pending, the vice principal offered to provide special transportation for the Student, but the Student declined, and the Parent agreed to transport the Student until the March 2017 IEP meeting when the team drafted the BIP, including a bus safety plan. Documentation provided by the District substantiates that the District followed procedures for implementing the Student's IEP transportation provisions.

Special Education Disciplinary Procedures -

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, a district, parents, and other relevant members of the IEP team must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. Here, the District suspended the Student for one school day on October 14, 2016, and then expelled the Student for ten school days on February 13, 2017. The 11 removals resulted in the District changing the Student's placement, and required that the District hold a manifestation determination meeting by February 27, 2017. The District's documentation shows that it attempted to hold a meeting on February 27, but that the Parent would not attend the meeting without his attorney present. In order to accommodate the Parent, the District rescheduled the meeting six school days later on March 7, 2017.

If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either conduct a functional behavioral assessment, or if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior. Here, at the manifestation determination meeting, the Student's IEP team discussed that an FBA had not been conducted, and agreed that an FBA would be conducted along with the Student's reevaluation. The District then provided consent forms to the Parents for the reevaluation and FBA. The Student's mother returned the signed consent form on March 15, 2017, and the District has until May 10, 2017 to complete the Student's reevaluation and FBA. Additionally, the IEP team also discussed the Student's BIP, and then agreed to hold another IEP meeting a week later on March 14, 2017. At the March 14 meeting, the team revised the Student's BIP to include a school bus safety plan, and to reflect the Student's diagnosis of Tourette's syndrome, ODD, ADHD and sleep disorders. The documentation provided by the District substantiates that the team did review and revise the Student's BIP as necessary to address the Student's behavior.

Services During a Change of Placement: After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal, the school district must provide services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress in the general education curriculum, although in another setting, and to progress toward meeting the annual goals set out in the student's IEP. Here, the Student was removed for 11 school days during the timeline for this complaint, and the District was required to provide the Student services, per special education discipline regulations, beginning on the eleventh day he was removed. The District's documentation does not show the Student was provided services on the eleventh day of suspension. The District is also reminded that under recent changes to state general education discipline regulations, the District may also have had a responsibility to provide services prior to a student being suspended for more than ten school days. RCW 28A.600.015.

CORRECTIVE ACTIONS

By or before **May 31, 2017, June 21, 2017, August 4, 2017, August 16, 2017, September 5, 2017, and September 22, 2017**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. In addition to the Student's pending 2017 evaluation, the District will seek the Parent's consent to contract with an independent evaluator to supplement the District's evaluation, and ensure the Student receives a comprehensive evaluation in all areas of suspected disability. At a minimum, the independent evaluation will include a review of records from the last three school years, including the Student's private medical evaluation(s), information provided by the Student's current teachers and the Parent, and any other assessments determined to be needed by the independent evaluator, including but not limited to assessments to provide information about the educational impact of the Student's diagnoses of Tourette's syndrome, ADHD, ODD, and sleep disorder.
 - By or before **May 31, 2017**, the District will provide the Parent and OSPI with at least three names and qualifications of individuals (who are not District employees) to conduct an IEE for the Student within the required timeframe, and seek for the Parent's informed, written consent to proceed.
 - By or before **June 7, 2017**, the Parent will either provide his written, informed consent for the Student's IEE, or notify the District of his refusal to consent. If the Parent refuses to consent, the District will notify OSPI immediately. If the Parent provides consent, he will notify the District of his choice of evaluator from the list of proposed evaluators, on the same date. If the Parent provides consent, but does not choose an evaluator, the District will select an evaluator from the list given to the Parent.
 - By or before **June 21, 2017**, the District will provide OSPI with: (1) the name of the independent evaluator who will conduct the Student's IEE; (2) a copy of the Parent's written consent to proceed with the IEE; and, (3) a copy of the contract with the IEE provider.

- By or before **August 9, 2017**, the District will hold an evaluation results/eligibility meeting, including the Parent, to review the results of the Student's IEE. The District will ensure the independent evaluator participates in the meeting in person or by telephone.
 - By or before **August 16, 2017**, the District will submit: (1) a copy of any meeting invitations; (2) a copy of the evaluation report; and, (3) a copy of any related prior written notice.
 - By or before **August 30, 2017**, the Student's IEP team will develop and finalize a new IEP and BIP for the Student. The District will provide OSPI with the associated documentation, including: (1) a copy of the Student's IEP and BIP; and, (2) a copy of any related prior written notices, by or before **September 22, 2017**.
2. By or before **May 31, 2017**, the District will meet with the Parent to amend the Student's IEP and BIP while the District and Parent wait for the results of the evaluation. At a minimum, the amendment will: (1) provide a measurable annual IEP behavioral goal for the Student; (2) clarify the specially designed instruction for behavioral skills the Student will receive; and, (3) discuss providing other supports so that the Student can increase his attendance at school. The District will provide OSPI with a copy of the amended IEP, and a copy of the Student's proposed class schedule as soon as possible, but no later than **June 21, 2017**.

DISTRICT SPECIFIC:

By **September 1, 2017**, the District will develop procedures for all District special education certificated staff, including educational staff associates (ESAs), and principals at the Student's middle school, to ensure that information relevant to the implementation of IEP's and BIP's for students is provided to appropriate building staff, including transportation staff and substitutes, as needed. This includes developing a protocol to ensure relevant medical documents and information regarding identified students are considered by a student's IEP team, and that relevant information is appropriately shared with individuals who work with, or are likely to frequently encounter such students while in the care of the District. The trainer will not be an employee of the District. The training will include examples.

- By **August 4, 2017**, the District will submit a draft of the training materials to OSPI for review. OSPI will approve the materials or provide comments by September 18, 2017, as well as additional dates for review, if needed.
- By **September 5, 2017**, the District will submit documentation that all required staff participated in the training. This will include a sign-in sheet and a roster of who should have attended so OSPI can verify that staff participated. If any of the staff are unable to participate, the District will contract with the trainer for a follow-up session within the required timeframe.

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 May, 2017

Douglas H. Gill, Ed. D.
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.)