

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-105**

### **PROCEDURAL HISTORY**

On November 5, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Bethel 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 November 5, 2018, 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 November 26, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on November 28, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not provide a written reply.

On December 7, 2018 and December 10, 2018, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on December 12, 2018. OSPI forwarded this information to the Parent on December 13, 2018.

On December 10, 2018 and December 14, 2018, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on December 18, 2018. OSPI forwarded this information to the Parent on December 19, 2018.

On December 17, 2018, the OSPI Special Education Dispute Investigator interviewed the Parent by phone.

On December 19, 2018, the OSPI Special Education Dispute Investigator interviewed the District's assistant director of special services (assistant director) by phone.

On December 19, 2018, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on December 19, 2018. OSPI forwarded this information to the Parent on December 20, 2018.

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

### **SCOPE OF INVESTIGATION**

This decision references events which occurred prior to the investigation time period, which began on November 6, 2017. 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 implement the Student's individualized education program (IEP) during the 2018-2019 school year, including any behavior provisions?
2. Did the District follow procedures to ensure the Parent's participation in the May 22, 2018 IEP meeting?
3. Did the District follow procedures for amending the Student's IEP?

### **LEGAL STANDARDS**

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

Parent Participation in IEP Development: The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding: the student's needs and appropriate goals; the extent to which the student will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and the services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If neither parent can attend an IEP team meeting, the school district

must use other methods to ensure parent participation, including video or telephone conference calls. 34 CFR § 300.322; WAC 392-172A-03100.

Provision of FAPE: An IEP is required to be “reasonably calculated to enable the child to receive educational benefit.” It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). For a district to meet its substantive obligation under IDEA, a school must “offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” An IEP must “aim to enable the child to make progress”, the educational program must be “appropriately ambitious in light of [the student’s] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom, ” and the student should have the opportunity to meet challenging objectives. *Andrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017). A district must implement an IEP that is “reasonably calculated to remediate and, if appropriate, accommodate the child’s disabilities so that the child can ‘make progress in the general education curriculum,’ commensurate with his non-disabled peers, taking into account the child’s potential.” *M.C. v. Antelope Valley Union High School District*, 852 F.3d 840, 69 IDELR 203 (9<sup>th</sup> Cir. 2017).

If a school district fails to comply with the procedural elements set forth in the IDEA or fails to develop and offer an IEP that is reasonably calculated to enable a child to received educational benefits, the district is not in compliance with the IDEA. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176 (1982). Procedural violations of the IDEA amount to a denial of FAPE if they: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a FAPE; and (3) caused a deprivation of educational benefits. 20 USC §1415(f)(3)(E)(ii); see 34 CFR §300.513; WAC 392-172A-05105.

IEP Development, Review, and Revision: In developing each student’s IEP, the IEP team must consider: the strengths of the student; the concerns of the parents for enhancing the education of their student; the results of the initial or most recent evaluation of the student; and, the academic, developmental, and functional needs of the student. In developing, reviewing and revising each student’s individualized education program (IEP), the team must, among other considerations, discuss the use of positive behavioral interventions and supports and other strategies to address the student’s behavior. A student’s IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student’s anticipated needs; or any other matters. WAC 392-172A-03110.

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written

document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095.

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.

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments and if the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why: the student cannot participate in the regular assessment and

the particular alternate assessment selected is appropriate for the student; (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.

## **FINDINGS OF FACT**

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

1. At the beginning of the 2017-2018 school year, the Student attended a District high school (high school 1), was in the ninth grade, and was not eligible for special education.

#### The Complaint Timeline Began on November 6, 2017

2. The Student was first evaluated for special education eligibility on March 23, 2018. The March 2018 evaluation included assessments in the following areas: medical-physical, general education, social/emotional, behavior, cognitive, academic, and vocational. Based on the results of the March 2018 evaluation, the Student's evaluation group found him eligible for special education services under the specific learning disability category. The March 2018 evaluation report recommended that the Student receive specially designed instruction in the following areas: reading, math, and writing.
3. On March 23, 2018, the Student's IEP team developed a new IEP for the Student. The March 2018 IEP included annual goals in the areas of reading, writing, and math. The March 2018 IEP provided the Student with specially designed instruction in the areas of reading, math, and writing.
4. On May 9, 2018, associate administrator 1 emailed one of high school 1's vice principals (vice principal 1), stating, in part:  
[Student] boarded the bus and told the driver 'you need to quit being <curse word> late.'  
The driver told him he needed to watch his mouth. [Student] then swung and hit the driver in the eye...The driver couldn't write a statement [soon after the event took place] because of the swollen eye.

In this email, associate administrator 1 said the Student had been given an emergency expulsion, and that a "re-entry meeting/threat assessment" was required prior to the Student being able to return to school.

5. Later on May 9, 2018, another associate administrator (associate administrator 2) emailed one of the Student's special education teachers (special education teacher 1), stating, in part, "Given the recent incident, we need to pull the IEP team back together for [Student]. There needs to be a [functional behavior assessment (FBA)] completed and a [behavioral intervention plan (BIP)] done based on past and current behaviors and eligibility."
6. On May 11, 2018, the District sent a meeting notice to the Parent to attend a manifestation determination meeting on May 14, 2018.
7. Also on May 11, 2018, the District sent an "IEP Amendment Invitation" to the Parent and the Student, inviting them to attend an IEP amendment meeting also scheduled for May 14, 2018. The invitation stated that the District proposed to "develop an initial IEP" and "develop [an] initial evaluation."<sup>1</sup> The following individuals were also invited to attend this meeting: an administrator, a District representative, a general education teacher, the school psychologist, and a special education teacher.

According to the "Contact Attempt Report", the Parent responded to the invitation on that same day—May 11, 2018—stating that she would attend the meeting.

8. On May 14, 2018, the District held a manifestation determination meeting to discuss the incident that took place on May 9, 2018. At that meeting, it was determined that:
  - "The conduct in question was not a manifestation of the Student's disability."
  - The Student needed to attend the District's Options Program<sup>2</sup> for a period of time.
  - An assessment revision needed to be conducted, so the Student's IEP team would have adequate data on the Student in the area of behavior/social/emotional.
  - The Student "may benefit from a resource room setting [next year]."
  - An FBA and BIP needed to be developed to address the Student's behavior.
  - The District would need to "complete [a] re-entry meeting [with the Student] before the next school year begins."
9. Also on May 14, 2018, the District issued a prior written notice to the Parent. In pertinent part, it read:

The [District] has met and completed a manifestation determination meeting which has resulted in a placement change.

...

[Student] has displayed significant behaviors in the school setting and the team is considering a smaller setting where [Student] can receive his instruction.

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<sup>1</sup> Upon knowledge and belief, this portion of the May 11, 2018 "IEP Amendment Invitation" had not been changed since an "IEP Amendment Invitation" had been issued in relation to the Student's March 2018 IEP.

<sup>2</sup> The Options Program was available at a District middle school. According to the District, "the Options Program is mainly used as a way to provide an [interim alternative education setting] for students who qualify for those services. We also use it to provide services on a shorter term basis if a student is being removed from school."

[Student] has recently been working with a counselor at [a private facility]<sup>3</sup> and Parent will be providing the school access for information regarding treatment goals and crisis plans. The team will be completing an FBA and BIP in addition to opening up an assessment revision in order to revisit behavior and/or social/emotional services that [Student] may need to be successful in the general education setting.

10. Also on May 14, 2018, the Student's IEP team amended the Student's March 2018 IEP. The May 2018 amended IEP included annual goals in the areas of reading, writing, and math. The May 2018 amended IEP provided the Student with the following specially designed instruction in a *special education setting* from May 17, 2018 through July 31, 2018:

- Writing – 40 minutes 3 times a week (to be provided by a special education teacher)
- Math – 40 minutes 3 times a week (to be provided by a special education teacher)
- Reading – 40 minutes 3 times a week (to be provided a special education teacher)

The May 2018 amended IEP provided the Student with the following related services in a *special education setting* from May 17, 2018 through July 31, 2018:

- Transportation – 120 minutes 3 times a week (to be provided by a bus driver)

The May 2018 amended IEP also provided the Student with the following specially designed instruction in a *special education setting* from August 1, 2018 through March 26, 2019:

- Writing – 55 minutes 5 times a week (to be provided by a special education teacher)
- Math – 55 minutes 5 times a week (to be provided by a special education teacher)
- Reading – 55 minutes 5 times a week (to be provided a special education teacher)

The May 2018 amended IEP provided the Student with the following accommodations from May 17, 2018 through March 26, 2019:

- Allow additional time
- Allow oral or written responses
- Allow to test in resource room with open book and notes
- Calculator
- Gentle repetition of directions and checking for understanding
- Pair with a responsible peer tutor
- Present verbal material visually
- Provide copy of notes/study guide
- Provide preferential seating
- Read tests and assignments to Student that cannot be accessed by Text to Speech on the iPad
- Repeat directions as needed
- Smarter Balanced Assessment (SBA) – Calculator for calculator allowed items only (e.g., talking or Braille) (Non-embedded accommodation)
- SBA – Extra time per test protocol
- SBA – Masking (embedded designated support)
- Small group
- Text-to-speech accessibility on iPad for texts, textbooks, and any assignments

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<sup>3</sup> According to the District, the Student's private facility "is an outside mental health care organization where one can go for counseling. Their counselors serve children, so often students who need counseling go there."

The May 2018 amended IEP was signed by: vice principal 1 (district representative), the general education teacher, the Parent, the school psychologist, and the special education teacher.

11. Also on May 14, 2018, the District issued a second prior written notice that stated, in part:
  - Student's education placement had been changed from the District high school to the Options Program at a District middle school.
  - This action was taken because "Student was suspended for two or more violent acts<sup>4</sup> towards staff during the 2017-2018 school year...[because of] the nature of [Student's] violent act of punching a bus driver in the face...it would be best to change placement to more restrictive for safety reasons."
  - "Depending on progress at the Options Program, the team will make an informed decision at the end of the 2017-2018 school year as to whether [Student] is ready to return to [the District] high school at the beginning of the 2018-2019 school year. If he has good attendance and behavior for the duration of the 2017-2018 school year at Options, then he will be able to go back to [the District] high school the following year, 2018-2019. If he has not, then the team will decide what his placement will be moving forward."
  
12. On May 16, 2018, the assistant director of special services (assistant director) emailed special education teacher 1, informing her that the District's transportation office was unwilling to transport the Student. In this email, the assistant director, stated, in part:

We will need to meet again, with [transportation], review the threat assessment, possibly create a safety plan and determine a way for [Student] to receive services. It might be good for all of us to watch the video at that meeting so that we can speak more plainly about the behavior in question.

At this time, mom can transport him to and from Options, but we will not put him on a bus until we feel like it is safe for him to ride the bus.
  
13. Later on May 16, 2018, special education teacher 1 emailed the Parent, stating that they would need to schedule another meeting "to come up with a transportation safety meeting and plan prior to [Student] starting Options." The Parent responded later that same day, stating, in part, "Thank you...I will text [general education teacher 1] myself to set up a conference or [I] will text you back with any issues."
  
14. On May 17, 2018, special education teacher 1 informed the Parent via email that the District would reimburse the Parent for her mileage for transporting the Student to the Options Program "until [the District] can get a safety transportation plan going."
  
15. In emails dated May 17, 20, and 21, 2018, the Parent acknowledged that she would attend a meeting scheduled for early in the morning on May 22, 2018. None of the emails specify a meeting location, other than the fact that it would be held at the Student's school.

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<sup>4</sup> One of the "two or more violent acts" referred to in this prior written notice is the incident that took place on the bus on May 9, 2018. According to the District, the other referenced incident took place on December 17, 2017. In that incident, the Student became involved in a physical confrontation with another student and certain staff members in the school cafeteria.



16. According to the District, on May 22, 2018:

There was confusion about where the meeting was to take place, and [special education teacher 1] and [Parent] met in another part of the building, while the rest of the team met and reviewed the threat assessment, pertinent information and discussed a variety of options regarding how to ensure staff safety while transporting [Student]. Toward the end of the meeting, we realized that they had met upstairs and that [Student] and [Parent] had left campus. [School resource officer 1] called [Parent], put her on speakerphone and reviewed the decisions that were made regarding safe transportation. [Parent] expressed concern that [school resource officer 1] had access to police record, and was uncomfortable with the idea that the District was concerned that [Student] had access to weapons with no guarantee from the family that he would not bring them to school.

The team did discuss with [Parent] that [Student] would be attending Options and asked if [Parent] could transport (she would be reimbursed for her mileage to and from). [Parent] shared that she could transport.

[The team] also discussed and updated the Threat Assessment information gathered on February 2, 2018.

17. According to the Parent, on May 22, 2018, the entirety of the Student's IEP team met in an office in the school. The Parent and special education teacher 1 then left the office, with special education teacher 1 telling the Parent that the other members of the team would join them in a bit, but they never did.

Also, according to the Parent's perception of the phone conversation that took place after she had left the building, she was told of the decisions that had been made—as opposed to being consulted on what decisions should be made.

18. On May 22, 2018, the District issued a prior written notice to the Parent, detailing the following decisions that were made at the May 22, 2018 meeting: a) due to safety concerns, the Parent would transport the Student to the Options Program; b) the District would reimburse the Parent for her mileage; and, c) that the Student's IEP team was working to gather information from the Student's private counseling facility.

In pertinent part, the May 22, 2018 prior written notice stated:

Transportation will not allow [Student] on the bus due to the assault of the bus driver...at this point, [Student] is too volatile to be safely transported...We cannot ensure the safety of the bus driver unless [Student] was restrained to and from, and we suspect that [Student] would not allow the restraint at this time.<sup>5</sup>

According to this prior written notice, the following individuals met in a location separate from where the Parent and special education teacher 1 met at the beginning of the meeting: assistant director, vice principal 1, transportation director, school resource officer 1.

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<sup>5</sup> In an interview with the OSPI Dispute Resolution Investigator, the Parent mentioned that she was strongly opposed to the District transporting the Student while he was restrained.

19. The documentation submitted to OSPI as part of this complaint does not include a "Meeting Notice" sent to the Parent before the May 22, 2018 meeting.
20. In an email thread dated May 22, 2018, special education teacher 1, school psychologist 2, and the assistant director discussed: a) the need to conduct an FBA, BIP, and assessment revision for the Student, and b) the need to gather information from the private facility the Student received counseling services from prior to completing these tasks.
21. On May 25, 2018, vice principal 1 emailed the assistant director, special education teacher 1, school psychologist 1, associate administrator 1, school psychologist 2, transportation director, and school resource officer 2, stating that due to the confusion at the last meeting, a new meeting would need to be scheduled to discuss: a) the plan for transportation to the Options Program, and b) complete a threat assessment.<sup>6</sup>
22. On May 30, 2018, the assistant director emailed the Parent and the other members of the Student's IEP team. Attached to this email was a prior written notice. According to the District, this prior written notice was an updated version of the one that had been sent out on May 22, 2018—" [Parent] had requested a list of attendees at the meeting, [the assistant director] updated the prior written notice and emailed it...to her." This email also referenced a meeting that had been scheduled for June 1, 2018.
23. On May 31, 2018, the high school secretary emailed the assistant director, stating that the Parent had called and requested that the meeting on June 1, 2018 be moved up to an earlier time of the day.
24. On June 1, 2018, the District issued a prior written notice to the Parent that summarized the meeting that took place that day. In pertinent part, it noted:
  - Attendees included: director of special services (director), vice principal 1, school psychologist 2, the transportation director, school resource officer 1, and the Parent.
  - "[Parent] entered the room, looked at the participants at the table and stated that she didn't like some of them, that [assistant director] had been harassing her, that she liked [transportation director], didn't like [school psychologist 2] and that she didn't want [vice principal 1] to be part of the meeting. [Vice principal 1] replied that he was going to be part of the meeting. [Parent] was not happy about that, she said she would talk to her lawyers and left the room. There was no time to discuss the issues that [Parent] had inquired about."
25. On June 5, 2018, the assistant director emailed special education teacher 1, stating, in part, "[Parent] requested an IEP team meeting for [Student], she said she never agreed to the Options placement or the transportation arrangement. Will you please connect with her, and my secretary, to see if there is a time that we can meet again?"

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<sup>6</sup> In an email thread dated May 22, 2018 through May 23, 2018, the IEP team determined that a new threat assessment form needed to be completed for the incident that occurred on May 9, 2018—and that it was not appropriate to simply amend the previous threat assessment, dated February 2, 2018.

26. Members of the Student's IEP team exchanged multiple emails on June 7, 2018, regarding setting up another IEP team meeting with the Parent, including:

- Assistant director to principal and special education executive director (executive director): "I called [Parent] to honor her request to set up another meeting, she politely declined a meeting, that she didn't want to reschedule, said thanks for calling me and hung up the phone."
- Special education teacher 1 to members of the Student's IEP team: "I spoke with [Parent] this morning. She is not sure she will be transporting him to Options for the remainder of this school year. She is requesting we provide her with the work to do at home with [Student], that I give it to her daughter to be sent home...I apologize ahead of time, but [Student's] situation has been quite trying for [Parent]. Can you please make me another copy of the work and put it in my box by the end of the day? Or tomorrow at the latest? I know this is asking a lot, but I am hoping to send the work home with [Student's] sister ASAP."

27. According to the District, "the Student never actually attended the Options program, although his case manager prepared everything for him to go. [Parent] was going to transport him, but changed her mind."

28. The District's school year ended on June 20, 2018.

### **Summer 2018**

29. On September 3, 2018, the District invited the Parent to an IEP meeting scheduled for September 5, 2018. In pertinent part, the invitation read, "The purpose of this meeting is to add specially designed instruction in the area of behavior."

30. On September 5, 2018, the District conducted an "assessment revision" of the Student.<sup>7</sup> The school psychologist reviewed the academic and behavior areas of the Student's March 2018 initial evaluation for special education eligibility. The September 2018 assessment revision also noted that the Student had a couple of discipline referrals in the latter half of the 2017-2018 school year.

The September 2018 assessment revision recommended that, in addition to reading, math, and writing, the Student be provided with specially designed instruction in behavior. It also recommended that the District conduct an FBA and a BIP "to support [Student's] success here at [the District] high school."

The signature section of the September 2018 assessment revision stated that its contents were shared with the Parent via a phone conference on September 5, 2018.

31. On September 5, 2018, the District completed an FBA of the Student. The September 2018 FBA stated, in relevant part:

#### **Contributing Factors**

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<sup>7</sup> According to an assessment revision prior written notice, dated September 5, 2018, this "was initiated in order to evaluate [Student's] need for specially designed instruction in the area of behavior."

[Student was] recently diagnosed with [oppositional defiant disorder (ODD)]<sup>8</sup> by counselor/psychologist at [the private facility where the Student receives treatment]...[Student] has identified the following triggers which may lead to his escalation: small and enclosed places, when someone else puts their hands on him, and when he is taunted...[Student] has become frustrated in the home setting and consequently hitting/punching the wall.

...

#### **Target Behavior**

[Physical and verbal aggression]

...

Student's behavioral difficulties are intermittent but the intensity of behaviors are significant and violent.

...

#### **When does the behavior tend to occur?**

Unstructured transition times (i.e., when in the cafeteria, when getting on transportation).

#### **Recommendations to the IEP Team**

- [Develop a BIP for the Student]
- [Utilize Certain Antecedent Strategies:] check-in upon arrival (with a preferred adult), potential reflection activity (during morning check-ins).
- Teaching Strategies: [Student] will be directed to contact natural supports as listed via [the] crisis plan created [by his private counseling facility]<sup>9</sup> when staff believe [Student] is becoming frustrated or has expressed frustration.

32. Also on September 5, 2018, the District developed a BIP for the Student. In relevant part, the BIP stated:

- "Instead of engaging in the target behavior, [Student] will ask his teacher to take a break to his case manager or teacher he feels safe with, or just take a break to his case manager or [a] teacher he feels safe with."
- "The environment will be set up where [Student's] teachers hold on to a check out slip for each class period. Before [Student] leaves class he must go up and circle a number from 1 to 10 on the slip, according to how he is feeling in his current mood. 1 being calm, 5 being irritated or agitated, and 10 being very angry. He then gives the slip back to his teacher who then enters the data/number into a shared data tracking system...[this system] will be a google spreadsheet named '[Student] Safety Plan/BIP and Data Tracking.'
- "If [Student] at any time feels he is above a 5 on his mood scale he knows he is supposed to take a break to his case manager or [a] teacher he feels safe with."
- "[Student] will be permitted to leave class five minutes early to transition to the next class."

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<sup>8</sup> According to WebMD, ODD "is a condition in which a child displays an ongoing pattern of an angry or irritable mood, defiant or argumentative behavior, and vindictiveness toward people in authority. The child's behavior often disrupts the child's normal daily activities, including activities within the family and at school." <https://www.webmd.com/mental-health/oppositional-defiant-disorder#1>

<sup>9</sup> According to the District, natural supports "usually refers to family members and friends that the person can contact when they are having a crisis."

- "Check-in upon arrival (with a preferred adult)."
- "Potential reflection activity (during morning check-ins)."
- "[Student] will be directed to contact natural supports as listed via [the] crisis plan created [by his private care facility] when staff believe [Student] is becoming frustrated or has expressed frustration."
- "Positive reward systems, such as case manager rewarding [Student] weekly with desired item if he follows his plan."
- "Staff will follow building discipline procedures calling Campus Safety and administration as well as letting case manager know what is happening."

The September 2018 BIP also included the following statement: "[Student] had identified the following triggers which may lead to his escalation: small and closed places, when someone else puts their hands on [him], and when [he] is taunted."

According to a prior written notice, dated September 5, 2018, the BIP was to be initiated on September 10, 2018.

33. On September 5, 2018, the Student's IEP team amended the Student's May 2018 amended IEP. The September 2018 amended IEP was the same as the May 2018 amended IEP, with the exception of the following additions:

- A behavior subsection was added to the "present levels of educational performance" section of the IEP.
- A measurable annual goal in behavior was added.
- The following was added to the service matrix: 55 minutes 5 times a week of specially designed instruction in behavior, to be provided by a special education teacher in a special education setting, from September 10, 2018 through March 26, 2019.

The September 2018 amended IEP was to be implemented starting on September 10, 2018.

The September 2018 amended IEP was signed by the following individuals: a district representative, a general education teacher, special education teacher 2. Under "parent," the signature portion of the September 2018 Amended IEP read: "permission to proceed."

34. The record contains conflicting information on whether the Parent was physically present during the September 5, 2018 meeting. According to the District, "Parent was in attendance and participated [in the September 5, 2018 IEP meeting], but there was no signature page for [Parent] to sign." In an interview with the OSPI Investigator, the Parent stated that she remembered being physically present for the September 5, 2018 meeting. However, the signature page of the September 2018 assessment revision and the signature page of the September 2018 amended IEP, though, suggest that the Parent participated via telephone.

35. The District issued a prior written notice, dated September 5, 2018, noted, in part:

The first meeting date on May 14, 2018, the FBA could not be completed due to needing more time for observations and IEP team member input. Since the May 14, 2018 meeting was so close to the end of the school year, the team could not complete the needed actions in the time left. The team decided to reconvene, with [Parent's] permission at the beginning of the school year. The original consent for the FBA was given on May 15, 2018, but the

actual FBA meeting was held on the same date as the BIP and IEP Amendment meeting on September 5, 2018. [Parent] gave permission to proceed with the paperwork for the BIP and IEP Amendment without providing signatures as they were not able to be obtained at the September 5, 2018 meeting due to changes and updates the team was making on September 5, 2018.

### **2018-2019 School Year**

36. The District's 2018-2019 school year began on September 6, 2018. At the beginning of the 2018-2019 school year, the Student attended high school 1.
37. According to the Student's 2018-2019 schedule, he received, in part, the following academic instruction:
- Special education: reading—300 minutes a week
  - Special education: math—300 minutes a week
  - Special education: English language arts—300 minutes a week
  - Special education: social/behavioral skills—325 minutes a week
38. On September 13, 2018, vice principal 1 emailed special education teacher 1, stating that the Student had "escalated" at lunch earlier that day "because there were no more lunches that he wanted." According to the email, the Student "grabbed a milk" without paying and threatened the lunchroom clerks by saying "I am going to slap the [expletive]." Vice principal 1 stated that he was able to help the Student de-escalate, the Student returned for lunch at a different period, paid for the milk, and received a meal.
39. According to a "Notification of Emergency Expulsion," the Student was issued a disciplinary referral on October 24, 2018 for the following two incidents:
- "Transportation reported that [Student] was vaping on the school bus in the morning and the driver reported a smell of marijuana."
  - "Administration and Campus Safety approached [Student] at the end of lunch and asked him to come with them to investigate the first incident. [The Student cursed at these individuals on multiple times and was generally uncooperative.] [Student] took off towards the cafeteria...bumping into [other] students as they passed. [Student left the building. After several moments of observation from within the gym lobby, the assistant principal followed the Student outside.] [Student] noticed her, [cursed at her again], and began to walk quickly towards her. The assistant principal was intimidated by [Student's] demeanor and notified campus safety that she needed immediate support. Campus safety arrived and [the assistant principal] was able to re-enter the building...campus security asked [Student] to leave campus [after he cursed at them again]. [Student] postured to fight [campus security and threatened to punch them]...[Student's] behavior caused a major disruption to the safety of students and staff and to the learning environment at [the high school]. An Emergency Expulsion is in place because these aggressive acts and threats represent a threat to students and/or staff...an emergency expulsion is in place until a threat assessment is conducted...a reentry meeting is required prior to [Student] returning to school. This will involve the Student, campus safety, and administration."

40. On October 24, 2018, campus safety representative 1 emailed the principal and vice principal 1, stating that he was concerned for his own safety as a result of the incident that took place with the Student on October 24, 2018.
41. In pertinent part, the entry on the principal's "phone log" for October 24, 2018 read as follows:  
Called [Parent]. She said she would press harassment charges against our school and said the staff have been harassing [Student] over the last couple weeks...She said an administrator went up to [Student] in an unstructured place and [Student] did nothing wrong. She said [Student] left the situation and the administrator followed him for a long time. She said our staff was 'incompetent.' She repeated again we were harassing [Student]...she said [vice principal 2] followed [Student] around and cornered him like an animal. She said we should have called her instead. She claims [campus safety representative 1 cursed at Student]. She said we should have let [Student] go...to class. I explained that I was told [Student] was refusing to follow directions and was approaching other students on campus. She said...if [Student] got confrontational, we should have called [general education teacher 1] or [special education teacher 1]. I explained that we had received a call from transportation that [Student] was vaping on the bus, and smelled of marijuana. It was the job of administration to investigate. [Parent] said [Student] doesn't get along with [the vice principal 1], [school resource officer 1], [campus safety representative 3], or [campus safety representative 1]...[Parent] repeated she would press charges...She said [Student] is a 'mouthy teenager with attitude problems.' [Parent] repeated again [Student] is harassed by [the District's] security and cops...[Parent] then hung up the phone.
42. The October 24, 2018 "phone log" entry for vice principal 1 reflects the fact that the Parent believed the District "escalated the situation [with Student on October 24, 2018]" by "cornering him" and "back[ing] him up in a corner."
43. The documentation submitted in response to this complaint includes notes from a conversation that the executive director and/or special education teacher 1 had with the Parent on or about October 26, 2018. These notes reflect that the Parent believed the District was not following the Student's IEP and BIP, in that: a) the District was not "giving [Student] space to cool off;" b) the District made things worse for the Student when its staff "followed him around." The top line of these notes read, "I believe he is being harassed."
44. On October 26, 2018, general education teacher 4 filled out a "Teacher/Staff Questionnaire" about the incident that took place on October 24, 2018. In pertinent part, it read, "The Student has a plan where I am to not confront or redirect him about behavior."  
General education teacher 5 filled out a "Teacher/Staff Questionnaire" about the incident that took place on October 24, 2018. In pertinent part, it read, "Student has been working with a paraeducator to get work turned in. He likes working in a smaller class setting. The paraeducator said he has been working well in that setting."
45. On October 29, 2018, the District issued a prior written notice. In pertinent part, it stated: [Student's IEP team met] and conducted a manifestation determination. The most recent disciplinary incident was found to be related to [Student's] disability. The team also conducted a threat assessment. The team reviewed the FBA/BIP and reviewed further steps

to take when [Student] is escalated. As part of the plan, [campus safety representative 2] will be added as a contact when escalated during unstructured times such as lunch and passing periods. When escalated, [campus safety representative 2] will try to have [Student] take a walk prior to escorting to the office. [Campus safety representative 4] will be the second contact. The team reviewed that when [Student] is escalated that he needs time to calm down and it is best not to corner him.

...

The team considered revising the FBA/BIP. [However,] the plan seems to be effective. It was reviewed by the team. [We rejected the option of revising the FBA/BIP].

46. A "Building Level Screening Protocol: Student Safety Assessment Team," dated October 29, 2018, read, in part: "[Student] will let staff know when he 'needs a moment.' [Campus safety representative 2] and [campus safety representative 3] are people [Student] feels comfortable taking a break with in the moment."

47. The record contains meeting notes from the meeting that took place on October 29, 2018. In pertinent part, it read:

**Purpose of re-entry/reason for exclusion:** Threat assessment due to Incident at school regarding an investigation on the bus.

**Student learning goal:** Student is expected to communicate when he needs a break from a situation. Student will walk away and return. Also see manifestation with Student's IEP/BIP.

**Student Goal:** Student to communicate when he needs a break from a situation.

**Resources Needed:** Case manager to monitor plan and [Student's] use of intervention.

**Action Plan:**

- Continue daily check-in with teachers.
- [Student] to check in with [campus safety representative 2] ([campus safety representative 3] in his absence), [special education teacher 1] and/or [general education teacher 1]
- Parents will talk with [Student] about the importance of him attending class.

48. In its investigation of this complaint, the OSPI investigator asked the District where the Student went when he asked to take a break. In response, the District submitted the following statement from special education teacher 1: "I am not sure if [Student] has ever asked to take a break with [myself or general education teacher 1], but now that teachers are aware they have been asking him if when he is frustrated and offering him to take breaks."

49. On October 30, 2018, vice principal 2 emailed the principal, vice principal 1, the associate administrator, the assistant principal, another associate administrator, general education teachers 1, 3, 4, and 5, special education teachers 1, 2 and 4, the English language arts teacher, and the school counselor, stating:

[Student] is returning to his normal schedule today after a re-entry meeting yesterday. Here are a few strategies as you support [Student]:



- When upset he will strive to communicate that he needs a moment and return...this may look like walking away, seeking support from an adult he trusts ([general education teacher 1, special education teacher 1, or campus safety representative 2]. [Campus safety representative 3] is an option of [campus safety representative 2] isn't available.)
- He will continue his daily check-ins with [general education teacher 1].
- Teachers, continue to rate [Student's] behavior on a scale of 1-10 daily and submit to [special education teacher 1]. This information is essential to us tracking our interventions and their effectiveness.
- If [Student] is unable to communicate his need for space, he may need prompting to "take a break and come back."
- [Student] is working towards building a relationship with [the school counselor].
- His parents are going to discuss [Student's] arrival time to classes.

50. The record contains a google sheet, entitled "[Student] Safety Plan/Behavior Intervention Plan & Data Tracking." It includes entries that rank the Student's emotional state at the end of each class period. According to a key on the google sheet, 1 means the Student is "calm," 10 means the student is "extremely angry," and 5 means the Student is "agitated/frustrated."

On the emotion tracking sheet, the Student's classes have varying numbers of entries. For example:

- The biology and reading classes have fairly regular entries.
- The math and sports classes have irregular entries.
- The social skills class has few entries.

Each cell on the emotion tracking sheet signifies a particular class on a particular day—for example, "biology class on October 4, 2018." The cells that have no entries are blank—in other words, nothing appears in those cells.

According to the District, "the blanks [on the form] signify that [Student] was calm."

According to special education teacher 1:

When the team met on September 5, 2018...I distributed [this] from to him and all other teachers where [Student] was supposed to be charting his mood. However, after the first two weeks...all teachers reports [Student] was not using the sheets, and that they began to just verbally ask him what his mood number was in order to record it in the google tracking sheet.

51. Regarding the google emotion tracking sheeting, the District also stated that the Student frequently skipped his social skills class, which "could account for the lack of tallies for [that] period."

According to the District, the Parent, Student, special education teacher 1, and associate administrator 3 "met...on November 15, 2018 to discuss Student's absences during [his social skills class]." At this meeting, the Student also stated: a) when he skipped his social skills class, he would attend a second lunch period so he could spend more time with friends; and b) that "he did not like his [social skills] class."

A prior written notice, dated November 15, 2018, read, in part:

[Student] has been seen taking more than one lunch during the same time he is marked absent for his [social skills class]...It was considered to approach [Student] during lunch to ask him to go to class. [This] option was accepted, if approached by campus safety, and if he refuses campus safety will walk away and call [Parent] to not escalate him further.

The record is not clear on how many times the Student skipped this class; from the documentation provided to OSPI, it appears that the Student skipped this class somewhere between six and thirty-one times.

In an interview with the OSPI investigator, the assistant director stated that the District does not know the exact number of times that the Student skipped his social skills class.

52. In pertinent part, the Parent's complaint read:

I believe the District violated Part B of the IDEA by not following [Student's] IEP requirements and doing things that are stated on the IEP [as ones that] would cause issues—e.g., following [Student] and taunting him when [his] IEP states he will leave situation to calm down, not allowing him to continue to go calm down...[On] October 24, 2018, [District staff] followed [Student and] taunted him...[The District] did not follow IEP guidelines for taking the necessary precautions needed for [Student's] behavior...[I would like to see the following changed:] no contact with certain security [staff] that don't support [Student] but only pushes him without any respect, that aggravates him over and over, not [for Student] to be bullied by certain security members...not [for staff] to point fingers [and] tell him things that will rile him up or belittle him because they have authority.

53. In its investigation of this complaint, OSPI asked that the Student's special and general education teachers fill out a questionnaire. OSPI received the following responses:

Questions:

During the 2018-2019 school year...

1. How often did you allow the Student to have additional time during testing?

General education teacher 1: [Student] has always taken the test in my class at the same time as others and has never needed extra time.

General education teacher 5: Every time we have a test he gets extra time and help from a para that takes him to a quiet place to take it away from classroom distractions.

English language arts teacher: In [English language arts] we don't really take tests, but the Student is given extra time for both embedded assessments (written essays) and...computerized practice state assessments

2. How often did you provide "gentle repetition of directions and checking for understanding"?

General education teacher 1: [Student] has never been a problem nor has he needed redirection.

General education teacher 5: Whenever I see he needs it or is slow to start his work. He also seeks help from a Para to complete assignments.

English language arts teacher: Whenever Student had phone out, initiating work, looked "lost," or was just sitting at his desk when an assignment [had been] given.

**3.** Did you provide the Student with a "responsible peer tutor"? If so, in what settings and/or for what tasks?

General education teacher 1: Never

General education teacher 5: He likes to keep to himself but seems to have made a connection with the para that comes by my room and often prefers to go work with her in a setting that has less distractions and he can work at his own pace.

English language arts teacher: We have a small class (7 students), and, as such, I have provided more of the one-to-one support. He has worked with another student twice.

**4.** Did you provide the Student with preferential seating in your classroom?

General education teacher 1: [Student] has always sat where he wanted to with no problems.

General education teacher 5: He sits close to the screen where I display daily information and has an easy time seeing the board for instruction.

English language arts teacher: Yes, close to me.

**5.** How often did you repeat directions for the Student?

General education teacher 1: Can't think of any that were done for just [Student].

General education teacher 5: Only when I see that he is slow to start working on daily assignments.

English language arts teacher: Several times.

**6.** How often did you allow the Student to work in a small group setting? In what settings and/or for what tasks was the Student permitted to work in a small group setting?

General education teacher 1: Three so far with one of them where [Student] was the captain and had to keep the group on task...[there is] more group work coming [in my class].

General education teacher 5: I let him go whenever he feels it is best for him to get his work done, oftentimes he goes to a place that is more quiet and has less distractions with a paraeducator.

English language arts teacher: Whenever possible (my class is basically a small group).

**7.** How many times did the Student ask you to take a break because he was feeling anxious, irritated, or angry? When (and if) the Student did ask you to take a break under these circumstances, what was your response?

General education teacher 1: One time ever—last year.

General education teacher 5: He has never asked my for any breaks, he is very quiet and keeps to himself most days. He has slowly starting asking for different things in class.

English language arts teacher: None, he has been very subdued in my class. However, he asks to use the restroom daily around 1:40 pm. I always let him go. Gone for roughly 35 minutes each time.

**8.** Was the Student permitted to leave your class 5 minutes early to transition to the next class?

General education teacher 1: Never has.

General education teacher 5: He has never expressed a need to leave early.

English language arts teacher: No. Was not aware that was an accommodation, nor did he ever ask to.

**9.** Did you implement a “positive reward system” for the Student in your class? If so, can you please provide me with the details of the system?

General education teacher 1: Nope.

General education teacher 5: I currently do not have a reward system in place.

English language arts teacher: Tried to, with candy, time on an electronic device (personal device). When he would give an answer, he was rewarded (candy). We talked about other rewards for work completion.

**10.** Roughly how often did you complete the Student’s “Safety Plan/Behavior Intervention Plan & Tracking Data” worksheet—i.e., recording the Student’s mood rating after each class?

General education teacher 1: I try to do it every day...that amount...I don’t have a number.

General education teacher 5: I do my best to complete it each day, times when he leaves to work with the paraeducator it is hard to fill it out because I don’t see him at the end of class.

English language arts teacher: Every day, even when he was absent. Sometimes he would fill out a rating sheet, sometimes I could tell his mood, but I would ask him anyway.

## CONCLUSIONS

**Issue One: IEP Implementation** – Here, the Parent alleged that the District did not implement the Student’s September 2018 amended IEP. A school district must ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a student with a disability and those required by the IEP.

### Incident on October 24, 2018

The Parent alleged that the District failed to implement the Student’s September 2018 amended IEP on October 24, 2018. Specifically, the Parent stated that District staff “taunted” the Student.

The Parent also stated that the District violated the IEP by having District staff: a) follow the Student after he left the cafeteria; b) "corner...the Student;" and c) not "give...[Student] space to cool off."

Regarding the Parent's first allegation, based on the documentation provided to OSPI in its investigation of this complaint, OSPI cannot conclude that District staff "taunted" the Student on October 24, 2018. According to Merriam-Webster's online dictionary, 'taunt' means "to reproach or challenge in a mocking or insulting manner; jeer at."<sup>10</sup> The record mentions two incidences of verbal communication from District staff to the Student on October 24, 2018: 1) according to the "Notification of Emergency Expulsion," "campus security asked [Student] to leave campus;" and 2) according to the principal's phone log, the Student was given certain "directions," which the Student chose to ignore. Neither of these verbal communications can be characterized as a "taunt."

Regarding the Parent's second allegation, the Student's September 2018 BIP does state that the Student should be allowed to "take a break" when he is feeling anxious. However, the September 2018 BIP also stated that "staff will follow building discipline procedures calling Campus Safety and administration." Here, that is exactly what happened. District security staff and the assistant principal followed the Student because he was cursing, "bumping into [other] students," and displaying aggressive body language. On this point, it is also important to note that districts are required by law to maintain a safe learning environment for all students. *See generally* RCW 28A.320.125; *see also* RCW 28A.320.128.

Therefore, the District properly implemented the Student's September 2018 amended IEP and BIP on October 24, 2018.

### Emotion Tracking Sheet

There were three implementation issues with the emotion tracking sheet.

First, according to the September 2018 BIP, the sheet was supposed to be completed as follows: At the end of each class, the Student would circle the number that corresponded to his current emotional state on a "check out slip" that each of his teachers had. The respective teachers would then record this entry in the google excel sheet. The District, though, states that after several weeks, the teachers began verbally asking the Student to rate his emotional state, as opposed to having him circle the correct number on the "check out slip" because the Student "was not using the sheets."

Second, the September 2018 BIP included the following explanation for the numbers to be used on the sheet: 1 represented "calm", 5 represented "irritated or agitated," and 10 represented "very angry." The September 2018 BIP does not explain what a blank, or no entry, represents. According to the District, though, some of the blank/no entries on the form signify that the Student was "calm."

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<sup>10</sup> See, <https://www.merriam-webster.com/dictionary/taunt>.

Third, the emotion tracking sheet appears to have been irregularly completed; for some classes, it was filled out fairly regularly; for other classes, it was filled out irregularly. For example, the math and sports classes have irregular entries. The biology and reading classes have fairly regular entries. The social skills class has few entries, but the District explained that this could be a result of the fact that the Student often skipped his social skills class.

These three issues, however, do not represent a material failure to implement the Student's IEP. They do, however, signify that the Student's IEP team should have met to discuss the emotional tracking sheet, especially given that the sheet was not being implemented as written and likely needed to be adjusted to be a more effective tool for the Student. Therefore, the Student's IEP team will meet to determine the appropriate manner in which to complete the emotion tracking sheet. Any changes will be reflected in an amended BIP. Subsequent to this meeting, all of the Student's teachers will be provided a copy of the Student's BIP (whether or not it has been changed) via email. In this email, the Student's teachers will be reminded of the importance of completing the emotion tracking sheet, as well as the appropriate manner in which to complete it.

#### Accommodations and Other BIP Elements

The remaining portions of the Student's September 2018 amended IEP and BIP appear to have been properly implemented. For example, general education teacher 5 filled out a District questionnaire wherein he stated, "Student has been working with a paraeducator to get work turned in. He likes working in a smaller class setting. The paraeducator said he has been working well in that setting." The English language arts teacher stated that he provided the Student with 'gentle repetition of directions and checking for understanding' "whenever [Student had] his phone out...looked 'lost,' or was just sitting at his desk when an assignment [had been] given." General education teacher 1 stated that, in his class, the Student was always allowed to "sit where he wanted." Therefore, the District properly implemented the accommodations in the Student's September 2018 amended IEP, as well as the provisions of the Student's September 2018 BIP that were not discussed elsewhere in this decision.

**Issue Two: Parent Participation in May 22, 2018 IEP Meeting** – The Parent alleged that the District did not follow proper procedures for ensuring her participation in the May 22, 2018 IEP meeting. Parents are considered equal partners with school personnel in making decisions concerning IEP development, review, and revision, and the IEP team must consider the parents' concerns and the information that they provide on these issues. As such, a school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider

the parents' concerns and the information they provide regarding their child in developing reviewing, and revising IEPs.

Here, based on several emails between the Parent and District staff, the Parent was clearly aware that an IEP meeting had been scheduled for May 22, 2018 to discuss "a transportation safety meeting and plan prior to [Student] starting Options." None of these communications, however, stated where in the Student's school the IEP team would meet. For example, the District did not issue a "Meeting Notice" concerning the meeting prior to May 22, 2018. As a result, on the actual day of the meeting, the Parent and special education teacher 1 met in one location, while the remaining members of the team met in another location.

Additionally, it appears that the Parent was not given notice of one topic that was discussed at the meeting. According to the District, at the meeting on May 22, 2018, "the team...discussed and updated the Threat Assessment information [from] February 2, 2018." This topic was not referenced in the emails that were exchanged between the Parent and District staff prior to the meeting. Finally, a review of these emails also reveals that the Parent was not informed, in advance, of who would be at the meeting.<sup>11</sup> Therefore, when the District failed to notify the Parent of the exact location of the meeting, who had been invited to attend the meeting, and each topic to be discussed at the meeting, three procedural errors were committed.

Procedural errors, however, only amount to a denial of a free appropriate public education (FAPE) if they: (1) impede the child's right to a FAPE; (2) significantly impede the parents' opportunity to participate in the decision making process regarding the provision of a FAPE; and (3) cause a deprivation of educational benefits. Here, these procedural errors did not amount to a denial of FAPE. For example, the Parent did actually participate in the May 22, 2018 meeting—she participated via phone after she left the building. Furthermore, these procedural errors did not cause any educational harm to the Student. And, the District tried to remedy these errors by holding an additional meeting soon after May 22, 2018. The Parent, however, declined to participate. An IEP meeting was held on June 1, 2018, but the Parent left the meeting before a discussion could take place. On or about June 7, 2018, the Parent told the assistant director that she did not want to hold another meeting on the matters discussed at the May 22, 2018 meeting.

OSPI finds that the District failed to properly facilitate Parent participation at the May 22, 2018 IEP meeting initially and is in violation. However, given the District's attempts to remedy, no corrective actions are warranted in this case. In light of the foregoing, OSPI recommends that the District remind the members of the Student's IEP team that meeting notices should include the exact location of the meeting, a list of the individuals invited to attend the meeting, and each topic that is to be discussed at the meeting.

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<sup>11</sup> On this issue, the Parent also alleged that the District did not consider her input on how to best transport the Student to and from the Options Program—specifically, she stated that the District IEP team members decided that the Student would have to be transported on the bus in restraints. The record, however, strongly suggests that the District did consider her input on this point. For example, the IEP team ultimately decided that the Parent would transport the Student to and from the Options Program and that the District would reimburse the Parent for this expense.

**Issue Three: IEP Amendments** – The Parent alleged that the District did not follow the proper procedures for amending the Student’s IEPs. A student’s IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student’s anticipated needs; or any other matters. In developing each student’s IEP, the IEP team must consider: the strengths of the student; the concerns of the parents for enhancing the education of their student; the results of the initial or most recent evaluation of the student; and, the academic, developmental, and functional needs of the student. In developing, reviewing, and revising each student’s individualized education program (IEP), the team must, among other considerations, discuss the use of positive behavioral interventions and supports and other strategies to address the student’s behavior. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP.

Among other things, an IEP must include a statement on the special education services, related services, and supplementary aids to be provided to the student.

An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child.

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. 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.

#### Amending the March 2018 IEP

Here, the Parent was given sufficient notice of the IEP amendment meeting scheduled for May 14, 2018. The District invited the Parent on May 11, 2018, and she responded the same day. This invitation, however, did not inform the Parent of the reason the District was proposing to amend



the Student's March 2018 IEP. For example, it stated that the Student's IEP team needed to meet to "develop an initial IEP" and "develop [an] initial evaluation." The Parent had notice, though, of why the District proposed amending the Student's March 2018 IEP—on May 11, 2018, the Parent received a notice for a manifestation determination meeting also scheduled for May 14, 2018. Therefore, the Parent was on notice that the District was proposing that the Student's IEP team discuss the Student's recent behavior and whether that behavior indicated that his IEP needed to be amended.

The other procedural requirements for amending the Student's March 2018 IEP were also followed. For example, it was amended because the Student's needs had changed—the Student had been "suspended for two or more violent acts towards staff during the 2017-2018 school year" and his IEP team determined that he required a smaller and more restrictive setting (the Options Program). Presumably, it reflected the Parent's input—the Parent signed the May 2018 amended IEP. It was also created by a full IEP team; the District representative, general education teacher, Parent, school psychologist, and special education teacher all signed the May 2018 amended IEP. It also contained each of the required elements of an IEP. After it was created, the District issued the Parent a prior written notice (dated May 14, 2018), explaining the changes that had been made to the Student's March 2018 IEP and why they had been made. Therefore, the District followed the correct IEP amendment procedures.

#### Amending the May 2018 Amended IEP

Here, the Parent was given sufficient notice of the IEP amendment meeting scheduled for September 5, 2018. For example, on September 3, 2018, the District invited the Parent to the meeting and the invitation articulated the purpose of the meeting: "to add specially designed instruction in the area of behavior [to Student's IEP]." The Parent had also been issued a prior written notice in May of 2018 that stated that the Student's IEP team had determined the Student would need an assessment revision, FBA, BIP, and possibly the addition of specially designed instruction to his IEP, before the beginning of the 2018-2019 school year.

This decision appears to have been undertaken for two reasons: first, as articulated above, the Student's needs had changed; second, recent data supported the determinations. For example, for the September 2018 assessment revision, the school psychologist reviewed the academic and behavior areas of the Student's initial, March 2018 evaluation report. In conducting the Student's September 2018 FBA, his IEP team gathered teacher observations, parent observations, student observations, and medical history. On the basis of all of this information, the Student's IEP team decided to add behavior as an area of specially designed instruction to his IEP.

While the record does contain some ambiguity on whether the Parent was physically present for the September 5, 2018 meeting, the Parent's recollection is that she was physically present and that she participated in the discussion. The amended IEP was also signed by a District representative, a general education teacher, and a special education teacher. Therefore, it was created by a properly constituted IEP team. On that same day—September 5, 2018—the District issued the Parent a prior written notice that explained the changes that had been made, and the

reasons that they had been made. Therefore, the District followed proper procedures in amending the Student's May 2018 amended IEP.

### Minutes of Specially Designed Instruction

According to the Student's 2018-2019 schedule, the Student received more specially designed instruction during the first semester of the 2018-2019 school year than is reflected in his September 2018 IEP. For example, according to his schedule, the Student is receiving, in part, the following specially designed instruction:

- Special education: reading—300 minutes a week
- Special education: math—300 minutes a week
- Special education: English language arts—300 minutes a week
- Special education: social/behavioral skills—325 minutes a week

According to the Student's September 2018 amended IEP, however, the Student is to receive the following specially designed instruction:

- Special education: reading—275 minutes a week
- Special education: math—275 minutes a week
- Special education: English language arts—275 minutes a week
- Special education: social/behavioral skills—275 minutes a week

An IEP must contain a statement of the special education services to be provided to the student. Here, the instruction the Student is receiving does not match his IEP and therefore, it is unclear how much specially designed instruction the Student is actually receiving. Therefore, the Student's IEP team will meet to determine how much specially designed instruction the Student requires in each of these areas. The Student's September 2018 amended IEP will be updated to reflect any changes and the Student's schedule will be arranged so that he is receiving the requisite number of minutes each week in each of these areas.

### **CORRECTIVE ACTIONS**

By or before **January 30, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

1. By **January 18, 2019**, the District and the Parent will hold an IEP team meeting. At this meeting, the following two issues will be discussed:
  - a) How much specially designed instruction the Student requires in the following areas: reading, math, English language arts, and social/behavioral skills. If these figures differ from the Student's September 2018 amended IEP, then the IEP will be updated to reflect these new figures. By **January 28, 2019**, the Student's schedule will be set up in a manner that permits him to receive the amount of specially designed instruction included in his IEP.
  - b) The appropriate manner in which to complete the emotion tracking sheet. Any changes will be reflected in an amended BIP. By **January 28, 2019**, all of the Student's

teachers will be emailed a copy of the Student's BIP (whether or not it has been changed). In this email, the Student's teachers will be reminded of the importance of completing the emotion tracking sheet, as well as the appropriate manner in which to complete it.

By **January 28, 2019**, the District will: 1) create a new IEP and/or BIP for the Student that reflect any changes resulting from this meeting; 2) provide the Parent with a copy of the Student's new IEP and/or BIP; and, 3) provide the Parent with a prior written notice that explains the decisions that were made (and the reasons those decisions were made).

By **January 30, 2019**, the District will provide OSPI with 1) a copy of any meeting invitations; 2) a sign-in sheet from the IEP meeting; 3) a copy of the new IEP; 4) a copy of the new BIP; 5) a copy of any related prior written notices; 6) a copy of any correspondence with the Parent regarding the IEP meeting and the decisions made at that meeting; 7) a copy of the email to the Student's teachers regarding the BIP (as outlined above); 8) proof that the Student's schedule has been changed to ensure he's receiving the specially designed instruction outlined in his IEP; and, 9) a copy of any other relevant documentation.

**STUDENT SPECIFIC:**

None.

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

**RECOMMENDATION**

OSPI recommends that the District remind the members of the Student's IEP team that meeting notices should include the exact location of the meeting, a list of the individuals invited to attend the meeting, and each topic that is to be discussed at the meeting.

Dated this \_\_\_\_ day of December, 2018

Glenna Gallo, M.S., M.B.A.  
Assistant Superintendent  
Special Education  
PO BOX 47200  
Olympia, WA 98504-7200

**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)