

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-87A**

### **PROCEDURAL HISTORY**

On November 27, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student A) attending the Medical Lake School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to Student A's education.

On November 28, 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 December 21, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on December 22, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not reply.

On January 9, 2018, OSPI requested that the District provide additional information, and the District provided the requested information on January 11, 2018. OSPI forwarded the information to the Parent on January 11, 2018.

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

### **OVERVIEW**

During the 2016-2017 school year, Student A attended a District elementary school and was eligible to receive special education services. Student A's individualized education program (IEP) in place at the beginning of the school year stated that Student A would attend school 1,665 minutes per week and spend 91% of his school week in a general education setting. In November 2016, the District changed Student A's placement to a full-time special education classroom. At some point in January 2017, Student A's placement was changed to a more restrictive special education placement, with Student A receiving instruction in a classroom with two adults and no other students. At the end of January 2017, Student A was suspended, and after a risk assessment was completed by a private behavioral health clinic, his private behavior therapist recommended Student A receive in-home instruction for one month, and the Parent agreed. The District then amended Student A's IEP to reflect the change in placement. Toward the end of March 2017, the IEP team changed Student A's placement so that he would attend school 240 minutes per week. Student A continued to attend school on the same schedule until June 2017. Prior to the beginning of the 2017-2018 school year, the IEP team agreed to increase the amount of time Student A would attend school to 450 minutes a week. In September and October 2017, the IEP team continued to amend Student A's IEP to increase his time in school and he eventually began attending 990 minutes per week. On November 1, 2017, the IEP team developed Student A's annual IEP which continued to provide for 990 minutes a week of services. The IEP did not

include updated annual goals or an updated BIP, and contained inaccurate information about Student A's present levels of performance.

The Parent alleged that the District failed to follow procedures for changing Student A's placement, and failed to follow procedures for developing Student A's IEP, including a BIP. The District denied the allegations.

### **SCOPE OF INVESTIGATION**

This decision references events which occurred prior to the investigation time period, which began on November 28, 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 changing Student A's placement?
2. Did the District follow procedures for developing Student A's individualized education program (IEP), including a behavioral intervention plan (BIP)?

### **LEGAL STANDARDS**

Change in Placement: One of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016). The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *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). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, 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 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. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

IEP Definition: An individualized education program (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) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

IEP Development for a Student with Behavioral Needs: In developing, reviewing, and revising each student's individualized education program (IEP), the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or 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. 64 Fed. Reg. 48, 12479 (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).

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 a free appropriate public education (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).

Emergency Response Protocols: If the parent and the school district determine that a student requires advanced educational planning, the parent and the district may develop emergency response protocols to be used in the case of emergencies that pose an imminent likelihood of serious harm, as defined in this section. Emergency response protocols, if developed, must be incorporated into a student's IEP. Emergency response protocols shall not be used as a substitute for the systematic use of a behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior. Emergency response protocols are subject to the conditions and limitations as follows: a) the student's parent provides consent, as defined in WAC 392-172A-01040, in advance, to the emergency response protocols to be adopted; b) the emergency response protocols specify the emergency conditions under which isolation, restraint, or restraint devices, if any, may be used; the type of isolation, restraint, and/or restraint devices, if any, may be used; and the staff members or contracted positions permitted to use isolation, restraint, or restraint devices with the student, updated annually, and identify any required training associated with the use of isolation, restraint, or restraint devices for each staff member or contracted position; c) and any other special precautions that must be taken. WAC 392-172A-02105.

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

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

## FINDINGS OF FACT

### Background Facts

1. In October 2015, the District determined that Student A was initially eligible for special education under the category of other health impairment. Based on the October 2015 evaluation report, the initial evaluation included only a review of existing data and did not include any assessments of Student A. The evaluation report recommended that he receive specially designed instruction in the area of emotional/social behavior.

### 2016-2017 School Year

2. During the 2016-2017 school year, Student A attended third grade at a District elementary school and continued to be eligible for special education services.
3. The District's 2016-2017 school year began on August 31, 2016.
4. Student A's individualized education program (IEP) in place at the beginning of the 2016-2017 school year was developed in November 2015. The November 2015 IEP included present levels of academic and functional performance, which stated:

[Student A] has made large gains in Social/Emotional skills. He has been able to manage aggressive outburst[s] on most occasions. He has been integrated successfully in the general education setting, but continues to struggle with managing his behavior in settings such as P.E. and Library. He has been learning to take a break when he self-identifies situations in which he is becoming agitated/upset/angry. Another area that he struggles in is following directions with a single prompt[.]. On many occasions [Student A] requires multiple prompts before starting a task.

The November 2015 IEP included the following annual goals in the area of social/emotional skills:

- When given a situation where he becomes agitated/upset/angry Student A will use a break card improving social/emotional skills in anger management from 0% use of a break card strategy to 90% use of a break card strategy.
- When given directions by a teacher/adult (1 prompt) Student A will follow directions using a 4 step process/cue card such as:
  - HEAR the person say the directions. Use your ears.
  - ASK questions about the directions. If you don't know how to do something, ask a question.
  - LOOK at the directions that need to be followed. Use your eyes or write them down.
  - CHECK what you did. Make sure you followed all the steps of the directions.

Improving social/emotional skills in following directions from following directions with 2 or more prompts, on 80% of opportunities, to following directions with 1 prompt, on 80% of opportunities.

The IEP stated that Student A attended school 1,665 minutes per week and spent 91% of his school week in a general education setting. The IEP provided for the following specially designed instruction in a special education setting:

- Social/emotional – 150 minutes per week

The November 2015 IEP included thirteen accommodations, including a “behavior plan/contract”. The IEP also indicated that the District was in the process of developing a behavioral intervention plan (BIP) for the Student. The District’s documentation in this complaint does not show that a BIP was later completed.

5. On September 29, 2016, Student A received a disciplinary referral. According to Student A’s discipline report, during his physical education (PE) class, Student A would not comply with games rules, and then “stormed out” and stayed in the bathroom for five minutes. An adult went and talked with Student A, who then calmed down and returned to PE. Student A then again did not comply with PE rules and “shoved/slapped/yelled” at other students. The behavior continued throughout the class period and worsened toward the other students in Student A’s proximity. The discipline referral form indicated that staff had a conference with Student A about his behavior.
6. Based on the documentation in this complaint, at some point in September or early October 2016, Student A was moved from his third grade general education classroom to a second grade general education classroom, which was taught by the same teacher Student A had when he was in second grade during the 2015-2016 school year. The rationale for the change in classes was that Student A had a good rapport with the second grade teacher and had less behavior issues when he was in her class. While in the second grade classroom, Student A was assigned a 1:1 paraeducator. The 1:1 paraeducator support was not noted in Student A’s IEP.
7. On October 14, 2016, Student A received a disciplinary referral. According to the elementary school’s referral form (referral form), another student was running with a ball that Student A was trying to take back. Student A ran into the other student “hard, knocking him down” which injured the other student’s side and head. The referral form indicated that as a result of the behavior, Student A spent time in the school office.
8. On October 18, 2016, Student A received two disciplinary referrals. According to one of the referral forms, Student A and a staff member were walking in the hallway to get work from Student A’s teacher and Student A was not following directions. At one point, Student A “pointed at the bat”, stated “I’m gonna hit you with a bat”, and then started laughing. According to the other referral form, Student A kicked another student for making what Student A perceived to be rude comments toward him. The referral forms indicated that as a result of the behavior, Student A spent time in the school office.
9. On October 19, 2016, Student A received a disciplinary referral. According to the referral form, Student A “deliberately tripped another student as he was running by. [Student A] moved out of line to sweep under student’s feet, causing student to trip and fall on gym floor at a full running speed”. The referral form indicated that as a result of the behavior, Student A lost a privilege.

10. On October 20, 2016, Student A's IEP team, including the Parent, met to complete a functional behavioral assessment (FBA) of Student A. Based on the District's documentation, Student A's general education teacher did not attend the meeting. The FBA stated that Student A's target behavior was making inappropriate statements intermittently throughout the school day and when engaged in heated confrontations with other students. The FBA stated that the behavior tended to occur when Student A wanted attention from peers or adults and that antecedents for the behavior included the following:

- Behavioral escalation to the point he can't self-regulate
- Math calculation and/or operations tasks without intense adult support
- Perceived sense of injustice
- Overstimulation
- When held accountable for behavior
- No peer or adult attention
- Perception that others are talking about him

The FBA did not address Student A's aggressive behavior toward other students. The FBA recommended that Student A have a BIP.

11. Also on October 20, 2016, the IEP team developed a BIP for Student A. The October 2016 BIP stated that Student A's problem behaviors were using inappropriate language and physically touching others (i.e., bopping them on the head, standing over them, sweeping their feet out). The BIP stated that the behaviors occurred in multiple school settings throughout the day, but noted that the behaviors happened more in the morning hours. The BIP also stated that acceptable alternate behaviors would be: taking a break, choosing an alternate activity, taking a break with an identified adult. The BIP said that Student A would be taught the following behaviors:

- Teach him how to take a break in a designated calm down area
- Establish a contact person he can take a break with
- Pre-teach what simple directions will be used
- Teach him appropriate areas of control through social skills curriculum
- Teach what words to use when angry-replacement words he chooses

The BIP also included the following "consequence manipulations":

- Proximity and eye contact
- State expected behavior and check for understanding
- Praise and honor break
- Instruction in self-regulation
- Frequent check in and check out
- Opportunity to be a learning coach
- Frequent nurturing comments
- Reminders for expected behaviors
- Frequent praise for appropriate behavior
- Allow him choices of activities (i.e., which activity math or writing)

Additionally, the BIP included a “crisis plan” which stated, “direct student to designated calm area and allow him to re-enter when calm”. The “crisis plan” also stated that if Student A became physically aggressive and unsafe, the following steps would be taken: evacuate other students, maintain two staff in area, notify building administrator, wait for Student to calm, use right response procedures if Student is at risk of hurting self or others.

12. On November 1, 2016, Student A’s IEP team, including the Parent, met to develop Student A’s annual IEP. The November 2016 IEP included present levels of educational performance, which stated:

General Education Teacher Report – [Student A] is a bright minded third grade student. He is at grade level in reading, writing, and math. He enjoys being challenged in his academics. He also enjoys building positive relationships with adults. He is very observant of his surroundings and what is happening around him...[Student A] succeeds in a structured environment where adults ensure him he [is] loved and cared for. He responds best to constant supervision and mentorships. He struggles in school with following commands pertaining to undesired activities and self-regulation. When he becomes over stimulated or aggravated he tends to respond with defiance, inappropriate language, and inappropriate physical contact.

The November 2016 IEP included the following annual goals in the area “personal/social”:

- When given a situation where he becomes agitated/upset/angry Student A will use a break card improving social/emotional skills in anger management from 75% use of a break card strategy to 90% use of a break card strategy.
- When given directions by a teacher/adult (1 prompt) Student A will follow directions using a 4 step process/cue card such as:
  - HEAR the person say the directions. Use your ears.
  - ASK questions about the directions. If you don’t know how to do something, ask a question.
  - LOOK at the directions that need to be followed. Use your eyes or write them down.
  - CHECK what you did. Make sure you followed all the steps of the directions.

Improving social/emotional skills in following directions from following directions with 2 or more prompts to following directions with 1 prompt, on 80% of opportunities.

The November 2016 IEP stated that the Student would spend 0% of his school day in a general education setting and provided for the following specially designed instruction:

- Personal/social – 333 minutes 5 times per week

The November 2016 IEP also stated that Student A’s behavior impeded his learning and the learning of others. The IEP stated that an “FBA would be completed”<sup>1</sup> and referenced an attached BIP. Student A’s October 20, 2016 BIP was attached to the IEP. The IEP also included two accommodations: behaviorally related – contract and more time on tests.

13. On November 2, 2016, the District issued a prior written notice, proposing to change the Student’s IEP. The notice stated that the reason for the change was “the purpose of the IEP meeting was to develop and/or review and determine the appropriate program, placement,

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<sup>1</sup> The documentation in this complaint does not show that an FBA was later completed.



services and goals and objectives.” The notice did not include information about the change in Student A’s placement or information about the decision to no longer include many of the accommodations from the prior November 2015 IEP.

14. Due to parent/teacher conferences and holidays, there was no school November 21-25, 2016.

**Timeline for this Complaint Begins on November 28, 2016**

15. On the morning of December 6, 2016, the Parent sent a text message to Student A’s special education teacher. The Parent stated that Student A was having a “rough time and actively sabotaging everything we need to do”, which included being on time to school. The Parent stated that she wanted to give the teacher a “heads up” about the behavior. In response, the special education teacher thanked the Parent for the information.

16. On the evening of December 6, 2016, a paraeducator who worked with Student A (paraeducator 1) emailed the elementary school principal and the school psychologist, stating that she had been told by another paraeducator that Student A had grabbed another student by the neck earlier that day. Paraeducator 1 then relayed additional information about Student A’s day, stating that Student A started the day late and “already was half flipped”. Student A was angry at doing work and thought that it is was unfair that another student got to do “baby work”. Paraeducator 1 stated that Student A spent two hours complaining about work and refusing to do anything. Then, just before lunch, Student A told paraeducator 1 he was going to throw a chair at her. In response, paraeducator 1 reminded Student A about what happened last time he did so, and Student A responded that he did not care, but also did not attempt to throw a chair. Paraeducator 1 then decided that Student A should eat his lunch in the classroom “due to his language and violent tendency”. Student A then threatened “to kill” paraeducator 1 on two occasions and called her multiple inappropriate names. Paraeducator 1 responded by confronting the behavior and letting Student A know she believed in him and his abilities to do his work. After about twenty minutes, Student A calmed down enough to eat. He then complied with directions and completed his work while complaining.

17. Based on the documentation in this complaint, on December 8, 2016, the Parent contacted a local private behavioral health clinic and requested a “crisis assessment” for Student A. On December 9, 2016, a private provider employed by the clinic conducted a risk assessment of Student A.

18. According to Student A’s attendance record, Student A was absent December 9-14, 2016, per the Parent’s request.

19. According to the District’s enrollment records, Student A was unenrolled from the District on December 14, 2016.

20. Based on the documentation in this complaint, during the latter part of December 2016, Student A was admitted to an area medical center.

21. The District was on break December 19, 2016 through January 2, 2017.

22. On January 5, 2017, the District held a “re-entry meeting” for Student A. The following people participated in the meeting:

- Parent
- Student (part of meeting)
- Special education teacher
- School psychologist
- Principal
- School counselor
- Paraeducator
- Private behavior therapist (employed by the behavioral health clinic)

Based on the meeting notes, the Parent provided information that she had a hard time getting Student A up in the morning and that Student A did not want to get dressed. Student A would call the Parent names, have “temper tantrums”, threaten the Parent, and had hit a window with a metal object. The Parent had asked Student A if he was nervous about attending school and Student A had said no. However, the Parent believed Student A had anxiety or nervousness about coming to school, and also wanted attention from the Parent. The Parent expressed that she believed Student A’s time at the medical center was beneficial to Student A because it was structured and there were strong boundaries and consequences in place. The Parent also shared that Student A’s medications had changed, and that she did see Student A trying to improve his behavior, even if he needed “heavy reminders”. The private behavior therapist then shared that Student A had a constant need for attention and that he had outbursts when he did not receive attention. The team discussed that a goal would be for Student A to appropriately ask for attention, and have alternative options, such as meeting with the school counselor or teacher instead of acting out violently. The private behavior therapist discussed having a crisis plan for Student A. Additionally, paraeducator 1 provided information about Student A’s behavior at school and strategies being used with Student A. The school psychologist also provided information about the results of Student A’s neuro-cognitive assessment<sup>2</sup>, Student A’s medical diagnosis and medications, that Student A’s younger brother was a trigger for Student A, and that while Student A was at the medical center, he exhibited similar behaviors to what he displayed at school and home. At some point, Student A was included in the meeting, and the team discussed that his behavior at school had been unsafe and that the school’s job was to keep everyone safe. Student A acknowledged that his behavior of throwing chairs at his teacher and touching other students was unsafe. The team also discussed that Student A’s home needed to be safe and that the Parent was following the same protocols at home, that were followed at school, in order to ensure this.

23. Also on January 5, 2017, the District created an emergency response protocol for Student A. The emergency protocol was not signed by the Parent, but was signed by the school principal. The protocol stated that the emergency conditions under which isolation, restraint, or a restraint device would be used were:

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<sup>2</sup> It is unclear from the documentation in this complaint what neuro-cognitive assessment the school psychologist was referring to. The Student’s October 2015 initial evaluation report does not reference a neuro-cognitive assessment. The evaluation does reference a “medical report” provided to the District by a behavioral pediatrician.

In all areas and all times in which the student threatens to physically harm or attempt to physically harm staff or students. Behaviors such as hitting, kicking, choking, picking up furniture, or throwing objects. Specifically Response Team shall:

- 1) Make emergency notifications to Office to request further staff assistance (radio and or phone).
- 2) Create and maintain perimeter of student (isolate and contain). Implement a plan to have other students removed from the room.
- 3) Maintain line of sight supervision and utilize calm verbal directives for student to stop unsafe action.
- 4) Follow and utilize physical interventions as a last resort to keep students and staff safe.
- 5) If student places himself or others at risk, staff shall notify office and request for call to private behavior therapist/behavioral health clinic for help and school resource officer, and potentially 911 assistance depending on level of escalation.

Note: verbal threats such as “I’m going to kill you” or “I’m going to choke you” and non-verbal physical threats such as gun gestures with hands or pretending to slice his throat using his finger – staff shall follow emergency response procedures however, a 911 call will not be necessary.

24. Also on January 5, 2017, the District issued a prior written notice, proposing to initiate “re-entry/ERP/safety plan.” The January 5 prior written notice is not clearly written and contains contradicting statements. Under the section entitled “Description of other options considered and rejected”, it stated:

The team discussed [Student A] continuing his education in the readiness room [special education classroom]. The continuation of positive behavior interventions, staff relationships, boundaries, consequences, and emergency response protocol was determined. The team considered a plan for [Student A] to be taught positive alternatives to frustration such as breaks, breathing and verbalizing his frustrations with school appropriate vocabulary. Positive staff relationships will continue to be built with the counselors, principal, readiness room instructors, and his classroom teachers. Giving [Student A] verbal reminders that he is cared for, acknowledge, and placing time limits when he needs immediate attention were suggested and plan to be implemented in all areas. In the event of violent behaviors, threats, or actions towards staff or students a call to the emergency response team (WISE), school resource officer and/or 911 will be made. The building principal will be notified of all violent behaviors, verbalizations, or actions immediately by the supervising adult. Team acknowledged trigger when [Student A] begins to argue or name-calling this will be a time to consider students/staff and space and potentially prepare for unsafe behavior.

The January 5 notice also contained a section entitled “The reasons we rejected those options were:” and stated there were no rejected options at this meeting. The notice further stated that documentation of medical services provided by a private behavioral health clinic and a private medical center “were used as the basis for this action” and that verbal input of experiences from teachers, parents, and staff were also considered.

25. According to the District’s enrollment records, Student A was reenrolled in the District on Monday, January 9, 2017. There was no school on January 9 due to inclement weather.

26. On January 25, 2017, the special education teacher sent a text message to the Parent, stating that Student A had been aggressive and had threatened to break another student's finger. The teacher stated that she had contacted Student A's private behavior therapist and was waiting to hear back from him. Based on the documentation in this complaint, also on January 25, Student A threatened to "cut off" the fingers of another student who was walking too slow.

27. On January 26, 2017, the District held an IEP meeting to discuss Student A's behavior. The following people participated in the meeting:

- Special education teacher
- School psychologist
- Principal
- School counselor
- Paraeducator 1
- Private behavior therapist

According to the meeting notes, the Parent was invited to the meeting, but declined to attend or participate by phone. The IEP team reviewed Student A's emergency response protocol. The team discussed Student A's "serious impulsive violent behaviors", that he targeted random students and adults, used foul language, and made violent threats. District staff then provided the private behavior therapist with background information regarding Student A's current placement and the reasoning behind the placement. The team also discussed that Student A had a tendency to control and "keep the people who are interacting with him" and that he was "a little" escalated prior to "the threat", as he was worried the volunteer that worked with him, would not be returning to the classroom. The team noted that Student A was "very smart" and was "all about survival". The team then discussed that the school counselor had been meeting with Student A during scheduled meetings and also as needed. The school principal had also been doing frequent check-ins and "hellos" with Student A throughout the day. The team discussed some strategies to help with Student A, and paraeducator 1 shared the data she had collected regarding Student A.<sup>3</sup> Finally, the team discussed the "emergency response plan" for Student A.

28. Based on the documentation in this complaint, on Friday, January 27, 2017, Student A verbally threatened his teacher, "attempting to assault her by swinging at her multiple times". As a result, staff restrained Student A, and then contacted Student A's private behavior therapist. The private behavior therapist recommended that staff contact the Parent and that a second risk assessment be completed. The Parent picked up the Student from school.

29. Based on the documentation in this complaint, on Monday, January 30, 2017, Student A was suspended from school for one day due to his behavior on January 27, 2017. The District's suspension report stated that:

While in computer lab, [Student A] verbally threatened to kill his teacher. He raised a chair over his head and advanced on her, threatening to throw chair at her. When teacher got him to put chair down, he advanced with his fists to hit teacher but was put in a chair and held there until he calmed down.

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<sup>3</sup> According to the January 26, 2017 meeting notes, paraeducator 1 collected data an average of every 15 minutes throughout the day.

30. Also on January 30, 2017, Student A's IEP team, including the Parent, met to discuss Student A's behavior. The Parent participated in the meeting by phone. According to the meeting notes, the IEP team discussed that Student A had "recently" been moved to a "1:1 setting" with paraeducator 1 and a volunteer.<sup>4</sup> The team also discussed Student A's behavior incident on January 27, 2017. The District members of the IEP team then asked that a second risk assessment be completed by the private behavior therapist, and the Parent expressed concern that having a risk assessment completed would mean Student A would be out of school for an extended period of time. The District special education director (District director) asked the Parent about the recommendations made by the medical center after the Student was discharged from the medical center's program. The Parent provided information that Student A had been meeting with the private behavior therapist once a week and that a meeting to discuss wraparound intensive services (WISe)<sup>5</sup> in the home was scheduled for January 31, 2017. The IEP team also discussed the District's concern about safety and that Student A was exhibiting a pattern of escalated behaviors – threatening to harm at least three staff members in the past and harming multiple students in a school setting. Additionally, the team discussed Student A's placements during the 2016-2017 school year and the District director recommended a "full care meeting", which included WISe, the private behavior therapist, the Parent, and the District members of the IEP team, to "accommodate wrap around programs and educational care" that was the "best fit" for Student A. The meeting notes indicated that a risk assessment would be completed in order to ensure Student A was safe to be present around other students and staff in a school setting, and that the District director would contact the private behavior therapist about conducting a risk assessment and then organize an IEP team meeting with the "entire care team".
31. According to Student A's attendance record, Student A was absent Tuesday, January 31, 2017 through Friday, February 3, 2017, per the Parent's request.
32. On February 3, 2017, the school principal emailed the Parent, asking if the Parent had been able to schedule the risk assessment for Student A, or if the private behavior therapist had completed it on February 2 when he was scheduled to visit Student A. The principal asked that the Parent let her know the status of the risk assessment. The principal stated "if we aren't in line to have our risk assessment review meeting and plan next steps by [February 6, 2017]", then she would "try to align someone to come to the house for [Student A's] specially designed instruction" if the Parent was interested. The principal said the District would try to stay with the same schedule as before and have someone come over about 7:30 a.m. In response, the Parent indicated that another person from the behavioral health clinic had completed the risk assessment on February 1, and that the private therapist had visited on February 2. The Parent stated that she believed the risk assessment report was being written up, but did not know what the turnaround time was. The principal later replied, thanking the

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<sup>4</sup> The documentation in this complaint does not show that Student A's IEP team agreed on or amended Student A's IEP to reflect that he would receive instruction in a 2(staff):1 (student) setting.

<sup>5</sup> The WISe services were provided by the same private behavioral health clinic at which Student A's private therapist was employed.

Parent for the information and stating that she would let the Parent know as soon as the District received the risk assessment report.

33. On February 6, 2017, the school principal emailed the Parent and copied the District director, school psychologist, special education teacher, school counselor, and paraeducator 1. The principal stated that she had received the risk assessment completed by the private behavior therapist that morning, and that the Parent's first opportunity to meet to review the report and plan next steps was February 8, 2017. The principal said that in the meantime, paraeducator 1 would go to Student A's home in the mornings to provide him with specially designed instruction.
34. On February 8, 2017, Student A's IEP team met to discuss the results of Student A's risk assessment completed by the private behavioral therapy provider. According to the meeting notes, the IEP team included the following people:
- Parent
  - Student
  - Special education teacher
  - School psychologist
  - Principal
  - District representative
  - School counselor
  - Paraeducator 1
  - Private behavior therapist

Based on the meeting notes, the private behavior therapist gave an update on his visits with Student A. The behavior therapist stated that he had met with Student A in the emergency room and in Student A's home that week, and that both sessions went well. The behavior therapist stated a risk assessment had been completed and it was recommended that Student A receive in-patient care. However, the emergency room had discharged Student A and recommended out-patient care. The IEP team discussed that the behavior therapist would provide recommendations for Student A, and that school seemed like a "really big trigger" for Student A, both "verbally and physically". The behavior therapist recommended removing Student A from the school setting until he could be stabilized with the use of medication, interventions, and instructions. The IEP team then discussed that for the past two days, paraeducator 1 had been sent to Student A's home to provide instruction, and during that time, Student A had verbalized three times that he would kill paraeducator 1 and the Parent. However, Student A completed his work independently and was proud to show his completed work to paraeducator 1 and the Parent. According to the meeting notes, the Parent then agreed with the private behavior therapist's recommendation that Student A receive in-home services from the District, WISE services, and session with the therapist. The IEP team then suggested more time for academics and discussed Student A's stamina. Student A was currently receiving forty-five minutes a day of one-on-one instruction in the home. The behavior therapist then asked Student A about school and Student A expressed that he wanted to be at school and learn. The IEP team then discussed a timeline to revisit Student A's placement and services, and the behavior therapist recommended a least one month before the team revisited the topic. The school psychologist then asked what stipulations the team was looking for in order for Student A to return back to school and what the plan was for when returned. The school principal suggested that in the next month, the

IEP team consider a “gradual release” back into the school setting. The Parent was then given a consent form to sign so the District could exchange information with Student A’s medical providers.

35. Also on February 8, 2017, the District amended Student A’s IEP. The amendment was signed only by the special education teacher and the school principal. The amended IEP stated that the Student would now attend school 300 minutes per week and receive specially designed instruction 60 minutes 5 times weekly in a special education setting. The amendment stated that “due to safety of staff and students [Student A’s] instruction will be received in the home setting by paraprofessional support.” The amended IEP stated that Student A did not have an emergency response protocol.

36. On February 14, 2017, Student A’s IEP team met to discuss Student A’s status. The Parent did not attend the meeting and the District’s documentation does not reflect that the Parent was invited to the meeting. The IEP team included the following people:

- Special education teacher
- School psychologist
- Principal
- School counselor
- Paraeducator 1
- WISE provider

Based on the meeting notes, the WISE provider gave an overview of her services and the services of other WISE team members. The IEP team discussed that WISE had a number to call during a crisis, and that the Student’s private behavior therapist, although employed by the same clinic, was not part of the WISE team. The WISE provider suggested creating a new crisis plan to support Student A at school, and the school principal gave a history of Student A’s placements while at school. The IEP team then discussed Student A’s current crisis plan, created by his private behavior therapist, that addressed violent behavior, such as hitting, kicking, and punching and threats of physical violence. That crisis plan had been unsuccessful, and Student A had been moved to an in-home service model until wraparound services were in place and Student A stabilized. The meeting notes stated that a meeting was scheduled for March 8, 2017 to discuss Student A’s placement and “crisis.” The WISE provider then suggested that the WISE team come into the school setting and work with school staff and Student A. The school psychologist suggested providing in-home services via paraeducator 1 to begin with. Paraeducator 1 then gave an overview of what Student A’s in-home services and curriculum looked like and how Student A responded to instruction. Paraeducator 1 expressed that she would like the District to “hold [Student A] and [the Parent] accountable for finishing academic pieces.” Additionally, the school psychologist shared input that the Parent had provided about Student A’s prior school placement. The Parent had expressed that she did not feel the prior school placement had worked, because the classrooms were too crowded, there were too many people, having paraeducator support was embarrassing for Student A, and people asked Student A too many personal questions. In response, the school psychologist had “encouraged” the Parent to collect data on the in-home placement for ten days. Finally, the WISE provider suggested that home visits may not be an appropriate long-term setting, and it was agreed that “alternative settings” and placement would be

discussed at the next meeting. The WISE provider also informed the District staff that WISE held monthly family team meetings regarding Student A, and that District staff could attend.

37. On March 7, 2017, Student A's IEP team met to discuss Student A's progress. The Parent did not attend the meeting, and it is unclear from the District's documentation in this complaint if the Parent was invited to the meeting. The IEP team included the following people:

- Special education teacher
- School psychologist
- Principal
- School counselor
- Paraeducator 1
- WISE Provider

Based on the meeting notes, the WISE provider had met twice with the Parent to "establish trust and safety" because the Parent had seemed apprehensive, and that the Parent had provided "mixed messages" to the provider and another provider about wanting information about a behavioral education skills training program (BEST program) at an area children's hospital.<sup>6</sup> The WISE provider shared that on March 2, 2017, Student A had "opened up about wanting to come back to school". Paraeducator 1 shared that "lessons were getting better" that week as there were not as many distractions, the house was calmer, and Student A was more compliant. The team discussed that the Parent had told the WISE provider that Student A was completing homework, but paraeducator 1 reported that Student A was not completing or turning in anything. Additionally, the IEP team discussed "possible re-integration" of Student A and the following options:

- Shortened school day (8:30-11:30 am)
- Having Student A in school by himself
- Keeping Student A in his current placement – in-home services
- Enrolling Student A in the BEST program and waiting until next school year to re-integrate
- Having an area for Student A to let out his aggression and decompress
- Home builders intervention – shortened amount of time, but every day support

38. On March 16, 2017, Student A's IEP team met to discuss Student A's progress and possible placements for Student A. The IEP team included the following people:

- Parent (via phone)
- Private behavior therapist
- Paraeducator 1
- Paraeducator 2
- Special education teacher
- School psychologist
- Principal
- School counselor
- District director
- WISE Providers ( two team members)

Based on the meeting notes, the IEP team discussed that Student A seemed emotionally stable during in-home therapy sessions, and although he needed many redirects, he was making good progress. The private behavior therapist noted that Student A had some anxiety about returning to school, but that Student A was willing to converse about school and entertain the idea of returning. The WISE provider also noted Student A had some anxiety

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<sup>6</sup> The BEST program is a five-week hospital-based day treatment program that provides intensive therapeutic treatment for children in grades kindergarten through sixth grade. In order to attend the program, a child must already be receiving behavioral health services from a therapist and the therapist must refer the child to the BEST program.



about returning to school, but that Student A did want to return and had expressed missing his friends. Paraeducator 1 reported a change in Student A in the past week and noted that the home had been peaceful. The Parent expressed that Student A was doing well at home, but that she had anxiety about Student A returning to school and thought it might be beneficial to have someone present during the transition back to school. Both the WISE providers and the behavior therapist volunteered to assist in the transition. The IEP team also discussed that Student A had recently begun a private counseling group for boys, and that he had started a new medication, which he took twice a day. Next, the IEP team discussed having a District male paraeducator with a background in behavior (paraeducator 2) begin working with Student A. The team agreed that paraeducator 2 would accompany paraeducator 1 to Student A's home on March 20, 2017, in order to build a relationship with Student A in a place where Student A was comfortable. The team also agreed that the Student would begin attending school on March 23 for two hours and then gradually increase his time from there. During the week of March 27-31, 2017, Student A would begin receiving in-home services on Monday and Tuesday, and then attend school on Wednesday and Thursday for two hours. Paraeducator 2 would act as Student A's 1:1 paraeducator while Student A was at school. The team further discussed a possible daily schedule for Student A while at school and that Student A should be allowed input into the schedule.

39. On March 20, 2017, the District amended Student A's IEP based on the IEP team's decisions at the March 16, 2017 IEP meeting. The amendment was signed by the special education teacher and the school principal, but not by the Parent. The amended IEP stated that from March 20-26, 2017, Student A would attend school 120 minutes per week and receive 120 minutes per week of specially designed instruction in a special education setting. The amended IEP also stated that Student A would also receive 240 minutes of specially designed instruction at his home. The amendment stated that the "team is proposing to change the student's placement and services to reflect a gradual release into the school setting. The team will reevaluate the needs of the student as needed."
40. On March 27, 2017, the District amended Student A's IEP based on the IEP team's decisions at the March 16, 2017 IEP meeting. The amendment was signed by the special education teacher and the school principal, but not by the Parent. The amended IEP stated that from March 27-April 15, 2017, Student A would attend school 240 minutes per week and receive 240 minutes per week of specially designed instruction in a special education setting. The amendment stated that the "team is proposing to change the student's placement and services to reflect a gradual release into the school setting. The team will reevaluate the needs of the student as needed." Based on the District's documentation in this complaint, the District originally proposed to also provide Student A with 180 minutes per week of in-home services, but the Parent called and declined the in-home services.
41. The District was on break April 3-7, 2017.

42. On April 26, 2017, Student A's IEP team met to review Student A's progress. The Parent did not attend the meeting and it is unclear from the District's documentation in this complaint, whether the Parent was invited to the meeting. The following people attended the meeting:

- Paraeducator 1
- Paraeducator 2
- Special education teacher
- Principal
- School counselor
- WISE Providers (three team members)

Based on the meeting notes, the IEP team discussed that Student A was currently attending school two days per week for two hours a day (8:30-10:30 a.m.) with "heavy support (three adults in the room)".<sup>7</sup> One of the WISE providers shared that mornings were harder for Student A, but that he had been able to sit longer and produce more work. The team discussed that too many adults in the classroom could be a trigger/anxiety amplifier for Student A. Paraeducator 2 then reported that Student A seemed more academically engaged the past few weeks and seemed to be catching on. Student A got frustrated more with reading and writing, but mathematics seemed to be more enjoyable and a strength for Student A. The WISE provider shared that Student A was more engaged one-on-one at home and that they were working on using nice words and saying kind things, and were in the process of starting a token system. The private behavior therapist was still working in the home with Student A. The IEP team then discussed that having consistent rules for Student A was important and the WISE providers asked for a copy of the school rules. The IEP team agreed that Student A would continue to attend school two days a week for two hours a day and that a meeting to evaluate his progress would be held on May 24, 2017.

43. On May 24, 2017, Student A's IEP team met to review his progress. The following people attended the meeting:

- Parent (part of meeting)
- Paraeducator 1
- Paraeducator 2
- Principal
- School counselor
- WISE Providers (three team members)

Based on the meeting notes, the IEP team discussed that Student A was getting back to where he was before he was pulled out of school. He was not needing as many breaks and was capable of working for a more sustained period of time without breaks. The team discussed using the same reward system at school and at home. Additionally, the team discussed maintaining Student A's schedule until the end of the year, and one of the WISE providers shared that Student A was on the waiting list to attend the BEST program. The team discussed that Student A had difficulty reading other people's facial expressions and was not comfortable with eye-to-eye contact. Paraeducator 2 encouraged Student A to have conversations with others, and felt that Student A needed to build relationships on many levels. The team agreed to meet again in August 2017 to discuss Student A's schedule. The Parent stated that she wanted Student A to start in a general education classroom and the principal stated that Student A's compliance was such that a general education setting was not a good match. The principal also stated that classroom teacher determinations were made in August. The team

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<sup>7</sup> Based on the documentation in this complaint, a member of the WISE team attended school with Student A at least part of the time Student A attended school.

then discussed reevaluating Student A's progress after the summer and that the team could look at creative ideas for supporting Student A at that time.

44. According to the District's enrollment records, Student A was unenrolled from the District on June 5, 2017. Based on the documentation in this complaint, at that time, Student A began attending the BEST program at the area children's hospital, and was enrolled in the school district where the children's hospital is located.<sup>8</sup>

45. The District's 2016-2017 school year ended on June 15, 2017.

### Summer 2017

46. On August 23, 2017, Student A's IEP team met to review his progress and discuss his placement. The following people attended the meeting:

- Parent
- Principal
- Paraeducator 1
- Special education teacher
- Principal
- School counselor
- District director
- WISE Providers (two team members)

Based on the meeting notes, the IEP team discussed that Student A completed the BEST program in July 2017 and was now participating in a boys counseling group every other week. The BEST program had recommended that academics and behavior be paired, as academics were a trigger for Student A. The IEP team discussed that Student A continued to need multiple redirections (30 per day) to stay at his baseline behavior. The WISE providers reported that Student A's behavior escalations were not as extreme or violent. The IEP team discussed Student A's academics and that reports showed his reading comprehension was low and he struggled with engagement in mathematics and working on grade level vocabulary. The IEP team then discussed Student A's schedule for the upcoming school year and the WISE providers suggested implementing more time in school for consistency. The team discussed the following schedule:

- Monday, Wednesday, Friday: two hours for two weeks
- Monday, Tuesday, Wednesday, Friday: two hours for two weeks
- Monday – Friday: two hours for two weeks and then add additional hours as success is seen.

47. Also on August 23, 2017, the District amended Student A's IEP. The amendment was signed by the special education teacher and the school principal, but not by the Parent. The amendment did not align with the schedule discussed at the IEP meeting. The amended IEP stated that Student A would now attend school 450 minutes per week and receive 450 minutes per week of specially designed instruction in a special education setting. The amendment stated that the "team is proposing to change the student's placement and

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<sup>8</sup> The children's hospital which operates the BEST program is located in the geographic boundaries of another school district. According to the BEST program, while children attend the BEST program, they are enrolled in the school district where the hospital resides and that school district has responsibility to provide academic instruction. However, during the fourth and fifth week of the BEST program, children spend some of the time in their school of residence and receive services there.

services to reflect a gradual release into the school setting. The team will reevaluate the needs of the student as needed.”

48. Also on August 23, 2017, the District issued a prior written notice, proposing to initiate a reentry plan for Student A. The August 23<sup>rd</sup> notice is not clearly written. The notice did not describe the reentry plan for Student A that the District planned to implement, but stated that a meeting was convened to determine a program and placement for Student A. The notice further stated that reason for the reentry plan was that Student A was withdrawn from the District in June 2017 and that upon return, the IEP team convened to determine an appropriate placement and program for him. Under the section entitled “Description of other options considered and rejected”, it stated:

The team discussed reinforcement, behaviors, and consequences for the student. The team considered [Student A] returning to school for three days a week, two and a half hours a day. The team considered small group and one on one placement for the student. It was discussed reinforcement systems and consequences for [Student A’s] behaviors. The team considered addressing these reinforcers and consequences for [Student A’s] behaviors. The team rejected having the student return to school on a full day schedule.

49. According to the District’s enrollment records, Student A was reenrolled in the District on August 30, 2017.

#### **2017-2018 School Year**

50. The District’s 2017-2018 school year began on August 30, 2017.
51. During the 2017-2018 school year, the elementary school operated Monday-Thursday (8:30 a.m.-2:45 p.m.) and on Fridays (9:30 a.m.-2:45 p.m.).
52. The District was on break September 4, 2017.
53. On September 13, 2017, the District amended Student A’s IEP. The amendment was signed by the special education teacher and the school principal, and noted that the Parent gave “consent over phone”. The amended IEP stated that Student A would now attend school 600 minutes per week and receive 600 minutes per week of specially designed instruction in a special education setting. However, the amendment also included a contradictory statement, which stated that Student A would receive his instruction in an in-home setting.
54. Also on September 13, 2017, the District issued a prior written notice, proposing to change Student A’s educational placement. The notice contained unclear information and did not include a description of the proposed change. The notice stated that the reason for the action was “the team was called together to determine placement and services for Student A”. The notice stated that the team considered extending Student A’s school days to three days per week from 8:00-10:00 a.m., and that the team rejected the Student attending five days a week. The notice stated that the reason the team rejected Student A attending five days per week was “due to late start and gradually releasing the student into the school setting.” The

notice said that Student A's present levels of performance were used as the basis for the action.

55. On September 27, 2017, Student A's IEP team met to discuss his progress. The following people attended the meeting:

- Paraeducator 1
- Special education teacher
- School psychologist
- Principal
- WISE Providers (three team members)

Based on the meeting notes, the Parent was unable to attend the meeting. The IEP team discussed changing the work organization for Student A, so that he would have job folders and know what work to expect. The team also discussed behavior strategies to use at school, and agreed to discuss the topic further at the next meeting, when the Parent could be involved in the discussion. Additionally, the IEP team also discussed that Student A was currently attending school Monday-Thursday from 8:00-10:30 a.m., and whether the schedule should be changed to include school on Fridays, with a late start, or increase the time on Monday-Thursday. The team discussed that the increase in time could include time spent with another student. The team agreed to meet on October 11, 2017, to discuss Student A's progress.

56. Also on September 27, 2017, the District amended Student A's IEP. The amendment was signed by the special education teacher and the school principal, but not by the Parent. The amended IEP stated that Student A would now attend school 840 minutes per week and receive 840 minutes per week of specially designed instruction in a special education setting. The amendment stated that the "team is proposing to increase the student's frequency of services to 4 days per week for 3.5 hours per day (8:00am – 11:30 am, Monday-Thursday)." Also that day, the District issued a prior written notice, proposing to change Student A's educational placement.

57. On October 11, 2017, Student A's IEP team met to review his progress. The following people attended the meeting:

- School psychologist
- Special education teacher
- Principal
- Intern
- WISE Providers (three team members)

Based on the meeting notes, the Parent did not attend the meeting. The District's documentation showed the Parent was sent a meeting notice on October 9, 2017. The IEP team discussed increasing Student A's time at school to include time on Fridays or increasing his current school day to include lunch time at school and what that time might look like. The special education teacher agreed to call and speak with the Parent about extending Student A's time at school. The meeting notes stated that "academics for [Student A] were ready to reevaluate."

58. The District's documentation in this complaint included a prior written notice, dated October 11, 2017, but the notice does not propose to or refuse to take any action. The notice stated

that “the team met to reevaluate [Student A’s] performance and special education services” and that the team was meeting to discuss increasing Student A’s time at school. The notice stated that the team considered and rejected “increasing the student to 150 minutes per day (two and a half hours) for four days a week. The team rejected continuing three days a week and increasing to five days a week.” The notice also stated that the team rejected “increasing to five days a week due to [Student A’s] scheduling and the shortened school days on Fridays. The team decided to revisit the student coming on Fridays until the next follow up meeting.”

59. On October 23, 2017, the special education teacher sent the Parent a text message regarding scheduling the Student’s annual IEP review meeting. The teacher asked if there was a day and time in November 2017 that worked best for the Parent. In response, the Parent asked if the IEP review meeting should be scheduled at the same time as the next “regular meeting”, and stated that she thought the next meeting was the following week. The teacher later replied that the IEP review meeting could be held on November 1, 2017, which was the date of the next scheduled follow-up meeting. The teacher stated that they could also meet sooner to make a decision about increasing Student A’s time at school.
60. On October 26, 2017, Student A received two disciplinary referrals. According to one of the referral forms, around 8:35 a.m., Student A “walked into the room screaming. [A staff member] asked him to quiet down [and] he said make me. He went & sat at another child’s spot. I asked him to move, he refused. I moved his food to [sic]”. The referral form also stated the special education teacher had been called for backup and that Student A had “time out of room” for the “rest of the day”. According to the other referral form, around 8:42 a.m., the special education teacher entered the classroom and Student A was under a table poking another student with a pencil. Student A was then “pulled from the table and put in the break room.” The referral stated that the Student had “time out of room” the “rest of the day.”
61. Also on October 26, 2017, the special education teacher sent the Parent a text message, stating that she had just received confirmation that Student A would start attending school on Fridays from 9:30-11:30 a.m. in addition to Monday-Thursday from 8:30-11:30 am. The teacher stated that the District had transportation set up to “drop off” and that the new schedule could start on October 27 if that worked for the Parent. In response, the Parent agreed to the new schedule.
62. On October 27, 2017, the District amended Student A’s IEP. The amendment was signed by the special education teacher and the school principal, but not by the Parent. The amended IEP stated that Student A would now attend school 990 minutes per week and receive 990 minutes per week of specially designed instruction in a special education setting. The amendment stated that the “team is proposing to increase the student’s frequency of services to 4 days per week for 3.5 hours per day (8:00-11:30 a.m., Monday-Thursday) and 1 day a week 2.5 hours per day (Fridays).”

63. On November 1, 2017,<sup>9</sup> the Student’s IEP team, including the Parent, met to develop Student A’s annual IEP. The Parent participated in the meeting by phone. Student A’s October 31, 2017<sup>10</sup> IEP included the same information in the present levels of education regarding the general education teacher report as Student A’s November 2016 IEP, except that the information now stated that Student A was in fourth grade, instead of third grade (see finding of fact no. 12). The present levels also stated:

Emotional/social – [Student A] enjoys coming to school during the week. He completes his tasks when presented. Will ask for help when needed and works appropriately in a small group setting or with support. He enjoys helping younger peers and working as a role model. He is able to verbalize rules and expectations of the classroom. [Student A] is unable to self-regulate at times, especially during highly stimulating times where there may be lots of people, noise, or movement. He has expressed anxiety toward being at school and participating with his peers. He is often in others spaces and hyperactive.

The adverse impact summary statement in the IEP stated the following:

[Student A’s] health impairment affects his ability to make academic progress at a rate commensurate with that of same age peers and interferes with his progress in the general education curriculum requiring specially designed instruction in social/emotional skills. [Student A] will receive his instruction in the general education classroom for all core content areas. He will receive specially designed instruction for social/emotional skills in a special education setting.

The October 2017 IEP included the same two annual goals in the area of “personal/social” that were included in the Student’s November 2016 IEP (see finding of fact no. 12). The October 2017 IEP stated that the Student would spend 0% of his school day in a general education setting and provided for the following specially designed instruction:

- Emotional/social – 210 minutes 4 times weekly
- Emotional/social – 150 minutes 1 time weekly

The October 2017 IEP also stated that Student A’s behavior impeded his learning and the learning of others. The IEP stated that a “crisis plan and FBA” were attached. The IEP also included two accommodations: behaviorally related – contract and more time on tests. The October 2017 IEP stated that Student A did not have an emergency response protocol. Additionally, the IEP did not indicate that Student A had a BIP. However, included in the District’s documentation in this complaint is a copy of a BIP, dated October 20, 2016/October 31, 2017, which other than the date change, is the same as Student A’s October 20, 2016 BIP.

64. On November 6, 2017, the Parent signed consent for an independent consultant hired by the District to conduct an “FBA/BIP/independent observation” of Student A.

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<sup>9</sup> The District’s documentation in this complaint includes a meeting notice stating that the meeting was scheduled for October 31, 2017, but according to the meeting notes and other documentation, the meeting occurred on November 1, 2017.

<sup>10</sup> As stated in footnote no. 9, the IEP meeting to develop Student A’s IEP occurred on November 1, 2017. The October 31, 2017 IEP is misdated.

65. Due to parent/teacher conferences and holidays, there was no school November 20-24, 2017.
66. On November 27, 2017, the Parent filed this complaint.
67. On December 6, 2017, the District amended Student A's October 31, 2017 IEP so that Student A would attend school 1,290 minutes per week and receive 1,290 minutes per week of specially designed instruction in a special education setting. The amendment noted that the Parent provided consent via phone.
68. On December 12, 2017, Student A's IEP team, including the Parent, met to review the results of the FBA conducted by the independent consultant and develop a new BIP for the Student based on the independent consultants recommendations. The District's documentation showed that the December 12 BIP was attached to the Student's amended October 31, 2017 IEP, but the IEP did not reference that Student A has a BIP.

## CONCLUSIONS

**Issue 1: Procedures for Changing Student A's Placement** – The one-year timeline for this complaint begins on November 28, 2016; therefore, OSPI will not address any issues regarding the District changing Student A's placement prior to that date.

A reevaluation must be completed before a significant change of placement is made. In determining whether a change in placement has occurred, the district must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, 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 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.

Based on the documentation in this complaint, on November 28, 2016, when the timeline for this complaint began, Student A's educational placement was a full-time special education placement, in which he attended a special education class with other students eligible for special education and was taught by a special education teacher. In January 2017, the District changed Student A's placement to a more-restrictive special education placement, a 2:1 setting, in which he spent his day with two adults (a paraeducator and a volunteer) and no other students. However, despite Student A's increasing and escalating behavior issues, and having been hospitalized, the District did not conduct a reevaluation prior to changing Student's A placement, and also did not amend Student A's IEP to reflect the change and provision of paraeducator support. There is also no documentation to show that the IEP team discussed or agreed to the change in placement. While it is recognized that the change in placement may have been for safety reasons, and that the District may not have had adequate time to conduct a comprehensive reevaluation prior to the change, the District should have at least taken steps to begin conducting a reevaluation of Student A. The District failed to follow procedures for changing Student A's placement in January 2017.



In February 2017, the District, with the Parent's agreement, changed Student A's placement to an in-home setting. However, the District again did not conduct a reevaluation prior to changing Student A's placement. While the District did consider the results of Student A's risk assessment, conducted by his private provider, and the recommendations of his private behavior therapist, this did not relieve the District of its obligation to follow procedures for conducting a reevaluation, which included determining if any additional assessments were needed to address Student A's needs. The District failed to follow procedures for changing Student A's placement in February 2017.

In March 2017, the District, with the Parent's agreement, changed Student A's placement to a part-time in-school special education setting. Based on the documentation in this complaint, the setting had a 2:1 or 3:1 adult to student ratio. Again, the District did not conduct a reevaluation of Student A prior to changing his placement. The District failed to follow procedures for changing Student A's placement in March 2017.

In August 2017, the District, with the Parent's agreement, increased the amount of time Student A would attend school and receive specially designed instruction. It is unclear from the documentation if the District also changed Student A's placement from a 2:1 or 3:1 setting to a special education classroom with other students. However, it is clear from the August 23, 2017 meeting notes that Student A had regressed academically, and that the IEP team did not discuss conducting a reevaluation to assess whether he was in need of additional services or supports. From September 2017–December 2017, the District continued to amend Student A's IEP to increase his time at school and amount of time he received services, but did not conduct a comprehensive reevaluation at any point. The District will conduct a comprehensive evaluation of Student A to determine all of the appropriate services and supports that he needs.

**Issue 2: Procedures for Developing Student A's IEP, including a BIP** – The one-year timeline for this complaint begins on November 28, 2016; therefore, OSPI will not address any issues regarding the development of Student A's individualized education program (IEP) prior to that date.

An IEP must contain a statement of the student's present levels of academic achievement and functional performance. Present means the current level of a student's functioning. Student A's October 31, 2017, which as discussed in the facts above, was actually developed on November 1, 2017, did not contain accurate statements of Student A's present levels. The October 2017 IEP included the same information from Student A's prior November 2016 IEP, which his general education teacher had provided. Not only was this information no longer current, it was misleading, as Student A had not participated in a general education setting since November 2016. Additionally, the present levels did not include any information about Student A's present levels of academic performance. Further, the information regarding his present levels in the area of emotional/social does not appear to accurately capture Student A's behaviors and does not include any baseline information in which to inform appropriate annual goals.

IEPs must also contain measurable annual academic and functional goals designed to meet the student's needs resulting from his disability. Student A's October 2017 IEP contained the same

two goals as his prior November 2016 IEP. While it may be appropriate in some cases to continue with the same goal after more than one year, the rationale should clearly be documented. Here, the District did not document the IEP team's rationale for continuing with the same goals and there is no documentation to show whether the goals continued to be appropriate for Student A given the numerous changes to his placement and service levels over the course of the prior twelve months. It is also noted that the District's documentation in this complaint did not include any progress reporting regarding Student A's progress toward the November 2016 goals.

Additionally, an IEP must include the special education services, related services, and supplementary aids to be provided to the student and any individual modifications and accommodations a student may require. Student A's October 2017 IEP did not include any related services or supplementary aids and services, despite Student A requiring 1:1 paraeducator support and behavior supports from the WISE providers and his private behavior therapist. Additionally, the October 2017 IEP only included two accommodations: more time on tests and a behavior contract. While all three of Student A's annual IEPs mentioned in this decision reference a behavior contract, none of the IEPs include a behavior contract, and there is no documentation to show a behavior contract is appropriate for Student A. Therefore, this accommodation should be removed from Student A's IEP. Further, given the level of services and support Student A requires on a daily basis, it is highly unlikely that Student A is not in need of additional modifications and/or accommodations, such as those provided for in his November 2015 IEP.

Further, an IEP must address any necessary behavior supports a student needs and include a behavioral intervention plan (BIP) if necessary for the student to receive a free appropriate public education (FAPE). A BIP must meet the requirements of WAC 392-172A-01031. Here, despite Student A's well documented behavior struggles, Student A's October 2017 IEP did not reference that he had BIP. However, the District's documentation in this complaint included a BIP, dated October 20, 2016/October 31, 2017. The October 2017 BIP is exactly the same as Student A's October 2016 BIP, the only difference being the change in date. The October 2017 BIP does not meet the requirements of WAC 392-172A-01031 and does not appropriately address Student A's current behaviors and the behavior strategies being used to support him.

An IEP must also include an emergency response protocol, if necessary, for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040. It is unclear from the District's documentation if the IEP team addressed whether Student A was in need of an emergency response protocol, although based on the District's documentation in this complaint, Student A had been restrained, and possibly isolated, on October 26, 2017, six days before his annual IEP was developed.

The District failed to develop an IEP, including a BIP, for Student A that met procedural requirements and met Student A's needs. After the District completes the comprehensive reevaluation of Student A, it will develop a new IEP for Student A that clearly complies with procedural requirements. It is also noted that the District's documentation in this complaint shows that the District did not follow procedures for amending Student A's November 2016 IEP

and frequently failed to provide the Parent with prior written notice that met the requirements of WAC 392-172A-05010.

### **CORRECTIVE ACTIONS**

By or before **February 16, 2018, March 16, 2018, March 26, 2018, and April 20, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT A SPECIFIC:**

By **March 16, 2018**, the District will conduct a comprehensive reevaluation of Student A that addresses all areas of suspected disability. The reevaluation must include academic and behavior related assessments. In addition to assessments, the reevaluation will include a review of records, including Student A's medical records, prior reevaluation(s), FBAs, IEPs, and information provided by Student A's behavior therapist, WISE providers, teachers, paraeducators, and the Parent. The evaluation report will thoroughly discuss Student A's needs and identify any needed specially designed instruction and related services.

By **March 21, 2018**, the District will hold an IEP meeting to review the results of Student A's reevaluation and develop a new IEP, including a BIP. The IEP and BIP must align with the requirements of WAC 392-172A-03090 and 01301. By **March 26, 2018**, the District will submit 1) a copy of any meeting invitations; 2) a copy of the evaluation report; 3) a copy of the new IEP; 4) a copy of the BIP; and, 5) a copy of any related prior written notices.

#### **DISTRICT SPECIFIC:**

By **April 20, 2018**, the District will provide training for all District special education certificated staff, educational staff associates (ESAs), who work at Student A and Student B's elementary school, the elementary school administrators, and District special education administrators regarding: 1) procedures for changing placement; 2) procedures for determining when a reevaluation, including a FBA, is warranted; 3) procedures for developing IEPs, including BIPs; 4) procedures for amending IEPs; and, 5) prior written notice. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. The trainer will not be an employee of the District. The training will also include examples.

By **February 16, 2018**, the District will notify OSPI of the name of the outside trainer, and provide documentation that the District has provided the trainer with a copy of decision SECC 17-87A and SECC 17-87B for use in preparing the training materials.

By **March 16, 2018**, the District will submit a draft of the training materials to OSPI for review. OSPI will approve the materials or provide comments by March 26, 2018 and additional dates for review, if needed.

By **April 20, 2018**, the District will submit documentation that staff participated in the training. This will include a 1) sign-in sheet from the training and 2) a roster of all District special education certificated staff, educational staff associates (ESAs), who work at Student A and Student B's

elementary school, the elementary school administrators, and District special education administrators so OSPI can verify that all required staff participated in the training. *If any of the staff are unable to participate, the District will contract with the trainer for a follow-up session(s) 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 January, 2018

Glenna L. 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.)