

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-113

PROCEDURAL HISTORY

On November 21, 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 Tacoma School District (District) and the Parent's attorney (Complainant). 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 21, 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 27 and 29, 2018, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on November 29, 2018.

On November 29, 2018, OSPI received additional information from the Complainant. OSPI forwarded the additional information to the District on November 30, 2018.

On December 4, 2018, the District requested an extension of time for the submission of its response regarding the complaint. OSPI granted the District's request and required the District to submit its response no later than December 21, 2018.

On December 21, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent and Complainant on December 24 and 26, 2018. OSPI invited the Parent and Complainant to reply with any information they had that was inconsistent with the District's information.

On January 3, 2019, the Complainant requested an extension of time for the submission of the Parent's reply. OSPI granted the Complainant's request and required the Complainant to submit her reply no later than January 14, 2019.

On January 14, 2019, OSPI received the Parent's and Complainant's replies.¹ OSPI forwarded the replies to the District on January 15, 2019.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on November 22, 2017. These references are included to add context to the issues under

¹ This decision will collectively refer to the reply provided by the Complainant and the reply provided by the Parent as the "Parent's reply."

investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District follow procedures for implementing the Student's individualized education program (IEP), including providing accommodations, positive behavior supports, and specially designed instruction in social skills?
2. Did the District follow special education discipline procedures, including addressing the Student's behavior by conducting a timely functional behavioral assessment (FBA) and developing a behavioral intervention plan (BIP)?
3. Did the District follow procedures for changing the Student's placement?
4. Did the District follow procedures for providing the Student transportation as required under WAC 392-127-02095?

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

Definition of Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. A need for special education is not limited strictly to academics; it also may include physical education, transition services, behavioral progress, and the acquisition of appropriate social and/or organizational skills. 34 CFR §300.39; WAC 392-172A-01175.

Program Modifications & Accommodations: An IEP must include a statement of the program modifications and accommodations that will be provided to enable the student to: advance appropriately toward attaining his or her annual IEP goals; be educated and participate with other students, including nondisabled students in educational activities; and participate, if appropriate, in general education classroom, extracurricular, and nonacademic activities. 34 CFR §300.320(4); WAC 392-172A-03090(1)(d).

Behavior: When considering special factors unique to a student, the IEP team must consider the use of positive behavioral interventions and supports, as well as other strategies, to address behavior in the case of a student whose behavior impedes the student's learning or that of other. WAC 392-172A-03110(2)(i). Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior. WAC 392-172A-01142.

Behavioral Intervention Plan (BIP): A BIP is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031.

Functional Behavioral Assessment (FBA): An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a behavioral intervention plan (BIP) that will reduce or eliminate the misbehavior. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2). The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008). An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015; *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4). Once the need for a reevaluation is identified, a district must act "without undue delay and within a reasonable period of time;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008). The IDEA does not specify who is qualified to conduct an FBA, for example there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

Disciplinary Removals – No Change of Placement: School districts may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155. A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or fewer in that school year, if it provides services to a student without disabilities who is similarly removed. 34 CFR §300.530; WAC 392-172A-05145.

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. 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.

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).

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).

Continuum of Alternative Placement Options: Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must: include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement. 34 CFR §300.115; WAC 392-172A-02055.

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive a free appropriate public education (FAPE). It is not appropriate to make IEP decisions based upon a majority "vote" and no one team member has "veto power" over individual IEP provisions or the right to dictate a particular educational program. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. 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). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

Transportation: Transportation options for students eligible for special education include the following, in order: (1) a scheduled school bus; (2) contracted transportation, including public transportation; and (3) other transportation arrangements, including that provided by parents. Whenever reasonably possible, no student should be required to ride more than sixty minutes one way. WAC 392-172A-02095.

FINDINGS OF FACT

Background Facts

1. During the 2016-2017 school year, the Student attended a preschool program at a District elementary school (school 1).
2. In March 2016, the Student was evaluated for special education services. The evaluation included assessment of the Student in the following areas: medical-physical, classroom observation, adaptive, social emotional/behavioral, and fine motor. The evaluation group found the Student to be eligible for special education services under the category of developmental delay. The evaluation report recommended that the Student receive specially designed instruction in social emotional/behavioral.
3. On December 8, 2016, the District completed a functional behavioral assessment (FBA) and held a meeting to review the results. The IEP team developed a behavioral intervention plan (BIP) for the Student, which addressed the Student's following behaviors: (1) pushing, kicking, scratching, and hitting others, and (2) talking during story/circle time.
4. On April 19, 2017, the Parent met with a District administrator, a general education teacher, and two special education teachers and developed the Student's annual IEP. The IEP noted that the Student had "age appropriate motor, language, math and cognitive skills" and that the Student's literacy skills were "extremely strong." The IEP team identified improvements in the Student's ability to manage his emotions, but stated they felt the Student's behavior still impeded his learning at times and recommended his BIP remain in place. Additional behavior strategies were discussed, including the process of "noticing," taking deep breaths, giving choices, and setting a visual timer.

The IEP included two annual goals in social emotional/behavioral and accommodations (alternative test setting, daily behavior reporting², and sensory breaks). The April 2017 IEP provided the Student with the following specially designed instruction and related services, in a special education setting from July 1, 2017 through April 23, 2018:

- Social emotional/behavioral: 21 minutes, 5 times per week

² During the 2017-2018 school year, the District provided the Parent with "daily behavior reports" nearly every school day, from September 12, 2017 through June 12, 2018.

The IEP stated that the Student would spend 94.17% of his time in the general education setting and receive his specially designed instruction in the special education "Learning Resource Center" (LRC) classroom.

5. On April 19, 2017, the team also reviewed and revised the Student's BIP. The new BIP included additional information regarding the Student's strengths, data collections, and positive behavior interventions. The data indicated that the Student's behaviors increased in October and November 2016, had decreased since November, and then had increased again in March 2017. The BIP addressed the target behaviors of (1) pushing, kicking, scratching, and hitting others; and (2) swearing. The BIP noted that the previous BIP included the target behavior of "talking during story/circle time" and based on the updated BIP, this no longer appeared to be a concern.

2017-2018 School Year

6. During the 2017-2018 school year, the Student attended school 1, was in kindergarten, and was eligible for special education and related services under the category of developmental delay. The Student's April 2017 IEP continued to be in place.
7. The District's 2017-2018 school year started on September 6, 2017.
8. According to the District's response letter, during the 2017-2018 school year, the Student was provided with specially designed instruction in social emotional skills. The District stated that this instruction consisted of: the use of visual social stories, "communication books made specifically for [the Student]", stories that used pictures of the Student using appropriate social skills in all school settings, and modified scripted social stories. The Student's special education teacher and paraeducator gave instruction on and modeled social skills, social cues, problem solving, calming, and self-regulating strategies. The District stated that the teacher and paraeducator used and modified lessons from a variety of social skills instructional books.
9. In September 2017, the Student was evaluated by a psychologist at the University of Washington Autism Center (UW) in the following areas: current cognitive functioning, social functioning, socio-emotional and behavioral adjustment, adaptive functioning, and sensory processing. The Parent shared the evaluation with the District. The evaluation resulted in the Student being diagnosed with Autism Spectrum Disorder (ASD) without intellectual impairment and without language impairment. The evaluator recommended the Student's special education eligibility category be changed to autism to more accurately reflect his diagnosis and educational needs. The evaluation provided the following recommendations regarding the Student's educational placement:
 - "It is important that [the Student] be served in the least restrictive setting. [The Student] will be best served by a carefully planned program developed and implemented by multidisciplinary team, including education, communication, and social/behavioral specialists."
 - "[The Student] is recommended to receive direct instruction in social skills, emotional and behavioral regulation, and adaptive skills."

- “[The Student] may benefit from instruction in pragmatic communication (e.g., how to join in conversation or play skills, nonverbal communication such as eye contact.)”
- “Working with speech and language therapist at school is recommended.”
- “[The Student] may also benefit from working with the school occupational therapist regarding his sensory processing issues in the classroom.”
- “Should specific behaviors or difficulties interfere with [the Student’s] academic progress or school functioning, it is recommended that these be addressed by an identified person within or outside the school district with expertise in autism spectrum disorders who can consult with his school staff.”

Recommendations were made for school in the areas of social skills, positive behavior support³, self-monitoring and self-advocacy, bullying prevention, parent advocacy, and school resources. Multiple recommendations for home were also provided.

10. On October 6, 2017, the Student was placed on an emergency expulsion for throwing chairs, crayons and pencil totes, screaming profanities, and threatening to kill adults in the classroom. The Student’s emergency expulsion was subsequently converted to a short-term suspension for five school days.
11. On October 9, 2017, the Parent emailed the principal, special education teacher, and general education teacher, requesting an emergency IEP meeting in light of the Student’s recent diagnosis of ASD. The Parent stated that she wanted to address “what changes could be implemented to support [the Student] during times where being frustrated has resulted in meltdowns for him in the classroom.” The Parent provided the District with a copy of the private evaluation report. The school principal responded by email that they were planning to look at the Student’s IEP on October 12, 2017.
12. On November 14, 2017 the District sent a letter to the Parent, seeking consent to evaluate the Student in the areas of reading, writing, and math. The Parent returned the consent form, signed on November 15, 2017, but added in writing that, “[t]esting methods may not be clear to [the Student]. [The Student] may need an example shown to him. He is not experienced [with] taking tests to truly assess his abilities.”
13. On November 17, 2017, the special education teacher emailed the Parent to notify her that multiple behavior incidents occurred at school that day, including aggressive behaviors, destruction of property, use of inappropriate language, and elopement. During one incident, the Student eloped toward a construction site. According to the special education teacher’s email, the incident required the intervention of seven adults. A notice of isolation and restraint was sent to the Parent the same day. The notice stated that “body positioning”, a “guided escort”, and “a two person support to keep him from hitting his head” were used as interventions. The Student spent less than 30 minutes in restraint.

³ Specifically, the 2017 evaluation recommended that the Student’s school team “continue utilizing Functional Behavioral Analysis...with behavior and education specialist (with expertise in [Autism Spectrum Disorder] ASD) to help identify possible ‘functions’ that different behaviors may be serving.”

14. On November 18, 2017, the Parent responded to the special education teacher's email and stated that she would like to come to school with the Student "to give support and see what the function of [the Student's] behaviors [are]." The Parent also raised concerns about the Student's IEP being implemented, specifically the behavior provisions, and requested that the Student have additional time with the counselor "to talk about how things are going and to see how he is feeling about school."

The Timeline for the Complaint Began on November 22, 2017

15. On November 28, 2017, the District completed additional assessments of the Student in the areas of reading, writing, and math. A meeting was scheduled for December 8, 2017 to review the results of the assessments.⁴

16. On December 1, 2017, the District entered progress reporting on the Student's April 2017 IEP goals, which stated the Student was making sufficient progress on his goals and provided the following information:

- Goal 1: "This year [the Student] has shown a decrease in hitting, pushing, scratching, or kicking. He doesn't go towards others. He may fling something near them but his acts are intentionally done in frustration of the things around him. When he is angry or frustrated his actions are more towards harming himself; banging his hands or head, hitting himself or poking and tugging at himself. Sometimes it is with intent to run out of the school where staff concern is for his safety. At this time he averages hurting behaviors an average of 2 times a week."
- Goal 2: "Compared to last year [the Student] continues to shown [sic] growth in decreasing the number of incidences where he swears at others. They still come but not at such a rapid fire rate. He gets angry, bored, upset and frustrated and his usual shout outs and put downs are people are 'stupid' or 'I'm bored'. This is still an improvement from the shout outs and put down's of using the f word or calling us names using the b word. He averages at this time 4-5 incidences a week."

17. On December 12, 2017, the Student's special education teacher emailed the Parent to inform her that the Student had some "challenges following expectations/directions" that morning, that "[the Student's] voice level was very loud much of the day." She stated that the Student "was talking over teachers and not wanting to listen to requests to use soft talking voice or no voice (as the teacher was talking)." The special education teacher additionally reported to the Parent that the Student asked the paraeducator if she "wanted to hear something funny," and the Student responded with "she got arrested with a 10 lb. bag of crack." In response to the Student's behaviors, the District "practiced adding some time where [the Student received] some additional support in LRC learning some more social situations," and stated that the behavior specialist would work with the paraeducator and the Student on implementing the behavior stories.

⁴ On December 8, 2017, the Parent contacted the District and requested the December 8, 2017 meeting be rescheduled so she and the Student's father could participate. The meeting was rescheduled for January 4, 2018.

18. On December 13, 2017, the Parent responded to the special education teacher's email, explaining that she tries "to reward the use of [the Student's] quiet voice by adding preferred activities or recentering [the Student's] focus when he gets off track with things that are inappropriate conversation." The Parent stated that "[t]his means...he is bored. Put simply, he needs redirection and prompting with small incentives to do the less preferred activities." The Parent also expressed relief that the behavior incident "only lasted 5 minutes," which she felt was an improvement from previous incidents.

The special education teacher replied and stated that the intent of the email was to keep the Parent informed about what was going on with the Student at school, and to let her know that they were tracking "what can be any triggers, commonalities, etc." The teacher stated that "yes it was an improvement as it was only 5 minutes!"

19. The District was on break from December 18, 2017 through January 1, 2018.

20. On January 4, 2018, the Parent met with a District designee, special education teacher, counselor, school psychologist, and the paraeducator. The group reviewed the November 2017 assessments and noted that the Student has a diagnosis of ASD and "meets eligibility under that category and continues to need specially designed instruction in the area of Social-Emotional/Behavior." The "Assessment Revision"⁵ report stated that the Student continued to be eligible for special education services under the category developmental delay and stated that the "team recognizes [the Student's] diagnosis but are not able to change the eligibility category on an Assessment Revision. This can occur on his next three-year evaluation." According to the District's response, the evaluation group discussed that the Student's "academic skills were at or above the average range."

21. According to the District's response, on January 25, 2018, the Student was suspended for one school day for assaulting and kicking a student in the lunchroom. The Student reportedly kicked and threw water bottles at staff members, screamed obscenities, and threatened to kill staff members.⁶

22. On January 25, 2018, an IEP meeting was held to review the Student's IEP. Following the meeting, the District sent prior written notice to the Parent, stating that the IEP team discussed the Student's behaviors at school and agreed to the following changes in the Student's IEP:

- An increase of the Student's minutes in the LRC.
- Implementation of additional behavioral support interventions for a trial period to begin January 29, 2018 and to be reviewed on February 15, 2018.

⁵ OSPI notes that neither the IDEA nor the State special education regulations use the term "assessment revisions." Generally, "assessment revisions" are more properly characterized as reevaluations; however, this complaint decision will use the term when quoting the District.

⁶ According to the Parent's reply, this incident occurred on January 23, 2018 and the Student was not allowed to return to school until January 29, 2018. According to the District's attendance report, the Student was emergency expelled on January 25, 2018 and was suspended on January 26, 2018.

The District further proposed an updated FBA and sent an IEP meeting notice to the Parent for March 1, 2018 to review the updated FBA once complete. The Parent signed written consent for the District to conduct a new FBA for the Student.

23. According to the Parent's reply, at the meeting on January 25, 2018, she expressed concern that the Student "was never provided those social skills services and it was repeatedly asked for at the IEP and emergent meetings." According to the Parent, she was told that the Student "was asked one day a week (on Thursdays) to go to the LRC and participate in social skills classes but they discontinued them because '[the Student] did not want to go.'" Also at the January 25 meeting, the Parent stated that the District began "trying to convince both of [the Student's] parents about changing schools/placement" because the District had "schools that have 'wonderful autism programs.'"
24. On January 28, 2018, the District sent the Parent a notification of isolation and restraint. The Student was in isolation for fifteen minutes after "getting angry and agitated", ripping up paper, running to the "house-keeping area in the classroom", and using inappropriate language. The notice stated that the Student "tried to run out the doors where the construction site is ongoing and staff blocked his exit, isolating him to be safe in the foyer. He kicked staff, pushed tables around and into lockers."
25. According to information provided by the Complainant and Parent, the Student was forced to sit facing the wall—and facing away from the teacher—separate from the other students in his class for several weeks in January 2018. According to the Parent, because of this seating arrangement, the Student was "not able to receive instruction with the rest of the class." According to the Parent, during this time, she was contacted repeatedly and had to respond to daily reports from the District staff that the Student was "acting out."⁷ The Parent provided photos of the Student sitting at what she called the "isolation desk" that the Parent took when she visited the Student's class on January 18, 2018. These photos show the Student sitting alone at a desk with one chair facing a wall covered with black construction paper, whereas other students sit together at desks grouped next to each other in what appears to be the center of the classroom.

The Parent stated that she was not informed of this seating arrangement and that denied the Student a free appropriate public education by segregating the Student from "other students and not being included with in classroom activities." The Parent's reply to the District's response in this complaint stated that she shared her concerns about the seating arrangement. On January 25, 2018, the District's assistant director of student services (assistant director) informed the Parent that the Student had been moved back to sit with the other students in the class.

⁷ According to the "Daily Behavior Reports" provided in the District's response, during January 2018, the reports noted the Student's behaviors on the following days: January 2, 3, 4, 5, 8, 10, 11, 12, 17, 18, 19, 22, 29, 30, and 31, 2018. The reports reflected a range of student behaviors from the Student having "a great day" with "very nice participation throughout", to the Student using inappropriate language, getting angry, kicking staff, and other escalated behaviors.

The Parent also stated that the Student "was not consistently taken to social skills classes and pull out classes for math and reading as was agreed to by the IEP team." The Parent stated that "there were some intermittent efforts to do so and then without discussion those lessons were discontinued by the school without consulting me as part of the IEP team as to what the successes or needs for improvement were."

26. On February 1, 2018, the District emailed the Parent regarding the Student's behaviors that day, which included the Student becoming frustrated and increasingly agitated. According to the email, the Student was escorted out of the classroom to take a break in the LRC, where he began "screaming and kicking and hitting" and calling her names. The paraeducators "tried a two person assist, but he would not walk on his own. They let go and verbally asked him to walk to LRC." Staff then assisted the Student down when he began climbing on a window sill. Once in the LRC room, the Student began tipping over chairs, hitting, and kicking. The principal arrived to assist and helped deescalate the Student. No notification of isolation and restraint was sent by the District.
27. On March 1, 2018, the Parent met with the school psychologist, special education teacher, behavior specialist, and District representative to discuss the updated FBA. The FBA contained updated data and observations from February 2018. The team recommended an updated BIP for the Student and identified strategies to address his behaviors. The March 2018 FBA further provided that a "1:1 para has been assigned to work with [the Student] on behavior support interventions specifically teaching [the Student] to take a BREAK across all instructional settings as needed. The Para Professional supports [the Student] and Teaching Staff in the Kindergarten and LRC classrooms." In addition, "a District Behavior Intervention Specialist also provides ongoing technical assistance/training with staff as well as direct intervention work with [the Student] weekly."

According to the Parent's reply, at this meeting, the District again "tried working on seeing if the parents would agree to send [the Student] to a different school." The Parent objected because the Student's siblings attended school 1 and because she found school 1 to be the best fit for the Student.

28. Also on March 1, 2018, the District invited the Parent to an IEP meeting scheduled for March 20, 2018 to discuss the Student's eligibility determination and reevaluation. The Parent provided written consent for the reevaluation on March 20, 2018, for the purpose of providing updated information on the Student's academic abilities.
29. On March 12, 2018, the District entered progress reporting on the Student's April 2017 IEP goals, which stated the Student was now making insufficient progress on his goals and provided the following information:
 - Goal 1: The Student "has used self-calming strategies with help of staff and especially his para. He has his own picture book of social stories using activities and actions from around the school. He has shown improvement over the quarter in the number of incidences happening. We attribute that to the additional intervention support of the para within the classroom. He

has been decreasing then [sic] number of incidences of hurting behaviors...and is averaging 3 times a month of high emotion and aggressive behaviors.”

- Goal 2: The Student “has been working with the team on using appropriate language in all areas of the school. He has been using his social stories to help him when it comes to recognizing and making appropriate choices. He has also been learning and using self-calming strategies when he gets frustrated. With the additional interventions and para help he has been getting, we were able to monitor him in all settings for a frequency count when it comes to using inappropriate language. For this quarter, he is averaging swearing 1-3 times a day.”

30. On March 13, 2018, the school psychologist emailed the Parent and stated that the behavior specialist came to work with her on the Student’s FBA. The school psychologist also requested information from the Parent regarding her availability to discuss the FBA.

31. On March 20 or 21, 2018⁸, an IEP meeting was held to discuss whether the Student continued to be eligible for special education and related services and whether to change the Student’s eligibility category. The meeting was attended by the Parent, school psychologist, general education teacher, behavior specialist, and special education teacher. The reevaluation report noted that the Student continued to be eligible for special education services, and the group changed his eligibility category to autism. The report recommended that the Student continue to receive specially designed instruction in social emotional/behavioral. The evaluation report noted that the Student scored above grade level in reading, math, and written expression.

According to the prior written notice, dated March 27, 2018, at the IEP meeting, the Parent expressed concerns that the Student’s academic potential could not be met at school 1 and requested the IEP team consider a self-contained behavior program for the Student. The IEP team rejected the Parent’s request because it opined that the District has an autism program it felt could meet the Student’s academic and behavior needs.

32. The District was on break from April 2-6, 2018.

33. On April 19, 2018, the Parent met with a District representative, behavior specialist, general education teacher, school psychologist, special education teacher, and an administrative liaison to develop the Student’s annual IEP. The IEP noted that the Student was “great at numbers...He is engaged when working with math and wants to keep raising the bar to learn more”, but that the Student’s behaviors continued to impede his learning. The April 2018 IEP included three goals in social emotional/behavioral that focused on self-regulation and social communication skills. The IEP included the following accommodations:

- Visual schedule/communication book
- Alternative test setting
- Daily behavior report
- Tests given 1:1 or in a small group setting
- Preferential seating
- An area of sensory breaks to calm down and become refocused
- Social stories with visual models
- Video modeling of behaviors for a social group

⁸ Based on the documentation provided in this complaint, it is not clear which date the meeting occurred or if two meetings occurred.

- Visual modeling of behavior

The IEP provided the following specially designed instruction in the special education setting:

- Social emotional/behavioral: 45 minutes, 5 times per week (provided by a special education teacher)
- Social emotional/behavioral: 90 minutes, 5 times per week (provided by special education staff)

The Student's IEP further provided the Student with 1,950 minutes per week of "additional adult support" from a paraeducator in the general education setting. The IEP stated that the Student would spend 62.5% of his time in the general education setting.

At the meeting, the IEP team also discussed the Student's new FBA and revised BIP. The IEP team recommended the Student's current placement at school 1—with additional behavioral interventions—be implemented using the Student's BIP through the end of the 2017-2018 school year. The prior written notice, dated April 19, stated that "serious consideration was given by all team members to meet [the Student's] social-emotional needs at [school 1]." The Student's BIP was revised during the April 19, 2018 IEP meeting to address the following behaviors: (1) verbal protests, refusal to follow teacher directions, getting out of his seat/running; (2) unsafe behaviors; (3) pushing, kicking, scratching, and hitting others; and, (4) use of profanity.

It was agreed that the IEP team would reconvene in June 2018 to review the Student's progress and determine whether he may require a change in placement to a program with "more comprehensive services focused on the Autism Spectrum Disorder."

34. According to the Parent's reply to the District's response to this complaint, the District did not implement the accommodations in the Student's April 2018 IEP while he was at school 1.⁹ The reply contained the following information about the accommodations:

- **Area for Sensory Breaks:** According to the reply, the Student was "forced down the hallway" when escalated to take a break in the LRC room. The Student felt that he was being disciplined and being "thrown out" of class when this occurred.
- **Social Stories/Visual Models:** The reply stated that the Student's paraeducator used some books, "on occasion", provided by the Parent.
- **Video Modeling:** The reply stated that there was no data or record of this being provided "when asked repeatedly for it at our meetings."
- **Visual Modeling of Behavior:** The reply stated that this was not an "accommodation" but simply a "professional practice" and that the Parent received no information about anything being provided to the Student that was different than what other students received.
- **Communication Book:** This book was never shared with the Parent.

The Parent's reply also stated that the Student was not provided with specially designed instruction in social emotional/behavioral skills in the special education setting.

⁹ The Parent's reply does state that the accommodations are being implemented at school 2 during the 2018-2019 school year.

35. On April 19, 2018, the District sent a letter to the Parent, notifying her that a meeting was scheduled for April 26, 2018 to further discuss the Student's BIP. The Parent notified the District in person on April 19, 2018 that she would attend.
36. On April 24, 2018, the school psychologist emailed the school principal, behavior specialist, special education teacher, and Parent to schedule a meeting to finalize the Student's BIP based on the current FBA. The behavior specialist responded the same day with her availability and further stated that she would follow up with the special education teacher "to assist with completion of the BIP."
37. On April 25, 2018, the Student was placed on an emergency expulsion for "physical assault and spitting on staff and using words of profanity." The Student's emergency expulsion was subsequently converted to a short-term suspension of four days. The District requested a conference with the Parent on May 1, 2018, to discuss the Student's situation. The Parent was contacted by the school principal on April 25, 2018, regarding the incident and sent notification by certified mail that same day regarding the emergency expulsion. According to documents included with the District's response, the Parent refused to sign the notice upon receipt.
38. Also on April 25 and/or 26, 2018¹⁰, an IEP meeting was held to discuss the Student's social emotional/behavioral goals, his FBA, and his BIP. The meeting was attended by a District representative, the general education teacher, the Parent, and a special education teacher. At the meeting, the IEP team finalized the Student's BIP, which was updated to incorporate new data through February 2018. The BIP included strategies, supports, and interventions to target the Student's following behaviors: (1) Decrease level 2 moderate agitation, verbal protest, refusal to follow teacher directions, out of seat/runs, increase social communication skills; (2) Decrease level 3 crisis protest, behaviors endangering self or others, increase self-management skills; (3) pushing, kicking, scratching, and hitting others; and, (4) swearing.

The District sent the Parent prior written notices, stating that the IEP team met to discuss the Student's social emotional/behavior IEP goals and FBA, and that input and data was collected from everyone involved in the Student's academic plan in order to help develop the BIP. It was again agreed that a recommendation for placement for the 2018-2019 school year would be made by the IEP team at the end of the current school year in June 2018.

39. On April 26, 2018, the District invited the Parent to a manifestation determination meeting scheduled for May 2, 2018.
40. On May 2, 2018, the District held a manifestation determination meeting regarding the April 25, 2018 incident. The meeting was attended by a District representative, the general education teacher, the Parent, and a special education teacher. The manifestation

¹⁰ The District's documentation included two prior written notices, dated April 25 and April 26, 2018. The notices were similar and so it is unclear whether two meetings were held, or two notices were produced for the same meeting.

determination team reviewed the Student's evaluation, FBA, BIP, and the incidents that led to the emergency expulsion, considered observations of the Student, the Student's IEP and placement, and relevant information provided by the Parent and the District. The team determined that the Student's conduct had a direct and substantial relationship to his disability and was a manifestation of his disability. The team agreed that the Student's conduct was not the direct result of the District's failure to implement the Student's IEP. The Student was returned to his educational placement the same day. The Parent shared her opinion with the District that the Student required a "time out" to avoid a stressful situation, i.e., "testing." The Parent requested the District ask the Student, "What are you trying to avoid?" or "What are you supposed to be doing right now?" to see what is motivating him when he is having behaviors.¹¹

41. Also on May 2, 2018, the District sent notice to the Parent of a meeting scheduled that morning to discuss the evaluation. The Parent responded by phone that she could attend. It is unclear whether or not a meeting occurred, but the Parent did sign a consent form on May 2 for the Student to be evaluated by a speech pathologist for "social/emotional pragmatics."
42. On May 3, 2018, the assistant director emailed the Parent, stating that, "Below are the addresses for the schools we had discussed earlier this week. We had agreed that we would be at [another District school (school 2)] at 9:30 [on May 8, 2018] to see both [school 2] and [a third District school (school 3)]."
43. According to the District's response, on or about May 4, 2018, the District completed a pragmatic language evaluation of the Student. The report noted that the results of the assessment do not "make [the Student] eligible for services in the area of communication, but

¹¹ According to the Parent's complaint, she appealed the Student's emergency expulsion to the District's "Disciplinary Appeals Council" (DAC). On June 15, 2018, the DAC sent the Parent a letter regarding her appeal of the Student's emergency expulsion from school 1 following a behavior incident on April 25. The letter noted that the April 25 incident was the "third time that [the Student] was expelled during the 2017-2018 school year and the 11th time that he engaged in disruptive behavior." The DAC held an informal conference on May 24, 2018, and heard further arguments on June 8, 2018. The letter stated that there was evidence to support the emergency expulsion, even though the behavior was connected to the Student's disability. The DAC found that the expulsion was not the result of the school's failure to implement the IEP and stated that the school was "already providing a substantial amount of support to [Student] by providing a one-to-one paraeducator and other supports including a therapist from the UW Autism Program. Further, as a result of the Manifestation Determination, the IEP team is tasked with reviewing [the Student's] functional behavioral assessment and behavioral intervention plan." The DAC ultimately upheld the emergency expulsion, but because the Parent did not receive any phone calls from the school and the Student did not receive any school assignments, reduced the emergency expulsion to one day and stated that the remainder of the days would be marked as excused absences on the Student's record.

some weaknesses were noted that his educational team should be aware of so that they can support his growth in these areas of concern.”¹²

44. On May 8, 2018, the Parent did not attend the tour of school 2 and school 3. On May 11, 2018, the assistant director of special education programs emailed the Parent to reschedule. It is unclear if the Parent toured either school.
45. On May 24, 2018, the special education teacher emailed the Parent to try and schedule a time to review the Student’s end of year progress on the morning of June 12, 13, or 14, 2018, at 8:15 a.m. The Parent responded that the 8:15 a.m. time did not work for her family. The special education teacher changed the time to 9:00 a.m. and sent out a meeting invite for June 13, 2018, at 9:00 a.m.
46. On May 25, 2018, the District sent the Parent a prior written notice, recording its decision not to find the Student eligible for direct services in communication at the May 4, 2018 IEP meeting. The notice stated that the Student continued to qualify for services in the area of social emotional under the category of autism. The notice stated that while the Student was found to have relative weaknesses, his ability to “take the perspective of others”, he scored only 1.3 standard deviations below average for his age. The IEP team recommended that the speech pathologist consult with educational staff to provide “social/emotional intervention strategies and that [the Student] be invited to join social skills intervention groups intermittently with parent permission when social intervention topics regarding perspective taking and communication turn taking/topic maintenance.”
47. On June 6, 2018, the District entered progress reporting on the Student’s April 2018 IEP goals, which stated the Student was making insufficient progress on two of his goals and that the other goal was an emerging skill.
48. On June 7, 2018, the special education teacher emailed the Parent regarding an incident at school that day where the Student “got into a war of words with another student [that] unfortunately went beyond that and got physical.” According to the special education teacher, the Student also “verbally threatened the other boy.” The Student “kicked and hit [the other student and] [t]old him he was going to stab him with a knife,” that “[h]e would pee in his face,” and then he “called [the other student] dumb.” The teacher stated that the Student would “start of the day in LRC as we will work with him doing social interventions and social stories along with his academic work” and that the plan was to “work with [the Student] and then he can go to lunch with his class and return to his classroom after.” The special education teacher noted that “both boys seem to be ramping up and we are concerned. Each of them

¹² Based on the signature page, it appears that the following individuals met and discussed the assessment report on June 13, 2018: the Parent, school psychologist, general education teacher, speech language pathologist, principal, building liaison, and special education teacher. On the “parent” signature line, the following was written: “(parent attended meeting but did not want to sign without reviewing the assessment revision with her lawyer.)”

have told us repeatedly that they don't have to listen to what we say. Mocking and making faces as they refuse to be redirected to a task or to engage in conversation."

49. On June 8, 2018, the principal emailed the Parent regarding an incident where the Student kicked a girl in the stomach. The school counselor discussed the situation with the Student, who let the school counselor know that he "did not like [the other student] in his space," and said "she was just bugging me." The school counselor spoke with the Student about using his words rather than his hands and feet to get the other student away from him. The school counselor additionally reviewed strategies with the Student that he could try and use next time, such as asking the other student to "Get away." The school counselor let the Student know that if his words did not work, he should find an adult to help him. The Student then apologized to the other student.
50. On June 13, 2018, the Parent met with the school psychologist, a general education teacher, the speech/language pathologist, the principal, the building liaison, an administrative consultant, and the special education teacher to review the Student's April 2018 IEP and to discuss placement for the 2018-2019 school year. The team did not make any changes to the Student's April 2018 IEP goals, accommodations, or minutes. At the meeting, the District members of the IEP team proposed a change in placement for the Student to provide additional support for students with high functioning ASD. The prior written notice, dated June 13, stated that the District made this proposal due to the Student's "continued need to access intensive specialized social emotional instruction and support to increase his functional understanding and application of appropriate behaviors." The Parent disagreed with the recommended change of placement.
51. According to the District's response, the IEP team proposed placement in a general education setting with special education services and supports through the "NEST Program," a program for students with ASD. The NEST program was available at a fourth school in the District (school 4) and at school 2. Although school 4 was closer to the Parent's home, the Parent expressed concerns about the Student's safety at school 4 and requested the Student attend school 2. Accordingly, the IEP team recommended the Student attend school 2.
52. On June 15, 2018, the District's 2017-2018 school year ended.

Summer 2018

53. On August 30, 2018, the assistant director emailed the Parent to schedule a time for the Parent and Student to visit school 2. The Parent responded with concerns about the hour-long commute each way and again stated that she disagreed with the placement recommendation. The Parent stated that she wanted to know "what other options you have as a suggestion since you kicked my son out of [school 1], which is five minutes from our home."
54. On or around September 5, 2018, the Parent attended a "meet the teacher night" where she met the school 2/NEST program special education teacher. According to the Parent's complaint, the special education teacher expressed concerns about the Student being in her

class and the Student being on medication. According to the Parent, the teacher stated that if the Student "does one thing, he's outta [sic] here. I just cannot have children in my classroom who are disruptive. He will have to go do LRC."

55. On September 10, 2018, the Parent emailed the assistant director regarding her concerns about school 2 and requested they visit other schools with the "NEST Program" and school 3. The Parent also asked about considering a "Montessori type setting" for the Student.

56. On September 11, 2018, the assistant director responded to the Parent's email, notifying the Parent that the two schools that house the NEST program are school 4 and school 2. The director of special education notified the Parent that school 3 did not house the program that the IEP team recommended for the Student and offered to set up a tour at school 4.

The Parent replied and stated that according to the District's website, there are "eight schools that have the Nest program." The Parent again stated that she did not agree with this placement and stated "it is of your making, not ours, so it is not an 'IEP service' if not everyone is in agreement. That I know is a law." The Parent further stated that "these determinations were made without my or [the Student's father's] agreement" and that she did not see "what provisions are available to our family or [the Student] at [school 2] that cannot be available at other schools." The Parent stated that she wanted to look at a fifth school in the District (school 5), school 3, or a school "with academic focus."

The assistant director emailed back and stated that at this time, the only two locations with the NEST program are schools 2 and 4, and that she would be happy to set up a time to tour school 4.

2018-2019 School Year

57. The 2018-2019 school year began on September 17, 2018 and the Student was in first grade at school 2.

58. Based on documentation in this complaint, at the start of the year, the Student generally received his specially designed instruction in social skills in the morning.

59. On September 20, 2018, the special education teacher emailed the Parent regarding the Student's behaviors that day, including that the Student "earned 2 trips to the library" and that when another student cut him in line the Student "let out 1 scream but was re-directed and problem solved."

60. On September 28, 2018, the Student's IEP met team to review and amend the Student's IEP. The IEP included the following accommodations:

- A visual schedule/communication book
- Alternative testing setting
- Daily behavior report¹³

¹³ The District's documentation included frequent email updates from the Student's special education teacher and a document with updates (on behaviors, social skills lessons, and other school work) from the

- Give tests in small group setting or 1:1
- Preferential seating
- Provide an area for sensory breaks to calm down and become refocused¹⁴
- Social stories with visual models of the Student
- Video modeling of behaviors for social group
- Visual modeling of behavior

The Student's annual goals in social emotional/behavior and accommodations remained the same. The IEP was amended to provide the following specially designed instruction:

- Social Emotional/Behavioral: 30 minutes, 5 times per week (provided by special education staff in a special education setting)
- Social Emotional/Behavioral: 15 minutes, 2 times per day (provided by special education staff in a general education setting)

The IEP also provided for 1,950 minutes per week of "additional adult support" provided by a paraeducator in the general education setting and stated that the Student would spend 91.67% of his time in the general education setting. According to the District's response, the team believed that the specially designed instruction in the general education setting "would support inclusion."

61. On October 1, 2, 3, 5, 8, 10, 15, 18, and 29, 2018, the special education teacher emailed the Parent an update about the Student's day, when the Student had expected behaviors and earned breaks and unexpected or escalated behaviors. The emails also described the Student's social lessons in the NEST classroom, what social skills he worked on, certain transitions that he struggled with, and other lessons he worked on (e.g., math, writing, reading sight words).
62. On October 9, 2018, the District's documentation indicated that the special education teacher notified the Parent that the Student was "having difficulty following his schedule and transitioning back to [the general education] classroom after his morning social group." The special education rescheduled the Student's social group for the afternoon.
63. According to the District's response, on November 2, 2018, the District received a copy of the Parent's consent for the District to reevaluate the Student.
64. Also on November 2, 2018, the special education teacher emailed the Parent that the Student became frustrated during lunch recess when he had difficulty sharing with other students and started kicking another student. He was prompted to take a break on the bench outside where he became upset and eloped from the paraeducator. The paraeducator and principal found

following dates during the 2018-2019 school year: September 17, 18, 19, 20, 21, 24, 25, 26, 27, and 28; October 1, 3, 4, 5, 8, 9, 10, 11, 15, 16, 17, 18, 19, 22, 23, 26, 29, 30, and 31; November 1, 2, 5, 6, 7, 8, 13, 14, 15, 16, 19, 20, 21, 26, 27, 28, 29, and 30; December 4, 5, 6, 7, 10, 11, 12, 13, 15, 19, and 20, 2018.

¹⁴ The documentation in this complaint indicates that the Student had the opportunity to take breaks in the occupational therapy classroom, which contained the sensory equipment and board games.

the Student in front of the school building. The Student was prompted to take a break in the NEST classroom. While escalated, the Student told the special education teacher that he wanted to run away. The Student reviewed a behavior contingency map of the situation as well as other recess situations for the future, transitioned to the library, and then back to the classroom.

65. On November 5, 2018, the special education teacher emailed the Parent regarding escalation of the Student's behaviors that day at school, including jumping on tables, kicking staff, and hitting staff with articles of clothing. In response to the special education teacher's email, the Parent requested that she be permitted to come to class with the Student to observe. On November 6, 2018, the special education teacher responded to the Parent that she was welcome to observe and the Parent replied with her availability.
66. On November 13, 2018, the special education teacher emailed the Parent with an update about the Student's day and behaviors.
67. On November 15, 2018, the special education teacher emailed the Parent to let her know that the school counselor visited the Student that day and that the Student participated in testing with the school psychologist and occupational therapist.
68. On November 21, 2018, the Parent emailed the school principal regarding her concerns about the frequency of the bus being late to school and the affect she believed it was having on the Student's education. Further, she expressed concern that the school was marking the Student down as "tardy" on days when he was late because the bus was delayed. The Parent requested the school "keep a little better record of what time [the Student] is showing up at school." The principal responded to the Parent's email, saying, "I agree with you. First, it's not good that the bus is late arriving to school. I wish I had more control over that issue. But, I will...support your request."
69. On November 27, 2018, the special education teacher emailed the Parent an update about the Student's day. The Parent replied with several questions, including a question about how much time the Student was spending in the general education classroom. The special education teacher responded and stated that the Student was "spending most of his day in his general education class. He consistently comes to my classroom after lunch for 30 minutes for his social emotional behavioral lesson" and that he "usually comes to the [NEST] 3-4 times per day to take 5 minutes breaks. Additionally, I check in with him in his general education class 2 times per day."
70. On December 1, 2018, the District entered progress reporting on the Student's April 2018 IEP goals, which stated the following:
 - Goal 1: Emerging skill; The Student continued "to maintain baseline levels. During the month of November, engaged in crisis behaviors on 7 school days. With the exception of the episode that occurred on 11/05, most episodes have lasted between 15 and 30 minutes. The behavior episode that occurred on 11/05 lasted approximately 1.5 hours." And the Student's "baseline data indicates that he was engaging in up to 5 episodes per month with a duration of 45

minutes to 1.5 hours per day. Although the frequency of this behavior has slightly increased it should be noted that the duration of each episode has decreased.”

- Goal 2: Emerging skill; The Student “averages 2.1 instances of moderate agitation per day. These behaviors include running from staff, verbal threats to peers/adults, brief profanity, and refusal to follow teacher directions.”
- Goal 3: Sufficient progress; “During [the Student’s] social lesson he has been reviewing the zones of regulation and various emotions within each zone. Additionally, [the Student] has been using visuals to look at various situations and then determine another person’s perspective as well as his own. [The Student] continues to require cues and prompts with teacher assistance to identify the feelings of others.”

71. The District collected data on the Student’s behaviors—based on the Student’s BIP—on December 10, 11, 12, 13, 16, 17, 18, 19, and 20, 2018, to record the number of times each target behavior was occurring and to document in what setting the behavior was occurring.

72. On December 12, 2018, the Parent emailed the District’s director of student services (director) regarding concerns over the transportation issues. According to the Parent, the “[the Student] has been late to school greater than half the days he has attended school this year.” The Parent further alleged that “[m]any days [the Student] [was] the only student riding the bus and [arrived] late anyway,” that “the arrival time of the bus has fluctuated to accommodate changes in the route based on attendance of other students,” and that “[t]here have been days the bus has broken down and no one called [her] to let [her] know and [the Student] was 40 minutes late.” In addition, the Parent expressed concerns that the Student was leaving class early to board the bus going home. The Parent communicated that she had “spoken to the driver, the supervisor of the driver, and also the principal” and had been unable to resolve the problem. The Parent requested a plan be made in writing to address the issue to ensure the Student arrived at school at time in order to “receive a full day of instruction, as required by law.”

73. On December 13, 2018, the director responded to the Parent’s email, communicating that he had “connected with our Transportation Department and staff at school 2 to ensure at dismissal that [the Student] does not get on the bus early prior to the end of the school day.” The director of student services further told the Parent that he was working with Transportation on “re-routing in the morning to ensure that [the Student] is dropped off earlier at [school 2]”

74. Also on December 13, 2018, the Parent emailed the general education teacher and asked for an update on the Student’s day. The Parent also expressed concern that the Student did not arrive home until 5:20 p.m. The general education teacher responded with an update about the Student’s day and stated that she would let the principal know that the Student was late getting home. The Parent replied and stated, in part, that she was “not excited about the bus situation and [the Student] got off the bus apologizing for being late and very hungry.”

75. On December 14, 2018, the Parent emailed the director that “as a result of [his] intervention, [the Student] arrived home at 5:20 pm” on December 13, 2018. The Parent requested a “Plan B.”

76. On December 17, 2018, the director emailed the Parent regarding the bus being late getting the Student home on December 13, 2018. The director stated that the transportation department informed him that there was heavy traffic and that the bus was late leaving school 2, resulting in the late arrival time. The Parent responded that the delay caused the Student "to be on the bus for an hour and fifty minutes" and that the director's response was "not an acceptable response." The Parent requested that she be informed when an "appropriate plan [had been] formulated so that this no longer occurs."
77. On December 20, 2018, the District sent the Parent a notice of restraint and isolation to inform the Parent that the Student spent one minute and thirty seconds in a restraint following a series of incidents involving physical aggression toward another student and elopement from the school building. According to the notice and emails about the incident, the Student's behavior escalated throughout the day from talking over people, having a difficult time following directions, punched another student in line, and eloped from the lunchroom. After attempting to run from the teacher again, the staff used the "least to most physical guidance (body positioning-1 minutes, physical guidance at the upper arm and hip-1 minutes, physical guidance at the upper arm and hip-30 seconds)" to prompt the Student into the office. In an email from the special education teacher, the teacher noted that the various strategies and de-escalation techniques the staff used to calm and redirect the Student.
78. On December 20, 2018, the District completed its reevaluation of the Student and held an evaluation review meeting. The Parent, school psychologist, general education teacher, occupational therapist, special education teacher, speech/language pathologist, principal, and school psychologist alternate were present.

The reevaluation report noted that the Student's most "recent special education evaluation took place in March of 2018 as a reevaluation" and that at that time, the Student's eligibility category was changed to autism, the report recommended that the Student receive specially designed instruction in social emotional, the team recommended the Student receive support from a 1:1 paraeducator, and the "team also recommended [the Student] be placed into a classroom which specializes in working with student[s] who exhibit high functioning Autism characteristics." Additionally, in March 2018, a functional behavioral assessment was completed and targeted the following behaviors: "verbal protest refusal" and "behaviors endangering self or others." In May 2018, the Student's evaluation was amended to include a pragmatic communication evaluation.

The group found that the Student continued to demonstrate significant deficits in his social/emotional skills. The group also found that the Student demonstrated significant fine and visual motor delays as well as sensory concerns. It was further noted that the Student was not demonstrating carryover of pragmatic language skills in various settings. The IEP team determined that the Student continued to meet the eligibility criteria for autism and recommended the Student receive specially designed instruction in social emotional/behavioral, related services in occupational therapy, and supplementary aids and services in speech and language therapy.

79. According to the District's response, the Student has been provided specially designed instruction in social emotional skills and behavior during the 2018-2019 school year. The District provided the following examples of this instruction:

- Explicit instruction on following a "first work and then choice time" visual schedule;
- Instruction on terminating a preferred activity (using a time and set time);
- The use of behavior contingency maps (table top activity, used verbally throughout the day to help with problem solving);
- Visual demonstration of expected behaviors and positive outcomes, and unexpected behaviors and negative outcomes;
- Problem solving without the need of a visual aid;
- Instruction on expected and unexpected behaviors in various settings and situations;
- Use sorting cards;
- Instruction on "Zones of Regulation" and work to review the behavior, identify cause, and discuss what to do in the future; and,
- Review de-escalation strategies and what strategies to use in different zones.

80. During the 2018-2019 school year, according to the Student's school 2 attendance record, the Student was marked "Tardy-Excused" due to the "bus" or "late bus" on the following dates:

- | | | |
|----------------|---------------|---------------|
| • September 27 | • October 31 | • November 20 |
| • October 1 | • November 5 | • December 4 |
| • October 8 | • November 8 | • December 5 |
| • October 22 | • November 13 | • December 6 |
| • October 25 | • November 19 | • December 10 |

81. According to the District's bus route, the Student's bus was scheduled to depart school 2 at 3:30 p.m. and drop the Student off at home at 4:18 p.m.

82. The Parent's reply stated that the Student was "being placed on a bus to go home prior to the end of the school day, which reduced his educational hours and took him even further from making bonds with his peers who he is currently going to school with." The Parent stated that the Student continues to be late to school and get home late in the evening.

The Parent's reply also included a statement from the Student's babysitter who stated that the Student's arrivals home after school are inconsistent and that the Student is almost always late, getting home between 4:40 p.m. and 5:20 p.m. The babysitter stated that the Student comes home hungry and in a bad mood on these days.

83. The District was on break December 14, 2018 through January 2, 2019.

CONCLUSIONS

Issue 1 (Part 1): IEP Implementation 2017-2018 School Year – The Parent alleged that the District failed to implement the Student's IEPs, including the accommodations, positive behavior supports, and specially designed instruction. A district, at the beginning of each school year, must have in effect and implement an individualized education program (IEP) for all students eligible for special education. This obligation includes providing students with specially designed instruction (adopting the content, methodology, or delivery of instruction to address a student's

unique disability related needs) and accommodations/modifications. This can also include implementing positive behavior interventions, which include strategies and instruction to provide alternatives to challenging behaviors and reduce or eliminate challenging behaviors. Behavior interventions can be included in an IEP or in a behavioral intervention plan (BIP).

April 2017 IEP: Accommodations & Positive Behavior Supports

When the complaint investigation timeline began on November 22, 2017, the Student's April 2017 IEP and BIP were in place. The IEP provided the Student with accommodations for alternative test setting, daily behavior reporting, and sensory breaks. The BIP included additional information regarding the Student's strengths, data collections, and positive behavior interventions. The BIP addressed the target behaviors of (1) pushing, kicking, scratching, and hitting others; and, (2) swearing.

According to the District's response letter, during the 2017-2018 school year, all the Student's accommodations were implemented. The documentation in the complaint indicates that daily behavior reporting was implemented and that the Parent was provided with a behavior report sheet nearly every day from September 12, 2017 through June 12, 2018. There is some indication that the Student was provided breaks in the LRC classroom when his behaviors escalated; although, the Parent characterized this as the Student being disciplined and "thrown out of class." The District did not provide any specific information about the testing accommodation, or whether this was even necessary during this period.

The Parent also stated and provided photographs that indicated the Student was required to sit facing the wall (covered with black construction paper)—and facing away from the teacher—separate from the other students in his class for several weeks in January 2018. According to the Parent, because of this seating arrangement, the Student was "not able to receive instruction with the rest of the class." The Parent stated that she was not informed of this seating arrangement and that this segregated the Student from his classmates. The Parent stated that she shared her concerns about the seating arrangement and on January 25, 2018 the District's assistant director of student services (assistant director) informed the Parent that the Student had been moved back to sit with the other students in the class.

It is not clear whether the District intended this temporary seating arrangement as a form of discipline for the Student or if this was intended as a sensory break for the Student. Either way, OSPI notes significant concerns with a seating arrangement that clearly separated the Student from sitting and interacting with his peers. This particular concern was ultimately resolved after the Parent brought it to the District's attention.

Based on the behavior updates and documentation in this complaint, often the behavior updates reported the Student's unexpected behaviors (e.g., December 12, 2017 email, reporting the Student's challenges following directions, loud voice level, and inappropriate language). There was also frequent discussion in meetings and by email of trying different strategies (e.g., December 12, 2017 email, stating that additional time would be added where the Student received support in LRC). Based on the documentation, the District seems to have provided the three

accommodations and behavior supports in the Student's April 2017 IEP accommodations a majority of the time.

April 2017 IEP: Specially Designed Instruction

The Student's April 2017 IEP provided the Student with two annual goals in social emotional/behavioral and 21 minutes, 5 times a week, of specially designed instruction in social emotional. The specially designed instruction was scheduled to be provided in the special education setting—the "Learning Resource Center" or LRC classroom—by a special education teacher.

According to the District's response letter, during the 2017-2018 school year, the Student was provided with specially designed instruction in social emotional skills. The District stated that this instruction consisted of the use of visual social stories, "communication books made specifically for [the Student]", stories that used pictures of the Student using appropriate social skills in all school settings, and modified scripted social stories. The Student's special education teacher and paraeducator gave instruction on and modeled social skills, social cues, problem solving, calming, and self-regulating strategies. The District stated that the teacher and paraeducator used and modified lessons from a variety of social skills instructional books.

On December 1, 2017, the District entered progress reporting on the Student's IEP goals, which stated that he was making sufficient progress on his goals and that he was showing a decrease in the number of behaviors that were the focus of the IEP goals. On March 12, 2018, the District entered progress reporting on the Student's IEP goals, which stated that the Student was now making insufficient progress, although he was making progress especially with the additional intervention support of a paraeducator in the classroom.¹⁵ The progress reporting also stated that the Student was learning about and using self-calming strategies, social stories, and recognizing and making appropriate choices.

According to the Parent's reply, the Student was not provided specially designed instruction in social emotional/behavioral skills in the special education setting, despite her repeated requests for more information about the social skills services at meetings. The Parent also stated that the Student's paraeducator told the Parent that the Student was "asked one day a week (on Thursdays) to go to the LRC and participate in social skills classes but they discontinued them because '[the Student]' did not want to go.'" The Parent also stated that the Student was not provided "pull out classes for math and reading as was agreed to by the IEP team."¹⁶

Based on all the documentation provided in this complaint, the Student was receiving some amount of specially designed instruction as evidenced by the reported progress the Student was

¹⁵ It is unclear at this point what, how much, and in what setting the Student was getting support from a paraeducator, as this was not added to the Student's IEP until April 2018.

¹⁶ OSPI notes that the Student did not receive specially designed instruction in math and reading, and there is no record of an agreement being made by the IEP team related to math and reading. Because this was not part of the IEP, this allegation is not a potential violation.

making, particularly when working with the paraeducator. OSPI notes, however, that there is no specific documentation to support that the Student was receiving specially designed instruction in pull-out sessions in the special education setting; instruction and supports appear to have occurred primarily in the general education classroom. OSPI finds that the District was not implementing the Student's IEP as written, and therefore, the District will be required to conduct training. Because the Student was receiving some amount of specially designed instruction during this period, no Student specific corrective actions are required.

April 2018 IEP: Accommodations & Positive Behavior Supports

On April 19, 2018, the Student's annual IEP was developed, which provided him with the following accommodations:

- Alternative test setting
- Daily behavior reporting
- Sensory breaks
- Visual schedule/communication book
- Tests given 1:1 or in a small group setting
- Preferential seating
- Social stories with visual models
- Video modeling of behaviors for a social group
- Visual modeling of behavior

The Student's BIP was also revised in April 2018, and the new BIP addressed the following behaviors: (1) verbal protests, refusal to follow teacher directions, getting out of his seat/running; (2) unsafe behaviors; (3) pushing, kicking, scratching, and hitting others; and, (4) use of profanity.

According to the Parent's reply, the Parent and Complainant stated that the Student was not provided an area for sensory breaks—he was instead taken out of the general education classroom to the LRC classroom not as a break but as a disciplinary action—and that there was no evidence that the Student was provided video modeling, visual modeling, and a communication book. The District's response letter stated the Student had daily access to visual schedule, communication book, and social stories, was provided break periods to work on self-regulation and self-calming techniques, participated in a social group during which he worked on social stories with visual models, was provided visual modeling and direct modeling of behaviors and social cues, was and taught self-calming and self-regulation strategies, was provided preferential seating and testing in small group, was provided daily behavior reports, and had a 1:1 paraeducator assigned to assist and guide him to demonstrate positive behavior at school.

As discussed above, daily behavior reporting was consistently provided and that, while there is some question about the effectiveness and fidelity of implementation, the Student was provided sensory breaks. Later in the school year, there is documentation that indicated that strategies and positive behavior interventions were being used (e.g., June 7, 2018 email that the Student would "start of the day in LRC as we will work with him doing social interventions and social stories along with his academic work"; June 8 email that noted the school counselor reviewed strategies with the Student and using his words, daily behavior reports report use of choices and a timer for preferred/nonpreferred activities).

Overall, the documentation in this complaint indicates that the District was implementing the Student's IEP accommodations. Some accommodations were clearly implemented (e.g., daily

behavior reports), others were implemented but with concerns about the effectiveness (e.g., sensory breaks), and for still others, the District stated they were implemented in the 2017-2018 school year (e.g., visual schedule or video modeling). The District also provided examples of strategies used that were in line with the Student's BIP (e.g., use of choices and a timer). OSPI finds that while some of the accommodations may not have been effective, the District did address the Parent's concerns when they were raised (e.g., January 2018 seating arrangement). Based on the documentation reviewed, the District did substantiate that it implemented the Student's IEP accommodations as written a majority of the time.

Specialty Designed Instruction: April 2018 through June 2018

On April 19, 2018, the Student's annual IEP was developed, which included new annual goals in social emotional/behavioral and provided him with the following specially designed instruction in the special education setting:

- Social emotional/behavioral: 45 minutes, 5 times per week (provided by a special education teacher)
- Social emotional/behavioral: 90 minutes, 5 times per week (provided by special education staff)

The Student's IEP further provided the Student with 1,950 minutes per week of "additional adult support" from a paraeducator in the general education setting.

As discussed above, the District stated that during the 2017-2018 school year, the Student was provided with specially designed instruction in social emotional skills. The Parent stated that she believed the Student was not receiving instruction in a pull-out class in the special education setting. In June 2018, the District entered progress reporting on the Student's April 2018 IEP goals, which stated the Student was making insufficient progress on two of his goals and that the other goal was an emerging skill. The progress reporting did not include any data or narrative notes for the period, and thus, it is difficult to tell the amount of progress the Student made.

While a lack of progress does not necessarily indicate a failure to provide specially designed instruction, the documentation provided in this complaint also does not provide much detail about how the Student's specially designed instruction was provided. There is some indication that the Student was not attending pull-out sessions in the special education setting, but again was likely receiving some amount of instruction in the general education setting as evidenced by information about progress made when working with the paraeducator. OSPI finds that the District was not implementing the Student's IEP as written, and therefore, the District will be required to conduct training. Because the Student was receiving some amount of specially designed instruction during this period, no Student specific corrective actions are required.

Issue 1 (Part 2): IEP Implementation 2018-2019 School Year – The Parent alleged that the District failed to implement the Student's IEPs, including the accommodations, positive behavior supports, and specially designed instruction. However, according to the Parent's reply, the Parent had no concerns about how the Student's IEP was being implemented at school 2 during the 2018-2019 school year. According to the District's response and documentation, the Student was provided with: a visual schedule; communication book; social stories; breaks in both classrooms; sensory breaks; social group; visual modeling and direct modeling; taught self-calming, self-

regulation, and educational strategies; had preferential seating; took tests in an alternative setting; received daily behavior reports; and, had a one-on-one paraeducator. The District also stated that the Student's BIP was implemented.

The Student's September 2018 Amended IEP stated that the Student would receive 30 minutes, 5 times per week, of social emotional specially designed instruction in the special education setting and 15 minutes twice a day in the general education setting. The District's documentation and emails from the Student's special education teacher also confirmed that the Student was receiving his specially designed instruction in both the special education and general education settings.

The District substantiated that it implemented the Student's IEP during the 2018-2019 school year. OSPI finds no violation.

Issue 2: Special Education Discipline Procedures – The Parent alleged that the Student was improperly disciplined and that given the Student's disability, discipline should not have been implemented for behaviors that were a clear manifestation of his disability. The Parent alleged that the District failed to follow discipline procedures and failed to conduct timely functional behavioral assessments (FBAs) or timely updated the Student's BIP.

A district may discipline a student eligible for special education for violations of the student code of conduct, and a district may remove a student from his or her current placement to an appropriate alternative education or other setting (including suspension) for not more than ten school days (consecutive or a series of removals that constitute a pattern of removals based on substantially similar behaviors). A change in placement occurs when a student is removed from his or her placement because of discipline for more than ten days. After a student has been removed from his or her placement, the district must provide services to enable the student to continue participating in the general education curriculum, although in another setting, and to progress toward meeting the goals set out the IEP. The district must also hold a manifestation determination to determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability or the result of the school's failure to properly implement the student's IEP or BIP. If the behavior is a manifestation of the student's disability or resulted from a failure to implement the IEP, the district must conduct an FBA (unless already conducted), implement or review the BIP, and return the student to his or her placement.

During the 2017-2018 school year, the Student was emergency expelled/short-term suspended on three occasions: October 6, 2017 for five days¹⁷, January 25, 2018 for one day¹⁸, and April 25,

¹⁷ OSPI acknowledges that this was prior to the special education citizen complaint timeline; however, it is included as part of the pattern of behaviors that resulted in disciplinary action. The exclusion of this incident from the analysis would not have changed OSPI's conclusion.

¹⁸ The Parent disagrees and stated that the incident occurred on January 23 and that the Student was not allowed to return to school until January 29, 2018. The District's attendance documentation indicates that the Student was excluded for one day. Regardless if this was one day or three days as the Parent alleged, this would not yet have triggered the requirement to hold a manifestation determination as the Student

2018 for four days. Following the April 25, 2018 emergency expulsion—subsequently converted to a short-term suspension—the Student’s IEP team met and discussed the Student’s social emotional/behavior IEP goals, his current FBA, and his BIP. The Student’s most recent FBA was conducted between January 25 and March 1, 2018, and the evaluation report as reviewed on March 1, 2018. The team updated and finalized the Student’s BIP and scheduled a manifestation determination meeting. At the manifestation determination, on May 2, 2018, the team determined that the Student’s conduct was a manifestation of his disability and was not a direct result of the District’s failure to implement the Student’s IEP. The team returned the Student to his placement the same day.

The Parent alleged that the Student should not have been disciplined at all because his behaviors were directly related to his disability. However, being eligible for special education does not prevent a district from disciplining students for conduct code violations. Here, the documentation in the complaint indicates that the District followed special education discipline procedures. The District was required to conduct an FBA (unless already conducted), and here the District had just conducted an FBA less than two months prior to the incident and was thus not obligated to conduct a new FBA. The District reviewed and finalized the Student’s updated BIP after the disciplinary incident. Finally, after the incident on April 25, 2018, the District properly scheduled a manifestation determination because the Student’s disciplinary exclusions reached a total of more than ten school days during the 2017-2018 school year. Further, following the manifestation determination, the Student was returned to his placement at school 1. The District substantiated that it followed special education discipline procedures and OSPI finds no violation.

Issue 3: Placement – The Parent alleged that the District improperly changed the Student’s placement when the District moved the Student from school 1 to school 2.

When a significant change in placement occurs, a district is required to complete a reevaluation. In determining whether a significant change in placement has occurred, the district must determine whether the proposed change would substantially or materially alter the student’s educational program, including consideration of the following factors: 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. A district must ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum must include the alternative placements, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services, such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement.

had, at this point, been excluded from the classroom due to discipline for six days according to the District or eight days according to the Parent.

Finally, an IEP team should work toward a consensus, but the district has the ultimate responsibility to ensure that the student is being provided a free appropriate public education (FAPE). If the IEP team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program. The district must also notify the parents that they have a right to seek resolution of any disagreements by initiating an impartial due process hearing.

April 2017 & April 2018 IEPs

The Student's April 2017 IEP stated that the Student would receive 21 minutes, 5 times a week, of specially designed instruction in social emotional in the special education setting. The IEP stated that the Student would spend 94.17% of his time in the general education setting. The Student's April 2018 IEP stated that the Student would spend 62.5% of his time in the general education. This represents a substantial change in placement—the Student's education program was revised, the Student would be educated with nondisabled students to a lesser extent, and the placement option was on a different part of the continuum of alternative placements.

Prior to developing the April 2018 IEP, the District conducted additional assessments in November 2017 to evaluate the Student in the areas of reading, math, and writing, and in February, conducted a new functional behavioral assessment (FBA). The February 2017 FBA recommended that a one-on-one paraeducator be assigned to work with the Student on behavior support interventions across all instructional settings. On March 1, 2018, the Parent provided consent for a reevaluation to include updated information on the Student's academic abilities. And on or around March 20, the Student's IEP team met, changed the Student's eligibility category to autism, recommended that the Student receive specially designed instruction in social emotional/behavioral, and discussed that the Student was at or above grade level in reading, math, and written expression.

When considering a significant change in placement for a student, a district must conduct a reevaluation and consider the continuum of placements available for a student. Here, prior to the change in placement, the District did reevaluate the Student, conducted a new FBA, conducted additional academic assessments, and considered the results of a private evaluation. OSPI finds that the District followed the procedures for changing the Student's placement in April 2018.

Move from School 1 to School 2

According to the Parent, at a meeting in January 2018, the District first proposed changing the Student's placement to a school with an autism program. The Parent stated that the District also brought up moving to a different school at the March 1, 2018 meeting on the FBA. At the March 20, 2018 meeting, the prior written notice stated that the Parent requested that the team consider a self-contained behavior program for the Student and that the District members of the team rejected this request because the District has an autism program that could meet the Student's needs.

At the April 19, 2018 annual IEP team meeting, the prior written notice stated that the IEP team discussed and recommended that the Student remain in his current placement at school 1—with additional behavioral interventions—through the end of the 2017-2018 school year. It was agreed that the IEP team would reconvene in June 2018 to review the Student's progress and determine whether he may require a change in placement to a program with "more comprehensive services focused on the Autism Spectrum Disorder [ASD]." At an IEP meeting in April 26, 2018, the IEP team continued to discuss the Student's BIP and behavior data, and again agreed that a recommendation for placement for the 2018-2019 school year would be made by the IEP team in June 2018. In May 2018, the Student underwent a limited reevaluation by a speech pathologist for "social/emotional pragmatics", which were ultimately decided not to be an area of need for the Student. Also, in May, the District arranged for the Parent to tour other schools in the District.

In June 2018, prior to the end of the school year, the Student's IEP team met, although they did not amend the Student's IEP. The District members of the IEP team recommended that the Student be transferred to a different school in the District that had a program for students with autism. The Parent disagreed with the recommended change. The Student was transferred to a different school in the District for the 2018-2019 school year for placement in a general education setting with special education services and supports through the "NEST Program," a program for students with ASD. The NEST program was available at two other schools in the District. Although one of those schools was closer to the Parent's home, the Parent expressed concerns about the Student's safety at that school and requested the Student attend the other school with the program (which was further from the Student's house). Throughout the summer and into the fall of the 2018-2019 school year, the Parent continued to express her disagreement with the decision to place the Student in the program at the other school.

OSPI does note that the District seemed to believe starting in January 2018 that a program specifically for students with autism was appropriate for the Student. However, proposing this idea in January 2018 does not necessarily mean that the decision was predetermined. The topic was discussed at several meetings throughout the year and the documentation indicates that the team agreed to finish out the 2017-2018 school year at school 1 with the April 2018 IEP, BIP, and other behavior supports, and then reassess the Student's progress to make a decision about a school location. Further, while an IEP team should work toward consensus, the District has the ultimate responsibility to offer a student eligible for special education services a free appropriate public education (FAPE). The District asserted that attending a school with the NEST program offered the Student FAPE. Here, while the Parent did not agree with the decision, the District followed proper procedures for changing the location of services for the Student. OSPI finds no violation.

September 2018 Amended IEP

The Student's September 2018 Amended IEP stated that the Student would receive 30 minutes, 5 times per week, of social emotional specially designed instruction in the special education setting and 15 minutes twice a day in the general education setting. The IEP stated that the Student would spend 91.67% of his time in the general education setting. According to the District's response, the team believed that the specially designed instruction in the general education

setting “would support inclusion.” Again, this represents a significant change in placement for the Student—from 62.5% (April 2018 IEP) to 91.67% of his time in the general education setting. The Student’s education program was revised, the Student would be educated with nondisabled students to a greater extent, and the placement option was on a different part of the continuum of alternative placements.

The District did initiate and completed a reevaluation for the Student in November and December 2018. The reevaluation report stated that the Student continued to meet the eligibility criteria for autism and recommended the Student continue to receive specially designed instruction in social emotional/behavioral, related services in occupational therapy, and supplementary aids and services in speech and language therapy.

Here, the District conducted a reevaluation of the Student after changing his placement. There is no documentation that the Student’s IEP team discussed the continuum of alternative placements except that the team felt this placement supported a greater level of inclusion for the Student. Additionally, given the Parent’s ongoing disagreement with the Student attending school 2, OSPI notes that it is surprising the Student’s time in the general education setting was increased without a discussion of whether the Student could potentially return to school 1 with certain supports. Based on the documentation provided, OSPI finds that the District did not follow procedures for changing the Student’s placement in September 2018. The District will be required to hold an IEP team meeting to discuss the Student’s placement, recent reevaluation, and the continuum of placement options.

Issue 4: Transportation – The Parent alleged that the Student’s bus was frequently late in the morning, which resulted in the Student being late to school, and that the Student was frequently on the bus for more than an hour in the afternoon coming home. Transportation options for students eligible for special education include all of the transportation options available to any student, including a scheduled bus route. Washington regulations state that “whenever reasonably possible, no student should be required to ride more than sixty minutes one way” on the bus.

Prior to starting at school 2, the Parent expressed concerns that the Student would need to be on the bus for an hour to get to school. According to the District’s bus schedule, the Student’s bus would depart school 2 at 3:30 p.m. and drop the Student off at 4:18 p.m., a 48 minutes bus ride. The District did not provide the morning bus schedule. On November 21, December 12, 14, and 17, 2018, the Parent contacted the District to express her concern that the Student was late to school or late getting home because of the bus. The Parent also stated that the Student was being required to leave class early to board the bus in the afternoon. The Parent stated that the Student was being dropped off between 4:40 p.m. and 5:20 p.m., meaning he was on the bus for 70 to 110 minutes. The Parent’s statements and documentation indicated that one concern was that the Student extended afternoon time on the bus was resulting in escalated behaviors and the Student arriving home hungry.

The District provided the Student’s attendance record, which noted that the Student was marked “excused” late due to the bus on at least fifteen (15) days during the fall semester of the 2018-

2019 school year. The Student's September 2018 Amended IEP provided the Student with 30 minutes per day of specially designed instruction in the special education setting (NEST) classroom, which at the start of the year, occurred in the morning. On or around October 9, 2018, the Student's social skills lesson—i.e., his social emotional specially designed instruction—was changed to the afternoon. After cross referencing the dates the Student was late and the notes regarding his instruction, the Student likely missed his social emotional specially designed instruction on one day—September 27, 2018, which does not represent a substantial failure to implement the IEP. Otherwise, while it was not ideal that the Student was late to school, being late did not deprive the Student of specially designed instruction and there is no evidence that boarding the bus early in the afternoon caused him to miss specially designed instruction.

Based on the District's documentation and response, the District was aware of the transportation issues and that the District was working to address them. The District's director of student services (director) stated in December that he was working with the District's transportation department and had connected with staff at school 2 to ensure the Student was not being dismissed early to board the bus. The director also stated that some of the specific instances were due to heavy traffic. The Parent, in her reply, stated that the Student's bus continues to be late even now.

While the transportation issues have not significantly impacted the Student's access to his specially designed instruction, it ought to be reasonably possible for the District to craft a transportation schedule and route that does not require the Student to be on the bus for over 60 minutes in either the morning or the afternoon, and that does not cause the Student to be late to school. Further, the Student should not be leaving class early to board the bus. This is particularly important because the Parent noted that in the afternoon, the Student arrives home with escalated behaviors and is very hungry. While OSPI acknowledges that the District has been attempting to address the issue and that traffic is often out of everyone's control, the District has not substantiated that this issue has been fully resolved. The current transportation arrangement represents a violation of WAC 392-172A-02095(5). The District will schedule an IEP team meeting to discuss the transportation concerns and create a transportation plan for the Student.

CORRECTIVE ACTIONS

By or before **January 31, 2019, February 22, 2019, and March 22, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **February 15, 2019**, the Student's IEP team will meet to address concerns about transportation and placement. The IEP team will discuss and document discussion of, at minimum, the following topics:

- The transportation concerns;
- Potential alternate bus routes to address excessive time spent on the bus;
- A plan to ensure the Student arrives at school on time and is not leaving class early;
- The November/December 2018 evaluation's implications for the Student's IEP (unless already discussed at a previous meeting);
- The continuum of placement options and Student's current placement; and,
- Consider the Parent's potential desired change of location for services.

By **February 22, 2019**, the District will submit to OSPI: 1) a copy of the meeting invitation; 2) a copy of any prior written notices; 3) a copy of the agenda or topics discussed at the meeting; 4) a copy of the IEP and BIP if amended; 5) a copy of the transportation plan; and, 6) any other related documents.

The District will also monitor the Student's bus schedule and document what time the Student arrives at school and what time the Student gets home from school for several weeks. By **February 22, 2019**, the District will provide OSPI with this documentation and will notify OSPI if there are next steps required to resolve the transportation concern if it remains ongoing. OSPI will provide additional dates for review if necessary.

DISTRICT SPECIFIC:

By **March 15, 2019**, the District will provide training for all District elementary schools.¹⁹ The training will be provided for all special education teaching and educational staff associate (ESA) staff, paraeducators, principals, assistant principals, and any general education teachers with students eligible for special education in their classes. The training will address the topics identified in this complaint, including:

- Procedures for changing student placements;
- Considering a continuum of alternative placements;
- Implementing IEPs as written; and,
- Implementing behavior intervention plans (BIPs).

The training will be provided by a trainer who is not an employee of the District in collaboration with the Puget Sound Educational Service District 121 staff.

By or before **January 31, 2019**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials. The District will also provide OSPI with a list of the elementary schools in the District.

By or before **February 22, 2019**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by March 1, 2019 and additional dates for review, if needed.

By **March 15, 2019**, the District will conduct the training regarding the topics raised in this complaint decision.

By **March 22, 2019**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources

¹⁹ OSPI notes that between SECC 18-111 and SECC 18-113, four District elementary schools have been identified that require corrective actions related to placement and IEP implementation. As these issues appear to be systemic, all District elementary schools will receive training. The two schools identified in SECC 18-111 are not required to participate in the training ordered here as the training would likely be redundant; for those schools, please proceed with the corrective actions ordered separately in 18-111.

roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

RECOMMENDATIONS

OSPI notes that throughout the complaint, there was documentation of incidents that resulted in the restraint or isolation of the Student. The Parent raised the issue of the Student being "isolated" at a different table but did not allege improper use of restraint or isolation under WAC 392-172A-02110. OSPI notes that in some of these instances, it is unclear whether the restraint or isolation was proper and on at least one instance, the District does not appear to have followed the proper reporting and follow up procedures. For example, on February 1, 2018, the Student was "escorted" out of the classroom to take a break in the LRC and staff tried a "two person assist" because the Student was screaming, kicking, hitting, and calling the teacher names. It is not clear that there was an imminent likelihood of harm and the District did not provide a restraint or isolation notification regarding this incident. OSPI strongly recommends that the District have staff at school 1 review the District's restraint and isolation procedures, and WAC 392-172A-02110.

Dated this ____ day of January, 2019

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.)