

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-91

PROCEDURAL HISTORY

On December 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 Mount Vernon 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 the Student's education.

On December 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 December 13, 2017, OSPI granted the District an extension of time to submit its response to this complaint on January 5, 2018.

On January 5, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on January 8, 2018. 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 26 and January 29, 2018, OSPI requested that the District provide additional information, and the District provided the requested information on January 26 and January 29, 2018. OSPI forwarded the information to the Parent on January 29, 2018.

On January 31, 2018, OSPI requested clarifying information from the District and spoke to the District director and assistant director of special support services.

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 adult Student attended a District high school and was eligible to receive special education services under the category of autism. The Student's individualized education program (IEP) team agreed that during the 2016-2017 school year, the Student would attend the District's special education adult transitions program. However, in the spring of 2016, the Student experienced a mental health episode and missed several weeks of school, and then had additional mental health and behavior issues over the summer of 2016. As a result, the District and the Parent agreed the Student would receive transition services at the high school in a more structured setting. At the beginning of the 2016-2017 school year, the Student continued to struggle with mental health and behavior issues, and as a result, was frequently absent from the school. In October 2016, the Student's IEP team agreed to shorten the Student's school day and then meet in a few weeks to discuss his progress. In December 2016, the IEP team agreed to increase the length of the Student's school day, but did not amend his IEP to reflect this. In March 2017, the Student began attending the District's community

transitions program for a few hours a week and also continued to attend the District's high school. The District and the Parent agreed the Student would more fully participate in the transitions program during the 2017-2018 school year. However, the Student did not attend school the first three days of the 2017-2018 school year, and as a result, the District disenrolled the Student per the District's enrollment policy. The Student's IEP team then held two meetings in September 2017, and agreed the Student would return to the high school and receive 1:1 behavior support given the Student's continuing behavior struggles. The Student reenrolled in the District on October 9, but did not begin attending school until October 11, when his 1:1 behavior specialist was available to attend with him. In November 2017, the Student exhibited increasingly aggressive behavior at school, and the IEP team agreed to change his placement so that he would receive home-based services four hours per week. The Student was then absent from school for several days and began receiving his home-based services on December 7, 2017.

The Parent alleged that the District failed to follow procedures for determining the Student's placement during the 2016-2017 (beginning on December 7, 2016) and 2017-2018 school years. The Parent also alleged that the District failed to follow special education discipline procedures during the 2017-2018 school year. The District admitted that it failed to provide the Parent with prior written notice following a change in the Student's placement in November 2017, but otherwise denied the allegation. The District denied that it failed to follow special education discipline procedures.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on December 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 determining the Student's placement during the 2016-2017 (beginning on December 7, 2016) and 2017-2018 school years?
2. Did the District follow special education discipline procedures during the 2017-2018 school year?

LEGAL STANDARDS

Parent Participation in Meetings: The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student. Each school district must provide notice consistent with WAC 392-172A-03100 (1) and (3) to ensure that parents of students eligible for special education have the opportunity to participate in meetings. Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child.

If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. A placement decision may be made by a group without the involvement of a parent, if the school district is unable to obtain the parent's participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement. 34 CFR §300.322; WAC 392-172A-05000.

Placements: When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: the student's IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; the placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he or she needs. Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home. A student shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum. 34 CFR §300.116; WAC 392-172A-02060. When making placement decisions a district must draw upon information from a wide variety of sources and ensure that any decision is made by a group of persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 CFR §300.116; WACs 392-172A-02060; *L'Anse Creuse Public School District*, 35 IDELR 284 (OCR 2001); *Seattle School District*, 34 IDELR 196 (SEA WA 2000).

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).

Suspension: "Suspension" shall mean a denial of attendance (other than for the balance of the immediate class period for "discipline" purposes) for any single subject or class, or for any full schedule of subjects or classes for a stated period of time. A suspension also may include a denial of admission to, or entry upon, real and personal property that is owned, leased, rented, or controlled by the school district. WAC 392-400-205(2).

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). 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).

Home-Hospital Instruction: Home or hospital instruction shall be provided to students eligible for special education and other students who are unable to attend school for an estimated period of four weeks or more because of disability or illness. As a condition to such services, the parent of a student shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks. A student who is not determined eligible for special education, but who qualifies pursuant to this subsection shall be deemed "disabled" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a student eligible for special education for the purposes of generating state or federal special education funds. A school district shall not pay for the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section. Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to students eligible for special education in a homebound placement pursuant to a student's individualized education program. Home/hospital instruction shall be limited to services necessary to provide temporary intervention as a result of a physical disability or illness. A student eligible for special education who qualifies for home/hospital instruction must continue to receive educational services that provide a Free Appropriate Public Education (FAPE), so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The IEP team determines the appropriate services. WAC 392-172A-02100.

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

2015-2016 School Year

1. During the 2015-2016 school year, the adult Student¹ attended a District high school and was eligible to receive special education and related services under the category of Autism.
2. In October 2015, the District conducted a triennial reevaluation of the Student and the evaluation group determined the Student continued to be eligible to receive special education and related services. The October 2015 evaluation report stated that the Student had been diagnosed with autism, and that past diagnosis also indicated a learning disorder, inattention and impulsivity, obsessive compulsive traits, and the possibility of Tourette's syndrome. The evaluation report stated that:

[The Student] benefits from direct instruction in social communication, coping skills, and behavior/emotional regulation. He is also most successful in small classrooms that are highly structured with low stimulation and low student-to-instructor ratios. During his previous reevaluation, it was determined a Life Skills program was the most appropriate and least restrictive placement for [the Student] in order to comprehensively meet his educational needs. [The Student] continues to be best served in Life Skills classes at [the high school].

The evaluation report also stated the Student was currently a senior at the District high school and would attend a District transitions program for students aged 18-21, starting in the 2016-2017 school year. The evaluation report recommended that the Student receive services in adaptive skills, social/emotional, and life skills with a focus on functional academics (reading, writing, and mathematics).

3. On October 6, 2015, the Student's individualized education program (IEP) team developed his annual IEP. The IEP stated that the Student would attend the District high school for four years, "walk at graduation in 2016", and then attend the District community transitions program until he aged out in 2019. The IEP included present levels of performance in the area of social/emotional, which stated:

[The Student] introduces himself to others and greets others appropriately. When engaging in conversation with adults and peers, [the Student] makes inappropriate comments on approximately 50% of occasions, such as telling a boy he looks like a girl. Although [the Student] had made significant progress in managing his frustrations when being redirected or reminded to say on task, he still continues to struggle with managing his frustrations when a fellow student is engaging in a behavior that bothers him. When a student is bothering him, [the Student] raises his voice at the student on 3 out of 5 occasions.

The IEP included annual goals in the areas of post-secondary transition, life skills – reading, life skills – mathematics, life skills – writing, social/emotional, and adaptive. The IEP provided for the following specially designed instruction in a special education setting:

- Social/Emotional – 84 minutes 5 times weekly
- Adaptive – 84 minutes 10 times weekly
- Life Skills – 84 minutes 5 times weekly

¹ In her complaint request, the Parent included a copy of a court order from August 26, 2016, granting the Parent guardianship over the adult student.

4. Based on the documentation in this complaint, in the spring of 2016, the Student was prescribed new medications and as a result, the Student became increasingly irritable and aggressive. The Student had an “acute mental health episode in May” 2016.
5. Based on the Student’s attendance record, he was absent from May 2 – June 6, 2016, due to medical reasons. The Student was also absent on June 16 and 17, 2016.

Summer 2016

6. Based on the documentation in this complaint, in late June/early July 2016, the Student had an incident in a store in which he became escalated and confrontational. As a result, the police were called. The Student was then admitted to a hospital in-patient mental health program for two weeks. However, the Student was released because the in-patient program was not a “good fit” for the Student due to his other diagnosed disabilities such as autism. While in the hospital, the Student’s medications were adjusted.
7. On July 17, 2016, the Washington State Developmental Disabilities Administration (DDA) completed a functional behavioral assessment (FBA) of the Student. The FBA addressed the Student’s behavior at home and provided recommendations for the family to support the Student at home.
8. On August 26, 2016, the Student’s IEP case manager emailed the District director of special and support services (District director 1), the assistant director of special and support services, the high school assistant principal, and another special education teacher. The case manager stated that at the end of the 2015-2016 school year, the assistant principal had informed the Parent that the plan for the Student would be to for him to begin the 2016-2017 school year at the high school, and “then hopefully make a slow transition” to the District’s transitions program throughout the school year. The case manager also stated that earlier that day, she had spoken with the Parent, who had relayed that over the summer of 2016, she had spoken with District director 1 and was told the Student could stay at the high school for all of the 2016-2017 school year. The case manager stated that she did not give the Parent any information one way or the other, but was requesting clarity regarding what District staff had discussed with the Parent, so everyone was on the same page. The case manager stated, “as of right now [the Parent] thinks [the Student] can handle a full day schedule, so we will start with that and continue to monitor his progress.”

2016-2017 School Year

9. The District’s 2016-2017 school year began on August 30, 2016.
10. Based on the Student’s transcript, the Student was enrolled in the following classes for the first semester of the 2016-2017 school year:
 - Life Skills – Vocational A
 - Life Skills – Home Economics
 - Life Skills – Music
 - Life Skills – Academics A
 - Life Skills – Art
 - Advisory

- Adaptive Physical Education
11. The District had an in-service day on September 2, 2016, and there was no school for students. The District was on break on September 5, 2016.
 12. Based on the Student's attendance record, the Student was absent as follows in September 2016:
 - September 12-21 – absent all day
 - September 22, 23, and 26 – absent part of day in the morning
 - September 27 – absent all day
 - September 28-30 – absent part of day in the morning
 13. Based on the documentation in this complaint², the Student was absent due to his worsening behavior issues, which included becoming easily enraged and physically aggressive toward people and property. The aggression toward others involved "hitting, pushing, kicking, and choking" and the property destruction involved "throwing items around the room and kicking". On some occasions, as a result of the Student's behavior, the police were called and the Student was either arrested or taken to the hospital. The documentation in this complaint does not show that the Student was suspended during this time period, but indicated the District sent the Student home early due to the aggressive behaviors or being "deemed unsafe to attend".
 14. On September 28, 2016, the high school special education secretary emailed the Parent, asking if the Parent was available to attend an IEP meeting on October 6, 2016 to develop the Student's IEP. The meeting was later rescheduled for October 7, 2016.
 15. Based on the Student's attendance record the Student was absent for part of the day in the morning on October 4 and 5, and absent the entire day on October 6.
 16. On October 7, 2016, the Student's IEP team met to develop his annual IEP. The Parent and the Student attended the meeting. Based on the meeting notes, the IEP team determined that the Student would walk in the graduation ceremony at the end of the 2016-2017 school year, and that the Student would move toward participating in the District's community transitions program when he became stabilized. The IEP team also discussed the Student's schedule. According to the District's October 6, 2016³ prior written notice, the IEP team decided that the Student "would continue to have a shortened school day, arriving by special transportation at 11am" and that the team would meet again in four weeks to discuss the Student's stability and progress. The notice stated that the goal was to have the Student "return to full school days and eventually begin bridging to the transitions program."

² This information is taken from the Student's independent educational evaluation, which was completed in March 2017 and paid for by the District. It is included here to provide context for the events that occurred in September and October 2016.

³ It is assumed the date of the prior written notice is misdated and should reflect a date of October 7, 2016 or later.

17. The Student's October 2016 IEP stated:

Returning to school after the summer break has been challenging for [the Student]. There have been some changes with the Life Skills programming which may be effecting his ability to settle into a new routine. Two weeks into the school year [the Student] exhibited physically/verbally aggressive behavior towards staff, administration, and the school resource officer. To adjust his medication and regulate emotions, [the Student] stayed home for approximately a week, but has now returned back to school. When [the Student] is unsafe or escalating, staff are using calm language to deescalate him, offering him opportunities to make better choices.

The IEP stated that the Student was in his fifth year at the District high school, with a plan for him to attend the District community transitions program until 2019. The October 2016 IEP included annual goals in the areas of post-secondary transition, life skills – reading, life skills – writing, life skills – mathematics, social/emotional, and adaptive. The IEP provided for the following specially designed instruction in a special education setting:

- Social/Emotional – 29 minutes 2 times daily
- Adaptive – 28 minutes 2 times daily
- Life Skills – 28 minutes 5 times daily

The IEP also provided for nursing services, to address the Student's medications, for 3 minutes 5 times weekly as a related service and special transportation. The IEP also included an accommodation that allowed the Student to take a break from an activity or task to calm down.

18. Based on the Student's attendance record, the Student was absent as follows from October 7-31 and November 2016:

- October 13, 17-20, and 26 – absent all day
- October 27 and 29 – absent part of day
- November 2, 9, 10, 14, and 15 – absent all day
- November 16 and 17 – absent part of day
- November 18 and 21 – absent all day
- November 22 – absent part of day
- November 24 and 25 – District on break
- November 28 – absent part of day
- November 29 and 30 – absent all day

19. Based on the Student's attendance record, he was absent December 1-12, 2016.

Timeline for This Complaint Begins on December 7, 2016

20. On December 12, 2016, the Student's IEP team met to review the Student's progress and concerns regarding the Student's placement. The following people attended the meeting:

- Parent
- Life skills teacher
- Assistant principal
- District director 1
- School psychologist
- DDA case worker

Based on the meeting notes, the IEP team discussed that the Student's medications continued to be adjusted and the Parent provided a copy of the Student's July 2016 FBA conducted by DDA. The Parent expressed concern that the Student's classroom setting was not the best setting for him and wanted the Student to have more "mainstreamed classes". The IEP team discussed educational options for the Student to receive transition services, and that the volume in the cafeteria was a trigger for the Student. Additionally, the IEP team discussed that the Student would begin attending a "full schedule" on December 13, 2016.⁴ Also during the meeting, the Parent requested that an IEP meeting be held in January 2017 and that the District pay for an independent educational evaluation (IEE) of the Student. The District agreed to pay for the IEE.

21. The District's documentation in this complaint does not show that the Student's October 6, 2016 IEP was amended at or after the December 12, 2016 meeting to reflect that the Student would attend school more than 960 minutes per week and that the amount of his specially designed instruction would be increased. The District's documentation does not show that the District sent the Parent prior written notice regarding the decisions made at the December 12, 2016 IEP meeting.
22. On December 13, 2016, the District contacted an independent evaluator to see if she could conduct the Student's IEE.
23. The District was on break December 19, 2016 through January 2, 2017.
24. Based on the Student's attendance record, he was absent on January 3, 2017.
25. On January 5, 2017, the District special services administrative assistant (administrative assistant) emailed the independent evaluator about providing the evaluator with the Student's records to review for the IEE.
26. On January 10, 2017, the independent evaluator emailed the District administrative assistant, stating that she had left a voice message for the Parent, and asked if the District had other contact information for the Parent. In response, the administrative assistant provided an alternate phone number for the Parent.
27. On January 17, 2017, the District administrative assistant emailed the independent evaluator, asking if the evaluator had scheduled any observations or testing times with the Student. The administrative assistant stated that the Student had been exhibiting more and more escalating behaviors on the bus and at school, to the point where he was at home that day. The administrative assistant stated that District director 1 was anxious to move forward with the IEE, so that the IEP team could discuss best options for the Student. In response, the independent evaluator stated that she had left two voice messages for the family, but had not heard back. Later that day, District director 1 emailed the independent evaluator and

⁴ Based on information provided by the District in a phone call on January 31, 2018, at the December 12, 2016 meeting, the IEP team agreed the Student would begin attending school from 9:30 a.m. until 2:15 p.m., which was the high school's second period through the end of the school day.

district staff, stating that the Parent had recently been ill and hospitalized at one point. The District director 1 suggested that the District could send a prior written notice to the Parent, stating that the IEE would commence as soon as the IEP team met to determine the scope of the IEE.

28. Based on the Student's attendance record, he was absent January 17-24, 2017.
29. On January 24, 2017, the independent evaluator emailed District director 1 and other District staff, stating that she had been able to touch base with the Parent that day and had tentatively scheduled three days to do an intake and complete testing. The scheduled days were February 16, 17, and 22. The evaluator also stated that she wanted to schedule a time to observe the Student in school. The next day, District director 1 responded that she had asked a representative of a private disabilities employment organization, which provided job coaching and with whom the District worked with, to come observe the classroom and meet the Student.
30. Also on January 24, 2017, the Student's life skills teacher emailed the Parent, asking how the family was doing. The next day, the Parent responded that the Student had been hospitalized on January 22, 2017 for aggression and was now staying with his uncle for a few days. The Parent stated that the Student seemed better and she hoped he would return to school on January 30, 2017. The Parent stated that she had heard the Student's DDA caseworker was working with the District's community transitions program teacher (transitions teacher), and asked if the life skills teacher had heard anything about this.
31. On January 26, 2017, the life skills teacher emailed the Parent, stating that he had heard from District director 1 that a job coach would be coming to do a work assessment of the Student in the school environment. However, that had now been delayed since the Student was not at school. The life skills teacher asked that the Parent keep him posted on when the Student would return, so the teacher could help coordinate the Student's services. The teacher asked that the Parent let him know if the Parent needed help with anything.
32. On January 27, 2017, the District issued progress reporting toward the Student's annual goals in his October 2016 IEP. The progress reporting stated that the Student had made insufficient progress toward his life skills goals due to missing a significant amount of school. The Student had made some progress "emerging skill" toward initiating an appropriate conversation with an adult. The progress reporting stated that the Student had "emerging skill" toward his adaptive skills goal and his social/emotional goal of managing frustration, but had missed a significant amount of school. The progress reporting noted that managing frustration had been significantly challenging" for the Student that year.
33. Based on the Student's attendance record, he was absent January 25-31, 2017. The District was on break on January 30, 2017.
34. On January 31, 2017, the Student's life skills teacher emailed the Parent to see how the Student was doing. On February 2, 2017, the Parent replied that the Student was not doing

very good and had been taken to the hospital by the police on January 29, 2017. The Parent stated that the Student had been sent home from the hospital three hours later “heavily drugged”. The Parent had then had to call the police again on January 31, 2017, because of the Student’s anger. The Student was then admitted to the hospital where the psychiatrist stated the Student was on too many medications. The Student would remain in the hospital until February 4 or 5.

35. Based on the Student’s attendance record, he was absent February 1-3 and 7-10, 2017. The attendance record does not show that the Student was absent on Monday, February 6, 2017, but based on the other documentation in this complaint, this appears to be an error.
36. On February 10, 2017, the high school assistant principal spoke with the Parent. After the phone call, the assistant principal emailed the Student’s teachers regarding the conversation. The assistant principal stated that the Parent had relayed that the Student was doing much better, was receiving psychiatric care, and was receiving proper medication management. The Student’s behaviors were improving and he was no longer “raging”. The assistant principal stated that the plan was for the Student to return to the high school on Tuesday, February 21, 2017, and then the IEP team would do “periodic transitions” to the District transitions program after that. The Student would meet with the independent evaluator on February 16, 17, and 22, and be placed in a respite care setting from March 7-21, 2017.
37. Based on the Student’s attendance record, he was absent February 13-17, 2017. The District was on break on February 20, 2017. The Student attended school for at least part of the day on February 21, was absent on February 22, attended school on February 23, and was absent on February 24, 2017 for at least part of the day.
38. On February 24, 2017, the life skills teacher emailed the employment service representative and the Parent, and copied the assistant principal. The teacher stated that on February 23, 2017, he and the Student had met with the employment service representative and her coworker at the high school. The representative had presented her idea of services for the Student and had provided some paperwork that was sent home with the Student. The life skills teacher stated that the Student was excited about the possibility of having a job in the future and receiving support to acquire necessary skills, and that he had expressed that he would like to work at “Dairy Queen”. The life skills teacher stated that he wanted to have a meeting with the Parent and the representative and proposed dates and times to meet the following week.
39. Also on February 24, 2017, the life skills teacher emailed the Parent, stating that the Student had settled back in to school “really well” and was exhibiting appropriate behavior, such as being patient, compliant, and “overall very pleasant”.
40. On March 1, 2017, the employment services representative responded to the life skills teacher’s February 24, 2017 email, asking if the meeting could take place the following week. The representative and the life skills teacher then exchanged additional emails, proposing to

meet on March 7, 2017. The life skills teacher then emailed the Parent with the proposed date and the Parent agreed to the meeting.

41. On March 6, 2017, the life skills teacher emailed the Parent, asking if the Parent had received the packet from the employment services organization that went home with the Student two weeks prior. The teacher stated that if the Parent had received it, the packet would be needed for the March 7 meeting. In response, the Parent stated that she had received the packet. The Parent also stated that the independent evaluator was waiting for paperwork from the teacher, so the IEE report could be finalized. The Parent asked if the teacher had completed the paperwork. The teacher later replied that he had completed the paperwork the prior week and given it to the assistant principal.
42. Later on March 6, 2017, the Parent emailed the life skills teacher, stating that the Student's father wanted to cancel the March 7 meeting, and meet when the Student's IEE was completed. The life skills teacher then canceled the meeting.
43. On March 8, 2017, the life skills teacher emailed the transitions teacher, providing an update on the Student's progress since returning to school. The life skills teacher stated that the Student was doing "awesome" and had been polite, compliant, patient, and willing to complete tasks without struggles. The life skills teacher also stated that he and the assistant principal thought that the Student was ready to begin spending time in the transitions program. The life skills teacher asked if the Student could meet up with the transitions program at the local community athletics center in the morning on Monday, March 13 to experience the program's routine. The life skills teacher stated that a staff member would support the Student traveling to and from the transitions program, and if the visit to the transitions program went well, have the Student also attend the program on Wednesday. The transitions teacher responded, stating that she thought the Student's transition to the transitions program should be "slow and steady" and asked how long the Student had been back in school and what staff member would provide support for the Student in the transitions program. The transitions teacher agreed that the Student could join the transitions program on March 13.
44. On March 9, 2017, the transitions teacher and the life skills teacher exchanged several emails and agreed that the Student would attend the transitions program on March 13 and March 17. Later that day, the life skills teacher emailed the Parent, informing her of the schedule.
45. On March 10, 2017, the Student's IEE was completed. The IEE encompassed a "neuropsychological assessment" of the Student, which included a review of existing data and medical information, observations of the Student, and assessments in the areas of behavior, intelligence, executive functioning, academics, social communication, adaptive functioning, and psychological functioning. The IEE report stated that the Student would benefit from assistance to develop independent living skills, and benefit from the District's 18-21 transitions program to support development and acquisition of pre-employment skills, along with continued development of his social skills, adaptive abilities, and functional academics. In regard to the Student's school program, the IEE report recommended that the

Student have goals related to social-communication, self-care and safety, functional reading and writing, mathematics and finances, vocational development, independent living, and accessing the community. The IEE report also included employment considerations and stated that the Student would benefit from a community based assessment to understand how his strengths and weaknesses manifested in the work place, and that he have a job coach and apply for services with the Division of Vocational Rehabilitation (DVR). Additionally, the IEE report recommended that the Student have close, on-going supervision and consultation regarding his medications with a psychiatric medical provider, behavioral and mental health supports, both individually and as a family, and access to community groups.

46. On March 13, 2017, the life skills teacher emailed the Parent, stating that the Student had done "great" in the transitions program that day, and would join again on March 17. The teacher stated that the high school program students would also spend time at the community athletics center on March 17, and asked if the Parent had received the permission slip for the activity.
47. Based on the District's documentation in this complaint, the Student was absent March 23-28, 2017 due to illness.
48. On March 28, 2017, the life skills teacher emailed the assistant principal, the transitions teacher, and the employment services representative, stating that the Student had recently missed some school and missed his time in the transitions program. The life skills teacher suggested meeting in mid-April to assess the Student's progress and readiness for the move to the transitions program, possibly before the end of the school year.
49. On March 31, 2017, the transitions teacher emailed the life skills teacher, suggesting continuing to have the Student attend the transitions program on Monday and Thursday during the week following spring break, and then discuss increasing his time.
50. The District was on break April 3-7, 2017.
51. Based on the Student's attendance record he was absent on April 14, 20, and 26, 2017.
52. On April 24, 2017, the District contacted the Parent to schedule a meeting to review the Student's IEE report. On April 27, 2017, the Parent agreed to hold a meeting on May 5, 2017.
53. On April 27, 2017, the transitions teacher emailed the life skills teacher, stating that she could not attend the meeting to review the Student's IEE report, because she had a meeting with another parent. The transitions teacher also stated that she agreed to "go ahead" with any additional evaluation that would help the Student.
54. On May 5, 2017, the Student's IEP team met to review the Student's IEE report. Based on the meeting notes, the IEP team discussed that the Student's behavior was better and he did not have as many escalations. The Student would have a medication check during the month of May. The Parent relayed that the Student's physician had told the family the Student would

probably need 1:1 support. The team discussed that the Student was participating in the District's transitions program twice a week, and would like the Student to fully integrate into the program in the fall of 2017. The team discussed the Student having 1:1 support in the fall, to start out, and then slowly fade the support. The team agreed to maintain the Student's current "hybrid"⁵ schedule and participate in the high school graduation ceremony in June 2017.

55. On May 8, 2017, the transitions teacher emailed the life skills teacher, stating that students in the high school program and paraeducators and other staff were invited to have lunch and a question and answer session with the transitions program students on June 1, 2017. The transitions teacher asked that the life skills teacher let her know how many students would attend and provided a list of students she thought would attend. The Student's name was on the list.

56. Based on the Student's attendance record, the Student was absent as follows in May 2017:

- May 3 – absent all day
- May 9 – absent part of day
- May 10 – absent part of day
- May 11 – absent part of day
- May 12 – absent part of day
- May 13 – absent part of day
- May 15 – absent part of day
- May 16-18 – absent all day
- May 19 – absent part of day
- May 23 – absent part of day
- May 26 – absent all day
- May 31 – absent part of day

57. Based on the Student's attendance record, he was absent on June 1, 2017 for the whole day.

58. On June 7, 2017, the life skills teacher emailed the Parent and copied the transitions teacher. The life skills teacher stated that the group should meet at the end of the summer to discuss the Student's wellbeing and what supports he needed to be successful. The life skills teacher asked that the Parent let him know if there was anything additional she needed from him, and stated that the Student did well at graduation practice that day.

59. Based on the Student's attendance record, he was absent part of the day on June 9, 12, and 16, 2017.

60. On June 12, 2017, the District issued progress reporting toward the Student's annual goals in his October 2016 IEP. The progress reporting stated that the Student had made insufficient progress toward his life skills goals due to missing a significant amount of school. The Student had made some progress "emerging skill" toward initiating an appropriate conversation with an adult and was doing so on 6/10 occasions. The progress reporting stated that the Student had "emerging skill" toward his social/emotional goal of managing frustration, and was doing so on 2/5 occasions. In regard to his adaptive goal, the progress reporting stated that the Student made some progress "emerging skill", but stated that since the Student had returned

⁵ Based on information from the District, the term hybrid was used to describe the Student receiving transition services at the high school and also receiving transition services two days a week in the District's 18-21 transitions program.

to school, he had been extremely tired and had very little focus. The Student was spending about two minutes on a task, unless it was a preferred task.

61. The District's 2016-2017 school year ended on June 16, 2017. At the end of the 2016-2017 school year, District director 1 retired. The high school assistant principal then became the District director of special and support services (District director 2).

Summer 2017

62. On August 18, 2017, the Student and the Parent completed a family questionnaire and other information for the District's transitions program.

2017-2018 School Year

63. The District's 2017-2018 school year began on September 6, 2017.
64. Based on the District's documentation in this complaint and other information provided by the District, the Student did not attend school for the first three days of the 2017-2018 school year (September 6-8), and as a result, the District withdrew the Student from the District based on the District's policy. According to information provided by the District, the District does not have a policy of sending a notice of withdrawal.
65. Based on the documentation in this complaint, in September 2017, the Student was receiving private in-home support services from a behavior support specialist employed by a private company that provided support for people with disabilities. The support was provided for less than twenty hours per week.
66. On September 8, 2017, the transitions teacher spoke with the Parent and agreed that an IEP meeting would occur on September 12, 2017.
67. On September 12, 2017, the Student's IEP team met to discuss the Student's status. Based on the meeting notes, the IEP team included: the Parent, the IEP case manager, District director 2, the school psychologist, and the Student's private behavior specialist. The IEP team discussed that the Student had a "rough summer" and that the Parent had taken a class on de-escalation, which helped with de-escalating the Student. The IEP team also discussed concerns about the Student attending the community transitions program because of his continued behaviors, and if 1:1 support would be appropriate in that program. The IEP team did not recommend having 1:1 support because of the unique nature of the transitions program's schedule. The team then discussed the Student returning to the high school and having adult support. The Student would attend the high school from 9:30 a.m.-2:15 p.m., but did not determine a start date. When the Student was able, he would transition to the transitions program, starting with the same two day a week schedule he had during the 2016-2017 school year. Additionally, the IEP team discussed that the private behavior specialist was not a District contracted employee.

68. On September 20, 2017, District director 2 spoke with the program manager at the private company that provided support for people with disabilities to discuss contracting with the company so that the behavior specialist could also provide support to the Student during the time he attended school. On September 21, 2017, District director 2 and the program manager exchanged emails about the behavior specialist providing the Student in-school support and how long this would take to set up. The program manager stated that the behavior specialist was employed by another division of the private company and she did not have access to the behavior specialist's contact information. The program manager asked if District director 2 could get the information for her.
69. On September 22, 2017, the transitions teacher emailed the Parent, stating that an IEP meeting had been confirmed for September 29, 2017. The teacher also stated that the Parent should contact District director 2 regarding the Parent's questions and concerns.
70. On September 25, 2017, the transitions teacher emailed the Parent, stating that she was mailing the Parent an invitation to an upcoming IEP meeting, and asked that the Parent let her know if she did not receive the invitation in the next day or two. The District's documentation in this complaint included a September 22, 2017 meeting invitation, inviting the Parent to a September 29, 2017 IEP meeting. The invitation stated that the purpose of the meeting was to review the Student's current IEP and instructional needs, and discuss transition services and the Student's progress toward his annual goals.
71. On September 27, 2017, District director 2 emailed the program supervisor of the private company that provided support for people with disabilities. District director 2 asked if the Student's private behavior specialist had contacted the program supervisor about providing the Student support at school. District director 2 stated that there was an IEP meeting coming up on September 29, 2017, and wanted to be able to discuss providing the Student support at school.
72. Also on September 27, 2017, the transitions teacher emailed the Parent, asking that the Parent bring a copy of the Student's July 2016 FBA completed by the DDA evaluator to the September 29, 2017 meeting.
73. Also on September 27, 2017, the transitions teacher sent the Parent a second email, stating that she was sending the Parent a corrected copy of a prior written notice, as the notice should have been marked that the Student's IEP would be changed, not continued.
74. The District's documentation in this complaint included a prior written notice, dated September 22, 2017, proposing to change the Student's IEP. The notice stated that the description of the proposed action was "this is [the Student's] last year in the public school system. His transition plan will be discussed". The notice stated the reason for the action was the Student "continue[d] to be eligible for special services...and is in need of specially designed instruction in life skills, social/emotional, and adaptive. Goals were determined that reflect his needs in each area." The notice also stated that the IEP team had considered and rejected the following option: "the team will discuss when it is appropriate for [the Student]

to bridge to the Transitions program”, and the reason the option was rejected was “based on recent behaviors exhibited by [the Student] in home, school, and community, [the Student] will continue attending classes at the high school until the team feels he is ready to bridge to Transitions.” Additionally, the notice stated that the IEP team would discuss the Student’s schedule, bridging to transitions program, and the length of the Student’s day at the high school.

75. On September 29, 2017, the Student’s IEP team, including the Parent, met to develop his annual IEP. Based on the meeting notes, the IEP team agreed the Student would receive services at the high school and then transition to the transitions program, and that the District would contract with the behavior specialist to provide the Student 1:1 support beginning on October 9, 2017.

76. The September 2017 IEP stated that the Student needed support with managing his impulsive behaviors, such as verbal outbursts and inappropriate language. The IEP also stated that he needed support staying on task for longer periods of time and completing tasks for vocational success. The IEP noted that the Student had a job coach from an agency contracted by the District and had opportunities to learn job skills at the high school, which would “strengthen his work ethic and add to his job experience.” The September 2017 IEP included annual goals in the areas of post-secondary transition, life skills – reading, life skills – mathematics, life skills – writing, social/emotional, adaptive, and functional written language (employment applications). The IEP provided for the following specially designed instruction in a special education setting:

- Social/Emotional – 95 minutes 5 times weekly
- Adaptive – 95 minutes 5 times weekly
- Life Skills – 95 minutes 5 times weekly

The IEP also provided for nursing services, to address the Student’s medications, for 3 minutes 5 times weekly as a related service and special transportation. The District did not issue a prior written notice after the meeting.

77. On October 4, 2017, the Student visited the high school during lunch and then stayed for the last period of the day in anticipation of the Student returning to school the following week. Based on the data notes taken by his special education teacher, the Student became upset in the school library when he was told he could not sit on the couches, and as a result, started yelling and swearing. The Student then continued to be upset while he waited for the Parent to pick him up, and then punched the Parent in the arm, when he got in the car.

78. On October 5, 2017, a clinical supervisor from the private company that provided support for people with disabilities emailed District director 2, stating that the Student’s private behavior specialist was taking training on October 6 and 7, and may be able to start supporting the Student at school on October 9, 2017. The supervisor stated that she needed to know the start and end times the Student would need to receive services, days of the week, a copy of the Student’s IEP and other information, and teacher information.

79. On October 6, 2017, District director 2 responded to the clinical supervisor's email, stating that the plan was to have the private behavior specialist "shadow" the Student with District transportation to and from school, as well as throughout the school day. District director 2 stated that he wanted the behavior specialist to ride the bus to and from school with the Student. District director 2 had arranged for bus transportation to begin on October 10, 2017, and hoped the behavior specialist could begin working at that time. Additionally, District director 2 stated that the Student would attend school from 9:30 a.m.–2:15 p.m. Monday through Friday and provided contact information for the Student's IEP case manager and the transitions teacher. Also that day, the District administrative assistant emailed the clinical supervisor a copy of the Student's IEP.
80. Also on October 6, 2017, the transitions teacher emailed the Student's District contracted job coach, informing her of the plan that the Student would return to school on October 10, 2017 and work with the contracted behavior specialist. The transitions teacher asked that the job coach contact the Student's IEP case manager to arrange for the job coach to meet with the Student at the high school, and provided contact information.
81. Based on the District's documentation in this complaint, on October 7, 2017, the transitions teacher met with the family to discuss transition services for the Student. The transitions teacher then sent a follow-up email, asking that the Parent let her know if she had any additional questions regarding the transition services.
82. Based on the District's enrollment records, the Student was reenrolled in the District on October 9, 2017. However, the private behavior specialist could not begin providing support until October 11, 2017, so the Student did not begin attending the high school until October 11.
83. Based on the District's documentation in this complaint, on October 9, 2017, the Student's job coach contacted the Parent to set up an appointment for the job coach to meet the Student at the job coach's office. A meeting was arranged for October 13, 2017, but the Parent and Student did not attend the meeting.
84. The District's documentation in this complaint included data notes taken by the Student's IEP case manager regarding the Student during the time period between October 11-November 2, 2017. The notes are summarized below:
- October 12 – the Student became agitated at the end of lunch because the janitor mistakenly threw away the Student's food when the Student went to use the restroom. As a result, the Student was yelling in the classroom. The contracted behavior specialist then took the Student outside to calm down. The class later had a party, and the Student became distracted and happy with the music and treats.
 - October 16 – The Student arrived at school agitated and began yelling and slamming doors. The Student then refused to take his medication at school. The Student took off his shoes and threw them at the contracted behavior specialist. The Student eventually calmed down and took a nap for a large part of the remainder of the afternoon.
 - October 19 – The Student arrived at school and slept most of the day.

- October 23 – The Student arrived at school and slept until 2:00 pm.
- October 24 – The Student became agitated after lunch and expressed that he was agitated because he did not understand why the contracted behavior specialist was working with him all day. The Student wanted the behavior specialist to leave and called the behavior specialist a name. Staff then asked the Student to do a writing assignment about his weekend, and initially threw the paper at the IEP case manager. The Student wrote that he did not want to come back to school.
- October 25 – The Student became agitated during adaptive PE, but it is unclear what agitated him. As students were moving desks around in the classroom, the Student shoved his desk into another student's desk and began yelling at the student. The IEP case manager and the contracted behavior specialist told the Student he needed to calm down, and asked him if he wanted to take a break. The Student stated that he would "rather die than come back to school". The Student eventually deescalated and had a successful rest of the day at school.
- October 27 – The Student arrived at school agitated, and when a special education teacher attempted to give the Student choices for work tasks, the Student stated that he did not want to work and used profanity. The Student then asked the teacher an inappropriate question, and in response, the teacher tried to redirect the Student. The Student then repeated the question and swore at the teacher.
- October 30 – The Student was slightly agitated after lunch and was yelling that he hated Halloween and did not want to celebrate it with the class due to a family member passing away near Halloween a few years prior. In response, the IEP case manager told the Student he had the option of going to the library during the class party. The Student then went to the back of the classroom to rest and remained resting for the remainder of the day.
- On October 31 – The Student started off the day appearing happy and content. After lunch, the Student went to the school piano room. When it was time to transition back to the special education classroom he became agitated and near the entrance to the classroom began yelling at the contracted behavior specialist. The Student was upset that he did not understand why the behavior specialist had to be with him all the time. The Student called the behavior specialist a name. Another staff member then showed the Student her phone and the Student became distracted and deescalated. The Student attended the class party without incident.
- November 1 – The Student became upset when another student started eating candy in class. The Student began yelling, swearing, and saying inappropriate things about staff. Staff then asked the Student to go on a walk or leave the room, and he reluctantly complied. The Student then returned to the classroom and began "an hour and a half of aggressive behavior" which included: throwing an empty water cooler at the IEP case manager, attacking the contracted behavior specialist by scratching his face and attempting to bite and hit him, throwing a plastic grate at the Parent after the Student knocked it off the ceiling in the "safe room", and taking his shoes off and throwing them at the ceiling. The Student was placed in the "safe room" when attempting to attack the behavior specialist and then continued to cycle through periods of escalation. During the time he was escalated, the school nurse gave the Student two doses of medication, which was to be administered to help calm the Student down during periods of extreme escalation. The school resource officer was eventually called and suggested that the Student be taken to the hospital via ambulance, but the Parent did not want the Student taken to the hospital and instead wanted to take him home. The Student then came out of the "safe room" and spoke with the resource officer, appearing

calm in speech and body. The Parent, the behavior specialist, and the Student then left. The IEP case manager contacted the Parent about forty-five minutes later and the Parent reported the Student was calm.

- November 2 – the Student arrived at school at 9:30 am and slept the duration of the school day. Staff attempted to rouse the Student a few minutes before it was time for him to get on the bus, and the Student was resistant.

85. Based on the District’s documentation in this complaint, on November 1, 2017, the Student’s job coach contacted the Parent to set up an appointment for the job coach to meet the Student at the job coach’s office. A meeting was arranged for November 7, 2017, but the Parent and the Student did not attend the meeting.

86. On November 9, 2017, the Student was seated at his desk with his head down. A class paraeducator was talking to the teacher and the Student began saying insulting names. The paraeducator then walked to another area of the classroom, ignoring the Student, but the Student followed the paraeducator “intimidating her”. The Student used vulgar language toward staff, made obscene hand gestures, and attempted to intimidate staff by getting closer and making fists, holding arms out, and following staff member around the room. Staff then attempted to de-escalate the Student by talking him down with things he enjoyed talking about, and attempted to show the Student a “safe body”. The Student continued to be escalated and attempted to hit his behavior specialist. As a result, the behavior specialist used a one-person cross-arm restraint with the Student. While restrained, the Student attempted to kick the behavior specialist and head-butted him.⁶

87. On November 15, 2017, the Student was at lunch in the cafeteria, and after finishing his meal, expressed interest in going to the school’s piano room to sing and play. The IEP case manager told the Student that the behavior specialist would need to accompany him, which triggered the Student’s anger. The Student then became “verbally assaultive” toward the case manager and behavior specialist, and staff asked the Student to leave the area and independently walk back to the life skills classroom. At some point, the Student attacked the behavior specialist by trying to hit him. The behavior specialist and another staff member then used a rear two-person escort to move the Student to the quiet room.⁷ While staff were releasing the Student, he kicked the staff member in the thigh. The staff then continued to monitor the Student from a safe distance, and the Student continued to “verbally assault” staff. However, the Student was not able to control his anger in the quiet room and proceeded to pull and tear the quiet room half-door off its hinges. Staff asked the Student to sit down in the quiet room, but he then tried pick up the door. He was unable to fully pick up the door, so he slammed it to the ground. Next, the Student charged at the life skills teacher, trying to kick him. The life skills teacher deflected the kick by turning his body and using his leg for protection. The Student then charged at another special education teacher, trying to scratch and hit him, and the teacher backed away using his hands a shield. The life skills

⁶ This information was included in the Student’s December 18, 2017 assessment revision, and is included here to provide context regarding what occurred during the first three weeks of November 2017.

⁷ According to the District’s documentation, the quiet room is a room that has a half door that does not lock.

teacher then restrained the Student and walked him to the quiet room. The other special education teacher then assisted in placing the Student in a two-person seated hold, having the Student sit on the floor. The Student continued to escalate, trying to kick, bite, and head butt, and was verbally assaultive. The staff then requested that the behavior specialist assist in holding the Student's legs and another staff member called the Parent and the school resource officer. The teachers continued to hold the Student until the resource officer arrived. The Student was able to calm down and independently take his medication. He then left school with the Parent for the rest of the day.⁸

88. Based on the Student's attendance record, he was absent from school on November 16 and 17, 2017.
89. On November 17, 2017, the Student's IEP team, including the Parent, met to discuss the Student's behavior and progress. Based on the meeting notes, the Student sometimes slept the majority of the day in a deep sleep, but would sometime wake up to eat lunch. Other days, the Student was very agitated, which could be triggered by structured tasks. The Student would only participate in structured activities for a few minutes a day, but would engage in favorable activities. The IEP team also discussed that the Student had been verbally and physically aggressive at school and as a result, staff were injured and the school resource officer had to respond. The IEP team discussed what the Student's program should look like due to his lack of progress. The IEP team agreed to change the Student's placement, so that he would receive home-based services through a curriculum designed by the special education teacher and delivered by the behavior specialist. The behavior specialist would work with the Student one hour per day four days per week, and that the program would begin on November 27, 2017. The IEP team discussed that the Student's September 29, 2017 IEP would need to be amended to reflect the changes. Based on the documentation in this complaint, the Student's IEP was not amended at the November 17 meeting.
90. The District stated in its response to this complaint that it failed to send a prior written notice after the November 17, 2017 IEP meeting.
91. Based on the District's documentation in this complaint, on November 20, 2017, the Student's job coach contacted the Parent to set up an appointment for the job coach to meet the Student at the job coach's office. A meeting was arranged for November 27, 2017, but the Parent and the Student did not attend the meeting.
92. Based on the Student's attendance record, he was absent November 20-22, 2017. The District was on break Thursday, November 23, and Friday, November 24, 2017.
93. Based on the documentation in this complaint, the Student was hospitalized November 23-December 1, 2017.

⁸ This information was included in the Student's December 18, 2017 assessment revision, and is included here to provide context regarding what occurred during the first three weeks of November 2017.

94. On December 1, 2017, the Student's physician wrote a letter, stating that the Student had medication adjustments and had consistently been in good behavioral control over the last three days, despite a stressful environment. The physician stated that he recommended the Student restart school on "at least on a part-time basis".
95. On Monday, December 4, 2017, District director 2 contacted the Parent to get an update on the Student's status. Based on District director 2's contact notes, the Parent stated that the Student had been released from the hospital on December 1 and had his medications changed. The Parent stated that the Student was doing great and wanted him to return to school immediately. In response, District director 2 suggested that the District follow the IEP team's recommendations from the November 17, 2017 IEP meeting "following the violent outburst that injured three staff" members. District director 2 stated that the plan agreed upon by the team was to provide support and design a program for the home. The contracted behavior specialist would provide services under the supervision of the IEP case manager, who would visit the Student's home when possible. The IEP team would meet in two weeks, to review the Student's progress. At that time, the IEP team would discuss possible reintegration of the Student into a transitions program following winter break (December 20, 2017 through January 1, 2018). The Parent then agreed to the plan verbally.
96. Based on the District's documentation in this complaint, also on December 4, 2017, the Student's IEP case manager contacted the Parent to schedule an IEP meeting, and they agreed to hold the meeting on December 18, 2017.
97. On December 5, 2017, District director 2 contacted the Parent. Based on District director 2's contact notes, District director reiterated the plan for the Student's services and the plan for the IEP team to meet. The Parent asked to move the meeting to December 13 or 14, 2017, due to individuals she wanted to invite being unable to attend a meeting on December 18 or 19. However, the District could not change the meeting because staff were not available on those days. The Parent then agreed to meet on December 18, and would ask the individuals the Parent wanted to attend the meeting to participate in the meeting by phone.
98. Also on December 5, 2017, the Student's IEP case manager emailed the District administrative assistant, stating that she was in the process of revising the Student's September 2017 IEP, and that at the present time, the Student would be receiving one hour of instructional time four days a week in his home. The case manager was uncertain how to document this setting in the IEP. The case manager also stated that the IEP team would be having another meeting on December 18, 2017.
99. The District's documentation in this complaint included a copy of an amended IEP, dated November 17, 2017. The IEP is not signed by any members of the Student's IEP team and it is unclear from the documentation in this complaint when the amendment was actually completed. The amendment stated that the IEP team, including the Parent, decided that the "best" and least restrictive environment for the Student was home-based services, based on the Student's present levels of performance. The IEP stated that "due to the frequency, unpredictability, and severity of [the Student's] physically and verbally aggressive behaviors,

[the Student] required adult supervision at all times in order to keep himself and others safe in his learning environment.” The amended IEP provided for the following specially designed instruction in a special education setting:

- Social/Emotional – 1 hour 1 time weekly
- Adaptive – 1 hour 1 time weekly
- Life Skills – 2 hours 1 time weekly

The IEP also provided for support from a 1:1 student specific behavior technician. The IEP also stated that the Student was being served for transitional services by a district-contracted behavior technician and his special education teacher for one hour a day, totaling four hours a week.

100. On December 6, 2017, the Parent filed this citizen complaint.

101. The District’s documentation in this complaint included a services log regarding services provided to the Student in his home from December 7-14, 2017. The log entries are summarized below:

- Thursday, December 7 – Contracted behavior specialist met with the Student at home. The Student became verbally aggressive and the behavior specialist stopped the session earlier due to concerns that the situation was not safe.
- Monday, December 11 – IEP case manager and another staff members met with the Student in the home. No behavioral incidents.
- Tuesday, December 12 – Student unavailable to receive services due to a medical appointment.
- Wednesday, December 13 – Life skills teacher and another staff member met with the Student at home. There were several instances of the Student using inappropriate language, and the Student threatened to injure the life skills teacher with a pen. Student worked on an assignment.
- Thursday, December 14 – Life skills teacher and another staff member met with the Student at home for approximately ten minutes. The Student became upset when staff asked him to turn off a movie and he began swearing. The Parent asked Student not to use the language. The Student began complaining that he was being “home schooled”, asked why he could not return to school, and then began swearing at staff and telling them to get out of his house. Staff informed the Parent that they believed it would be best to remove themselves from the situation given that they were a trigger for the Student.

102. On December 18, 2017, the District completed a “revision assessment” for the Student based on a review of existing data. The data included the notes kept by the Student’s IEP case manager, other information about the Student’s behavior, information from the school nurse, and information from the Student’s IEE.

103. Also on December 18, 2017, the Student’s IEP team, including the Parent, met to discuss the Student’s placement and progress. Based on the meeting notes and the prior written notice regarding the December 18 meeting, the IEP team discussed the days when staff had come to the Student’s home, and that there had been confusion on when the home-based services should have begun. The Parent expressed that she wanted the Student to receive

services in the community transitions program. The IEP team discussed concerns about safety in the community transitions program, but agreed the Student would receive services in the transitions program with “intense adult supervision”. The Student would have 1:1 support from a behavior specialist, and would work with a job coach. The team discussed that the Student would start the transitions program on January 4, 2018.

104. The District was on break December 20, 2017 through January 1, 2018.

105. Based on the information provided by the District in a phone call on January 31, 2018, the Student was admitted to a hospital for much of January 2018.

CONCLUSIONS

Issue 1: Procedures for Determining Placement during the 2016-2017 (beginning on December 7, 2016) and 2017-2018 School Years – In her complaint, the Parent alleged that the District failed to allow the Student to participate in the District’s special education adult community transitions program during the 2016-2017 school year and the 2017-2018 school year.

2016-2017 School Year – The one-year timeline for this complaint begins on December 7, 2016; therefore, OSPI will not address any issues regarding the Student’s placement prior to that date.

Based on the documentation in this complaint, prior to the beginning of the 2016-2017 school year, the District and the Parent agreed that the Student’s placement during the 2016-2017 school year would be a special education life skills program at the District’s high school, which would focus on transition services. This decision was made due to the Student’s then present mental health needs, likely related to issues with his medication, and his resulting behavior issues. In October 2016, the IEP team developed the Student’s annual 2016 IEP, which stated that the Student would participate in a special education life skills program at a District high school for 850 minutes per week and attend school 960 minutes per week. The October 2016 IEP stated that the Student would attend the high school and then transition to the District’s special education transitions program. While at the high school, the Student would work toward his post-secondary transition goals and acquiring new job skills. The IEP team also agreed to meet in the weeks to follow to discuss lengthening the Student’s school day.

On December 12, 2016, the Student’s IEP team, including the Parent, met to review the Student’s progress and agreed to increase the length of the Student’s school day to 1,425 minutes per day. A school district is required to complete a reevaluation prior to making a significant change of placement. 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 peers 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. Here, the IEP team’s decision to lengthen the Student’s school day was not a change in placement, and did not

require the District to conduct a reevaluation. The decision to lengthen the Student's school day did not revise the educational program in his IEP, did not increase or limit his access to non-disabled peers, did not affect his ability to participate in nonacademic and extracurricular activities, and was the same option on the continuum of alternative placements, as the Student continued to participate in a special education life skills program for the majority of his school day. However, the District was required to amend the Student's IEP to reflect the increase in the amount of time he would spend at school and provide the Parent with prior written notice, which it failed to do.

In March 2017, the Student began participating in the District's special education adult transitions program two days a week for part of his school day. The Student's participation in the transitions program did not change the Student's placement, but was instead a change in the location of where he would receive his special education transition services.

2017-2018 School Year – Based on the documentation in this complaint, near the end of the 2016-2017 school year, the District and Parent agreed the Student would participate more fully in the District's transitions program during the 2017-2018 school year. This is evidenced by meeting notes, emails, and the family completing the transitions program entry paperwork in August 2017. However, at the beginning of the 2017-2018 school year, the Student did not attend school and the District withdrew the Student from the District (discussed further below in issue no. 2). Based on the documentation in this complaint, the Student had continued to experience mental health issues and exhibit aggressive behaviors over the summer of 2017, and this is likely why the Student did not attend school during the first week of the 2017-2018 school year.

On September 29, 2017, the Student's IEP team, including the Parent, developed the Student's annual IEP, and agreed the Student would maintain his placement at the high school and then transition to the transitions program when he was ready. The Student's September 2017 IEP documented that he would continue to attend the high school and receive services for 1,425 minutes per week. The Student then reenrolled in the District on October 9, 2017, and began attending school on October 11, 2017.

On November 17, 2017, the Student's IEP team met to discuss the Student's increasingly unsafe behavior, and agreed to change his placement, so that he would receive home-based services for four hours per week. The District admits it did not send the Parent prior written notice documenting the change, and the District's documentation indicates that the Student's IEP was not amended until at least three weeks later. Changing the Student's placement from a school setting to a home-based setting was a significant change of placement, and as such, required the District to conduct a reevaluation prior to doing so. The District failed to do so. The District has since completed a reevaluation of the Student using a review of existing data, and the IEP team has agreed that the Student will now participate in the community transitions program with 1:1 behavior support. However, based on information provided by the District on January 31, 2018, the Student was hospitalized much of January 2018, and has not begun the transitions program. The District is reminded that when a student is unable to attend school for an extended period

of time due to illness or hospitalization, the District is still required to provide services. It is recommended that the District develop a contingency plan for the Student to receive services in the event he continues to be hospitalized or unable to attend school due to health issues.

Issue 2: Special Education Discipline Procedures during the 2017-2018 School Year – The Parent alleged in her complaint that the District failed to allow the Student to attend school until October 2017. As discussed above, the Student was enrolled in the District at the start of the 2017-2018 school year, but then did not attend school for the first three days of school. The District then disenrolled the Student from the District, based on the District’s policy, but did not provide the Parent notice. It is unclear from the District’s documentation and other information provided by the District, why the District had a policy of disenrolling students who did not attend school the first three days of a school year. It is also unclear why the District did not attempt to contact the Parent regarding the Student’s absences, given the family had completed paperwork on August 18, 2018, showing that they intended the Student to participate in the District’s transitions program. The District is reminded that it must provide a free appropriate public education (FAPE) to students eligible for special education. It is strongly recommended that the District review its policies regarding the disenrollment of students and providing notice.

The documentation in the complaint shows that the Student’s IEP team met on September 12, 2017, to discuss a plan for the Student to return to school, but it is unclear what decisions were made by the IEP team at the meeting, as the District’s prior written notice regarding the meeting does not meet the requirements of WAC 392-172-05010, and does not clearly reflect the decisions made by the IEP team. It is also unclear if the District explained to the Parent that the Student could be reenrolled at any time. The IEP team then met again on September 29, 2017, and agreed the Student would return to the high school and receive 1:1 behavior support. However, the District did not reflect the 1:1 behavior support in the September 2017 IEP or provide the Parent with prior written notice regarding the decisions made at the meeting and the District’s intent to implement the IEP.

On October 9, 2017, the Student reenrolled in the District, but did not attend school until October 11, 2017, due to the unavailability of the 1:1 behavior specialist. The failure to provide the Student with support on October 9 and 10, 2017, effectively suspended the Student from school on those days. The District is reminded that not allowing a student to come to school due to a lack of available services or for other reasons, is a denial of attendance and amounts to a suspension as defined by WAC 392-400-205. When a student is removed from school for more than ten days in a school year, a school district is required to determine if a change of placement has occurred. If a change of placement has occurred, then the district must follow additional special education discipline requirements. Here, the Student was only removed for two school days; therefore, the District was not required to follow special education discipline procedures.

CORRECTIVE ACTIONS

By or before **February 23, 2018, March 23, 2018, and April 27, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **February 20, 2018**, the District will hold an IEP meeting to review the Student's status, progress, and needs, and amend his IEP to reflect his current placement and the amount of specially designed instruction and related services he will receive. By **February 23, 2018**, the District will submit 1) a copy of any meeting invitations; 2) a copy of the amended IEP; and, 3) a copy of any related prior written notices.

DISTRICT SPECIFIC:

By **April 20, 2018**, the District will provide training for all District high school special education certificated staff and educational staff associates (ESAs) and the transitions program teacher, the high school administrators, and District special education administrators regarding: 1) procedures for changing placement; 2) procedures for developing IEPs; 3) procedures for amending IEPs; and, 4) prior written notice. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers providing services and support to the district high school. The trainer will not be an employee of the District. The training will also include examples.

By **February 23, 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 this decision in preparing the training materials.

By **March 23, 2018**, the District will submit a draft of the training materials to OSPI for review. OSPI will approve the materials or provide comments by April 6, 2018 and additional dates for review, if needed.

By **April 27, 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 high school special education certificated staff, educational staff associates (ESAs), the high 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 February, 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.)