

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

PROCEDURAL HISTORY

On February 13, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Bethel School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On February 13, 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 March 15, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply with any information he had that was inconsistent with the District's information.

On March 23 and 29, 2018, OSPI requested clarifying information from the District and on March 30, 2018, OSPI interviewed the school principal by phone.

On March 29, 2018, OSPI spoke with the Parent by phone and the Parent subsequently provided additional information in reply to the District's response. OSPI forwarded the additional information to the District on March 30, 2018.

OSPI considered all of the information provided by the Parent and the District as part of its investigation. It also considered the information received during phone interviews.

OVERVIEW

During the 2017-2018 school year, the Student attended a District middle school and was eligible to receive special education services. The Student's individualized education program (IEP) was developed in June 2017 and provided specially designed instruction in writing and social/emotional. The IEP also provided the Student with accommodations and contained goals in the areas of writing, social/behavior, and social/emotional. Beginning in late September 2017, the Student began exhibiting a pattern of behaviors that resulted in the Student receiving several detentions and in-school suspensions (ISS). The Student also left class several times without permission and went to the ISS room to work; often in these instances, the Student called the Parent when he got in trouble and the Parent would pick the Student up from school early. In October and November 2017, the Parent met with the school to discuss the Student's behaviors. In December 2017, after a behavior incident, the principal attempted to get the Student to return to class and the Student reportedly felt intimidated and bullied by the principal. The Parent also informed school staff that the Student felt bullied by another student. In December 2017, the District attempted to set up a meeting to discuss the Student's behavior, but the Parent did not respond to the request. At the beginning of January 2018, the Parent indicated that he would be

withdrawing the Student at the end of January. In January 2018, the Student received a three-day suspension for disruptive and inappropriate behavior. After this, the District indicated that it wanted to conduct a functional behavioral assessment of the Student and develop a behavioral intervention plan. At the end of January 2018, the Parent met with the school team to discuss the suspension. Also at the end of January, the Parent withdrew the Student from the District and enrolled him in an online school operated by another Washington school district.

The Parent alleged that the District failed to implement the Student's IEP and that school administrators and teachers did not know the Student had an IEP. The Parent also alleged that the District was improperly disciplining the Student, and that school administrators bullied and intimidated the Student, which resulted in a denial of a free appropriate public education (FAPE). The District denied all allegations.

ISSUES

1. Did the District follow procedures for implementing the Student's individualized education program (IEP) during the 2017-2018 school year?
2. If the Student was suspended or removed from class for more than ten school days during the 2017-2018 school year, did the District follow special education disciplinary procedures?
3. Did the Student experience bullying that resulted in a denial of a free appropriate public education (FAPE)?

LEGAL STANDARDS

IEP Definition: An individualized education program (IEP) must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures

for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP team has decided that a BIP is appropriate, the IEP team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. 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.

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

Disciplinary Removals: 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. After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress 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).

Disability-Based Harassment: Each school district shall adopt a policy and procedure that prohibits the harassment, intimidation, or bullying of any student. RCW 28A.300.285. Bullying is defined as aggression used within a relationship where the aggressor has more or real perceived power than the target, and the aggression is repeated or has the potential to be repeated. *Dear Colleague Letter*, 69 IDELR 263 (OSERS/OSEP 2013). Harassment and bullying that occurs based on a student's status of having a disability or receiving special education services and that adversely affects that student's education or prevents the student from receiving meaningful educational benefit may result in a denial of a free appropriate public education (FAPE). If a teacher is deliberately indifferent to the teasing of a student with a disability and the abuse is so severe that the student can derive no benefit from the services that he or she is offered by the school district, the student has been denied a FAPE. *In the Matter of Federal Way School*, OSPI Cause No. 2011-SE-0013 citing *M.L. v Federal Way Sch. Dist.*, 394 F3d 634, 105 LRP 13966 (9th Cir. 2005). As part of an appropriate response, the district should consider convening an IEP team meeting to determine whether the effects of the bullying have

caused the student's needs to change such that the student's IEP is no longer providing educational benefit and whether additional or different services are necessary. The IEP team should be careful when considering a change of placement for a student eligible for special education who was the target of bullying or harassment. A more restrictive placement may constitute a denial of a FAPE in the least restrictive environment (LRE). *Dear Colleague Letter*, 69 IDELR 263 (OSERS/OSEP 2013).

FINDINGS OF FACT

Background Facts

1. During the 2016-2017 school year, the Student attended a District middle school.
2. On April 17, 2017, the Student was referred for an initial special education evaluation by the Parent and the Parent's attorney. The District agreed to conduct an evaluation.
3. On June 8, 2017, the Student was initially found eligible for special education services under the category of other health impairment. The evaluation report found that the Student had a limited ability to process new information, stay organized, self-advocate, maintain focus, complete tasks, build and maintain relationships, and cope with academic and social stressors in an appropriate manner. The report also found that the Student had significant social, emotional, and behavioral issues that included disruptive behavior, harassment/bullying, disruptive conduct, and fighting. The evaluation group recommended specially designed instruction in written expression and social/emotional skills.
4. Also on June 8, 2017, the Student's individualized education program (IEP) team met and developed the Student's IEP. The June 2017 IEP contained goals in the areas of writing, social/behavior, and social/emotional. The behavior goal stated that by June 2018, when given a situation where the Student is faced with "adhering to classroom expectations regarding behavior", the Student would "use skills to be able to control himself in class by not roaming the classroom and distracting others in any shape or form improving work completion from 50% dependent level to 80% independent level as measured by classroom/standards based assessments." The IEP team did not develop a behavioral intervention plan (BIP) for the Student. The IEP also provided the Student with the following accommodations and modifications "as needed relevant to materials covered":
 - Allow additional time
 - Separate setting
 - Small group
 - Content area: use of graphics organizers
 - Content area: break materials into chunks
 - Content area: short, concise directions/instructions
 - Content area: preferential seating
 - Content area: samples of completed work
 - Content area: prompts to stay on task
 - Content area: give a maximum of two choices (for focus)

The IEP also provided the Student additional time and a separate setting for State or Districtwide assessments. The IEP provided for the following specially designed instruction from June 13, 2017 to June 12, 2018:

- Social/emotional: 15 minutes, two times per week – special education setting
- Writing: 50 minutes, five times per week – special education setting
- Social/emotional: 30 minutes, one time per week – special education setting

The IEP stated that the Student would spend 82.78% of his school week in the general education setting and receive special transportation.

2017-2018 School Year

5. At the beginning of the 2017-2018 school year, the Student attended a District middle school and continued to be eligible for special education services under the category of other health impairment.
6. The District’s 2017-2018 school year started on September 7, 2017.
7. On September 7, 2017, the Student was enrolled in the following classes for the middle school’s first trimester¹:

	Period	Class
1	7:15 – 7:45 a.m.	Advisory 7
2	7:49 – 8:39 a.m.	Health and Fitness
3	8:43 – 9:33 a.m.	Art
4	9:37 – 10:27 a.m.	Humanities ²
5	10:27 – 11:57 a.m.	Humanities (time period includes Lunch)
6	12:01 – 12:51 p.m.	Math
7	12:55 – 1:45 p.m.	Science

8. According to the District’s response to this complaint, the Student received specially designed instruction in writing in his humanities class, which was co-taught by a special education and a general education teacher. The Student received specially designed instruction in social/emotional during his advisory class, which was taught by the Student’s case manager. The District also stated that the general education teachers that worked with the Student received information about his IEP goals and accommodations.
9. On September 13, 2017, based on the Parent’s request, the IEP team amended the Student’s IEP to remove special education transportation. The Parent gave permission to amend the

¹ According to the District’s documentation, students at the middle school had all seven class periods every day.

² The Student’s schedule does not indicate which period the Student had instruction in writing, but the District’s response stated that the Student “received specially designed instruction in writing in a special education classroom.” Additionally, according to the District’s documentation, the Student’s humanities class, as well as his science class, were co-taught by one general education and one special education teacher.

IEP without a meeting and provided input by email. The IEP goals, accommodations and modifications, and minutes of specially designed instruction remained the same.

10. On September 18, 2017, according to the documentation provided by the District in response to this complaint, the Student received a detention.³
11. On September 20 and 21, 2017, according to the District's documentation, the Student was in the middle school's in-school suspension (ISS) room during his advisory period both days "per [the assistant principal] waiting on schedule change."
12. On September 25, 2017, according to the District's documentation, the Student received a detention.
13. On October 3, 2017, according to the District's documentation, the Student was in the ISS room for four minutes because he "threw a sock."
14. On October 5, 2017, according to the District's documentation, the Student was in the ISS room from 8:54 to 9:28 a.m. According to the principal, the Student was late and was supposed to get a "tardy slip," but instead went to the ISS room. The Student was also in the ISS room from 9:45 to 11:02 a.m. and according to a behavioral referral form for that day, the Student was:
[B]arefoot in the hallway. [An administrator] asked him to put his shoes on, which he did. When he turned the corner, he reached down and took his shoes off again. [The administrator] followed him to his classroom where his teacher asked [the administrator] to escort him to his advisor, [case manager], to explain the situation. On the way to this classroom, [the Student] played games on his phone, despite [the administrator] asking him to put it away. [The case manager] instructed [the administrator] to take him to ISS.

According to the ISS log, the Student refused to give his phone to the ISS supervisor and the Parent came and picked the Student up.⁴

15. On October 12, 2017, according to the District's documentation, the Student received two lunch detentions.
16. On October 18 and 19, 2017, the Student was supposed to go to lunch detention, but refused to attend. The behavioral referral form for October 19 stated that the Student "refused to go to lunch detention with [the case manager] as required, and he did not sit in his assigned student area. This is a pattern of behavior for [the Student]." The behavioral referral form

³ According to the District, detentions either occurred after school or during the lunch period.

⁴ Based on the District's discipline records, it is unclear if the Student was sent home early or if the Parent elected to pick the Student up. According to the principal, the Student's general pattern was that he would refuse to go to class and would go to the ISS room, school staff would call the Parent for support, or the Student would call the Parent and tell the Parent that he got in trouble. Then the Parent would elect to come pick the Student up early from school. The principal stated, in a phone interview, that he does not recall the Student ever being sent home early as a means of discipline.

for October 18, 2017 stated that the Student's behavior would be addressed at a meeting with the Parent and the Student's mother scheduled for October 24, 2017.

17. On October 24, 2017, the Parent and the Student's mother met with the campus security officer and the Student's special education case manager (case manager). The Parent shared concerns that the Student felt singled out and targeted during lunch for his behaviors. At the meeting, they discussed strategies, such as addressing the table as a whole and different options for the Student to eat lunch with a friend.
18. On October 30, 2017, the District provided progress reporting on the Student's measurable annual goal for writing that stated that the Student demonstrated an emerging skill and made progress on the prewriting and drafting steps of the writing process.
19. On November 14, 2017, according to the District's documentation, the Student hit or pushed another student during science class and was asked to fill out a "stop and think" form. According to the discipline referral form, the Student tore up the stop and think form and then went to the ISS room without permission for the remainder of the period. While in the ISS room, the Student continued to engage in unsafe behaviors, be disruptive, refuse to follow directions, and was disrespectful to the ISS supervisor.
20. On November 15, 2017, according to the District's documentation, the Student was again disruptive and disrespectful during his science class. According to the notification of in-school suspension, the Student swung a "pointy umbrella around in the crowded classroom at about eye-level" and refused teacher requests to stop. According to the discipline referral form, the teacher sent the Student to the ISS room for the remainder of the period. While in the ISS room, the Student continued to engage in unsafe behaviors, be disruptive, and make loud, inappropriate noises. When the teacher went to the ISS room to check on the Student's work, the Student swung the umbrella and almost hit her in the face. Based on his behavior that day and the previous day, the Student was given a one-day ISS to be served in the main office on November 20, 2017.
21. Also on November 15, 2017, the special education science teacher emailed the Student's mother and stated that the Student had engaged in unsafe behaviors that day and the previous day. The special education teacher asked the Student's mother if there was "anything we can do here at school to help [the Student] choose safe behaviors or safely stop unsafe behaviors and stay in class?"
22. On November 16, 2017, the case manager emailed the Student's mother and the Student's science teachers and stated that they could all meet the next day at 11:00 a.m. to discuss the Student's behaviors in science class. The Student's mother responded that the Student was taking an unexcused absence that day and that she did not know why the Student was engaging in the disruptive behaviors. She also stated that she and the Parent would be available to meet the next day.

23. On November 17, 2017, the Parent and the Student’s mother met with the Student’s case manager and the special education science teacher and discussed the Student’s behavior in science class.
24. On November 20, 2017, the Student served his one-day ISS for his November 14 and 15, 2017 behaviors.
25. On November 21, 2017, according to the District’s documentation, the Student worked in the ISS room from 7:49 a.m. to 1:45 p.m.⁵
26. On November 30, 2017, according to the District’s documentation, the Student was in the ISS room from 7:48 to 8:13 a.m. and from 9:39 to 9:42 a.m. The ISS log stated that the Student “went to nurse, back @ 9:49, 10:57 –to lunch, back @ 11:27, left @ 11:58.”
27. In December 2017, the District provided progress reporting on the Student’s measurable annual goal for social/emotional that stated that the Student “appears to be getting assignments turned in on time; he passed all classes last semester.” Additionally, the progress reporting on the social/behavior goal stated that the Student was “doing better in this area; he doesn’t roam the class and distract others as he had in the past, and has had to fill out a couple of Stop and Think forms this year. Nothing major at this time.”
28. On December 4, 2017, the District’s second trimester started and the Student was enrolled in the following classes:

	Period	Class
1	7:15 – 7:45 a.m.	Advisory 7
2	7:49 – 8:39 a.m.	STEAM
3	8:43 – 9:33 a.m.	Health and Fitness
4	9:37 – 10:27 a.m.	Humanities
5	10:27 – 11:57 a.m.	Humanities (time period includes Lunch)
6	12:01 – 12:51 p.m.	Math
7	12:55 – 1:45 p.m.	Science

29. On December 7, 2017, according to the District’s documentation, the Student refused to go to class and went to the ISS room from 7:48 to 8:39 a.m. Later in the day, the Student was in the ISS room from 1:07 to 1:45 p.m. According to the ISS log, the Student was “disruptive, not listening, [and] saying inappropriate things,” and the Student was sent to his case manager who sent him to the ISS room.⁶

⁵ The District’s documentation provided no other information about the Student’s time in the ISS room on November 21 and 30, 2017. According to the principal, when the Student was having a bad day, he would chose to work in the ISS room.

⁶ It is unclear, based on the District’s documentation, whether the Student refused to go to class in the afternoon or whether being sent to the ISS room was a disciplinary action.

30. On December 8, 2017, according to the District's documentation, the Student refused to go to class and instead chose to go to the ISS room. The Student also received a lunch detention for making inappropriate comments about other students while in the ISS room.
31. On December 11, 2017, the Student refused to go to class and instead went to the ISS room. According to the documentation provided by the District, the Student continued to be disruptive in the ISS room and the principal suggested that the Student go with him to the front office to call the Parent. The principal picked up the Student's backpack in an effort to get the Student to follow him to the office. The Student remained in the ISS room where he continued to be disruptive, refused to follow directions, and took a piece of a school computer. The principal called the Parent and the Parent stated that he would come pick the Student up from school. The principal told the Parent that he did not feel that was appropriate, but that the Parent could pick the Student up if he wished.
32. According to the Parent, December 11, 2017 was the first time the Parent had spoken directly with the principal. According to the Parent's complaint, the principal did not know the Student had an IEP and only wanted to bully the Student.⁷ Additionally, according to the Parent, the principal told the Student that he had it on video that the Student stole another student's lunch.⁸ The Parent stated that the principal was again trying to intimidate the Student.
33. Also on December 11, 2017, after speaking with the Parent, the principal emailed the Student's case manager and the general education science teacher and stated that they needed to set up a meeting with the Parent. The principal also stated that the Student felt like he was being targeted. The case manager responded and stated that this would be the second or third time that they would be meeting about the Student's behavior in science class and that "there has been some success for [the Student] each time we've met to talk about it."
34. Later on December 11, 2017, the Student's case manager emailed the Parent and the Student's mother to schedule a meeting about the Student's behavior in science class. The case manager stated that the principal "wants to meet to see how we can help [the Student] be successful" and also stated "we've met before about this class, so I feel we can work things out, like before." The case manager asked what a good day and time would be to meet.
35. Later on December 11, 2017, in response to the case manager's email, the Parent emailed that another student was calling the Student names and that the Student told the school

⁷ In a phone interview with the principal, the principal stated that it was not his intention to intimidate the Student. The principal stated that in retrospect, he could have handled the situation differently, but that his intention was to get the Student to follow him to the front office so that the principal and the Student could call the Parent together.

⁸ Neither the Parent nor the District provided any documentation about this alleged incident, and the principal stated in his phone interview with OSPI that he has no idea what this allegation was in reference to.

counselor.⁹ The Parent stated that the counselor “did not do anything about the bullying” and that the Student is “getting tired of letting the teacher know when something happens, but nobody does anything about it.” The Parent also wrote, in a second email, that the principal had called him and that:

[The principal] did not know any thing [sic] about [the Student’s] [diagnosis]. {Lack of communication at School} Second: He wanted to force [the Student] to go to Science class, by taking Backpack [sic] and not letting him stay in ISS. Overall [the principal], escalated the issue with [the Student] and [was] not following the rules in his IEP process.¹⁰ You and [the principal] need to setup a meeting.

The Parent did not provide information about when he was available to meet.

36. According to the District’s response to this complaint, there is no documentation that the Student reported to the school counselor that he was being bullied by another student.
37. On December 13, 2017, according to the District’s documentation, the Student took another student’s iPad. The Student ignored the teacher’s directions to give the iPad back and to discuss choices with the teacher. The Student then asked if he could go to the ISS room and the teacher agreed. However, the Student then refused to go to the ISS room, and the teacher called the campus security officer. The Student left the classroom before the campus security officer arrived. According to the District’s documentation, the Parent picked the Student up from school early.
38. On December 14, 2017, according to the District’s documentation, the Student refused to go to class and the Parent picked the Student up from school early.
39. The District was on break December 18, 2017 – January 1, 2018.
40. On January 2, 2018, according to the District’s documentation, the Student received a referral for insubordination because he left his health and fitness class without permission. The PE teacher, who made the referral, stated that he attempted to speak to the Student about his choices.
41. On January 5, 2018, the Student’s case manager emailed the Student’s other teachers, school staff, the Parent, and the Student’s mother and stated that, according to the Parent, the Student would be withdrawn from the middle school around January 23, 2018.¹¹ The case manager also sent out a plan for interacting with the Student, which included giving instructions once, asking the Student if he had clarifying questions, and then walking away.

⁹ In the Parent’s email, he gave the example of the Student being called “cockroach” by another student.

¹⁰ The Parent does not specify what aspect of the Student’s IEP was not being followed by the principal.

¹¹ According to the Parent, in a phone conversation with OSPI, he decided to withdraw the Student because the Student felt harassed at school when he was disciplined and because the District did nothing to help the Student reduce misbehavior and prevent behavior issues from continuing to happen.

The case manager stated that if there were any issues, the Student should be sent to the case manager or to the ISS room.

42. Later on January 5, 2018, according to documentation provided by the District, the Student was sent to the ISS room during science class for disruptive conduct, including running around the classroom, yelling, and making loud “yodeling” noises after being asked to stop. While in the ISS room, the Student refused to follow instructions, continued to be disruptive, kicked over chairs, and left the room several times without permission. The Student was redirected multiple times and continued to be disruptive. After the ISS supervisor left, the Student went to the front office and “proceeded to be disruptive making inappropriate comments stating he did not have to listen to anyone and refused to sit where he was told.”¹² The Student refused to follow directions from the assistant principal and other staff, and refused to go to his case manager’s office. The Student was then given a short-term suspension for three days, to be served January 8-10, 2018. The assistant principal informed the Student’s case manager that the Student was being suspended, and called and spoke with the Parent about the Student’s behavior and the suspension.
43. According to the Parent’s complaint, on January 5, 2018, the assistant principal and campus security officer failed to follow the Student’s IEP when they argued with and escalated the Student. The Parent also stated in his complaint that, as of January 5, 2018, the Student’s science teachers did not know that the Student had an IEP.
44. On January 8-10, 2018, the Student served his three-day suspension. The Student did not return to school on January 11, 2018 and continued to be absent until January 22, 2018.¹³ The District was on break on Monday, January 15, 2018.
45. On January 11, 2018, the case manager emailed the Parent and the Student’s mother and asked what they thought about pulling the Student from his science class because the Student would be withdrawn around January 23, 2018. The case manager also stated that the Student did not need a science credit until high school and asked to be kept in the loop on how the Student was doing.
46. On January 16, 2018, the principal emailed the Student’s case manager and asked him to reach out to the Student’s other teachers to provide the Student with work that he could do at home. The principal stated that the Student has an iPad so he can access anything online and that he specifically need work for math and humanities.

¹² According to the District’s documentation, the ISS supervisor needed to leave to act as the crossing guard and called the Student’s case manager to see what to do. The case manager stated that the Student should go back to class. When it was time to leave, the Student refused to go back to class or to his case manager’s office. Instead, the Student went to the front office.

¹³ According to the District’s documentation, the Student was absent for a “family emergency.” According to the Parent, the family had already decided to withdraw the Student from the District so they stopped sending him to school.

47. On January 17, 2018, the case manager emailed the Student's other teachers to get assignments for the Student to complete at home and stated that "more than likely, he will not be returning to us, so it's important for him to continue to work on his areas of service, and get assignments completed."
48. Later on January 17, 2018, the Parent emailed the assistant principal and requested a meeting to discuss the Student's suspension. The Parent stated that he wanted the assistant principal, the campus security officer, the ISS supervisor, the principal, the case manager, and the general education science teacher to attend the meeting.
49. On January 18, 2018, the general education science teacher emailed back and stated that she would attend the meeting, but that the special education science teacher should also attend because the special education science teacher interacted with the Student prior to him being sent to the ISS room on January 5, 2018.
50. Also on January 18, 2018, the case manager emailed the Parent and the Student's mother and asked how the Student was doing. He asked what dates they would be available for a meeting. The case manager also stated that the principal wanted to conduct a functional behavioral assessment (FBA) of the Student and develop a behavioral intervention plan (BIP) at the same time, so the school psychologist would be attending the meeting as well. The Student's mother emailed back and stated that the Student was doing well and that the Student was starting online school on January 23, 2018. She stated that the Student's iPad was not working, so the Student was unable to complete his assignments. The Student's mother also asked what an FBA and BIP were. The case manager emailed back that an FBA was a behavior assessment of the Student, which would allow the District to create interventions for the Student.
51. Later on January 18, 2018, the Parent emailed the case manager, and copied the assistant principal, and stated "not sure what this meeting is about. Only one I was asking for is a meeting to discuss and remove his 3-day Suspension that was done by [the assistant principal] on 1/05/2018?" The Parent stated that the assistant principal needed to set up the meeting and that he had already sent an email with the staff he wanted to attend. In response, the assistant principal sent the Parent an excerpt from the District's policy on the "grievance and appeal process for student discipline" and stated that the Parent would need to schedule a meeting with the principal, per the policy. The case manager also responded and stated that his email earlier that day was to schedule a meeting about the suspension.
52. On January 18, 2018, the Parent also emailed the District's executive director of secondary schools (executive director), copied the principal and assistant principal, and asked him to set up a meeting for the "removal of the 3-day suspension." The Parent went on to state that it "does not seem your [middle school] principal, vice principal know what they are doing. This has been the problem happening all year!" The Parent asked the executive director to attend the meeting.

53. In response to the Parent's email to the executive director, the principal responded that he was happy to meet with the Parent. The principal stated that he had asked the case manager to set up the meeting because when the Parent requested a meeting, the principal had not understood what the Parent wanted to meet about. The principal stated that he was "hoping to be able to get everyone together to create a plan for [the Student's] success should he return." And, the principal stated that he scheduled the meeting for the next day, January 19, 2018, to discuss the Student's suspension. The Parent responded that the principal needed to read his email and that he wanted to meet about the Student's three-day suspension. The Parent stated that he wanted the assistant principal, campus security officer, ISS supervisor, principal, case manager, general education science teacher, and the executive director to attend the meeting.
54. On January 19, 2018, the principal emailed the Parent and stated that he had statements from the staff who would be unable to attend the meeting. The Parent responded, thanked the principal, and stated that he would be at the meeting later.
55. On January 19, 2018, the Parent met with the principal, assistant principal, the Student's general and special education science teachers, the case manager, and the ISS supervisor to discuss the Student's behavior incident on January 5, 2018, which led to his three-day suspension from school. The Student did not attend the meeting, but the Parent read notes regarding the Student's version of events. During the meeting, the science teachers and ISS supervisor went over what happened on January 5. The campus security officer could not attend the meeting, but provided a written account of what happened when she took the Student to the office. The Parent disputed the science teacher's version and stated that the Student politely asked to go to ISS and did not make a loud noise. The Parent disputed some parts of the ISS supervisor and campus security officer's description of what occurred. The Parent stated that the Student refused to sit at the table in the front office because he was being singled out, but agreed that the Student did refuse to follow directions.
56. Also at the January 19, 2018 meeting, the Parent brought up concerns that the Student's IEP was not being followed. In response, the District stated that the Student's IEP did not include a BIP and that the case manager had emailed the Parent and the Student's mother on January 18 to request that the District begin the process of conducting an FBA and developing a BIP. The District also informed the Parent that having an IEP does not exempt a student from being disciplined for misbehavior. Additionally, the Parent stated that he wanted the suspension removed from the Student's record. The principal agreed that the District would reduce the suspension, but not remove it from the Student's record because his behavior warranted a suspension. The Parent stated that he would appeal the decision, and the principal told him that the District may not hear the appeal because the request was past the timeframe set out by District policy.
57. On January 22, 2018, the Parent withdrew the Student from the District and enrolled him in an online program operated by another Washington school district.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged that the District failed to properly implement the Student’s individualized education program (IEP) and alleged that the Student’s teachers and school administrators did not know the Student had an IEP. At the beginning of each school year, a district must have in effect an IEP for each student within its jurisdiction who is eligible to receive special education services. The district must ensure that it provides all the services in the student’s IEP, consistent with the student’s needs, as described in the IEP. The district must also 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.

At the beginning of the 2017-2018 school year, the Student’s June 2017 IEP included annual goals in the areas of writing, social/behavior, and social/emotional and provided for the following specially designed instruction in a special education setting:

- Social/emotional: 15 minutes, two times per week
- Writing: 50 minutes, five times per week
- Social/emotional: 30 minutes, one time per week

The IEP also provided the Student with accommodations. The Student was scheduled to receive his specially designed instruction in writing in his special education humanities class, which was co-taught by a special education and a general education teacher. The Student was also scheduled to receive his specially designed instruction in social/emotional during his special education advisory class. The District stated that the general education teachers that worked with the Student received information about his IEP goals and accommodations. In October and December 2017, the District provided progress reporting on the Student’s measurable annual goals that indicated that he made progress towards his goals.

The information provided by the parties and the documentation in this complaint substantiates that the Student received specially designed instruction as outlined in his IEP and that all teachers working with the Student received information on his goals and accommodations. Additionally, the District did not fail to implement the Student’s June 2017 IEP when it disciplined the Student for misbehavior. While the Student’s behavior patterns indicate that the District should have considered amending the Student’s IEP and developing a behavioral intervention plan (BIP) earlier (discussed below), there is no indication that the District failed to implement the Student’s IEP as written.

Issue 2: Special Education Disciplinary Procedures – The Parent alleged that the District improperly disciplined the Student. A school district can remove a student eligible for special education who violates a code of student conduct from his 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 change in placement occurs when a student has been removed from his 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. 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 must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. Additionally, under Washington State general education regulations, a suspension is defined as a denial of attendance (other than for the balance of the immediate class period for "discipline" purposes) for any single subject or class, or for any full schedule of subjects or classes for a stated period of time.

The Student's discipline records do not clearly indicate the number of times the Student was removed from class, or whether the removals were disciplinary in nature. The documentation in this complaint shows that the Student received after school or lunch detentions on September 18 and 25, October 18 and 19, and December 8, 2017. Lunch detentions and after school detentions are not a removal, as these detentions do not affect a student's ability to access special education services or the general education curriculum during the regular school day. Additionally, the Student received an in-school suspension (ISS) on November 20, 2017 and a three-day suspension on January 8-10, 2018. This is a total of four school days. According to the District's documentation, the Student was also in the ISS room on September 20 and 21, October 3 and 5, November 14, 15, 21, and 30, December 7, 8, 11, 13 and 14, 2017, and on January 5, 2018. On October 5, November 15, December 7, December 13, 2017, and January 5, 2018, it is likely that the Student was sent to the ISS room for disciplinary reasons. This is an additional five removals. The time the Student spent in the ISS room on September 20 and 21 was likely not for disciplinary reasons (i.e., waiting for a schedule change). Additionally, on October 3 and November 30, 2017, the Student was in the ISS room for short periods of time, which does not appear to meet the definition of a suspension. However, in other instances, it was unclear whether the Student chose to go to the ISS room or was sent to the ISS room as a disciplinary action (i.e., on November 14, November 21, December 8, December 11, and December 14, 2017). The District stated that the Student engaged in a pattern of behavior where he would refuse to go to class, choose to go to the ISS room, and then call the Parent to pick him up when he got in trouble for continued disruptive behavior. The Student was picked up early by the Parent on October 5, December 11, and December 14, 2017.

Based on the documentation provided by the District, the Student was removed from the classroom for disciplinary reasons at least nine times. However, it is unclear how many of the additional times the Student was in the ISS room were for disciplinary reasons. Therefore, it is not clear whether or not the District was required to hold a manifestation determination per special education discipline regulations. However, it is noted that, starting in late September, the Student exhibited a pattern of disruptive behavior that District staff were aware of, and the District should have taken steps to schedule an IEP meeting to determine if the Student was in need of more behavioral supports, as the District is required to include behavioral supports in an IEP when necessary for a student to receive a free appropriate public education (FAPE). Given that the Student no longer attends a school in the District, no student specific corrective actions

are required. The District will develop written guidance to address the concerns raised in this complaint.

Issue 3: Bullying – The Parent also alleged that school administrators bullied and intimidated the Student, which resulted in the Student being denied a FAPE. Harassment and bullying that occur based on a student’s status of having a disability or receiving special education services and that adversely impact the student’s education or prevent the student from receiving meaningful education benefit may result in that student being denied a FAPE. Additionally, if a teacher or administrator is deliberately indifferent to the teasing of a student with a disability and the abuse is so severe that the student can derive no benefit from the services that he is being offered, the student has been denied a FAPE. If a student is being bullied, as part of an appropriate response, the District should consider holding an IEP meeting to determine whether the effects of the bullying require a change to the student’s IEP.

On December 11, 2017, the Student refused to go to class, was being disruptive in the ISS room, and the principal took the Student’s backpack. In his complaint, the Parent stated that the principal took the Student’s backpack to bully and intimidate him. The Parent also stated that there was an incident in which the principal told the Student that he had video of the Student stealing another student’s lunch, and the Student felt intimidated by this interaction. Based on information provided by the principal, the principal did not intend to intimidate the Student by taking his backpack, but had taken the Student’s backpack in an effort to get the Student to follow him to the front office. The principal also stated that there was no record of an incident where the Student stole another student’s lunch. Additionally, as the Parent stated that the principal was unaware that the Student had an IEP, it is not logical to also suggest that the principal was engaging in behavior based on the Student’s status of having a disability. While the Student may have felt intimidated by the principal’s actions on December 11, 2017, the information provided in this complaint does not show that these incidents were based on the Student’s status as a student eligible for special education services or that the principal’s behavior on December 11 amounted to harassment or bullying.

Also on December 11, 2017, in an email, the Parent stated that the Student had been called names by another student and had reported this to the school counselor, but that the school counselor did not do anything about the bullying. The Parent also indicated the Student had told his teachers about the bullying, but they also did not take steps to address it. Based on the District’s response, there was no documentation that the Student reported that he was being bullied to the school counselor or other staff, thus the District did not investigate or respond to the allegation at that time. The District cannot reasonably be expected to investigate allegations of bullying of which it is not aware. But, once the Parent informed the District of the bullying on December 11, it should have begun taking steps to investigate the Student’s allegations. However, the District did not fail to provide the Student a FAPE as there is no indication that these incidents were so severe that they prevented the student from receiving meaningful educational benefits.

CORRECTIVE ACTION

By or before **May 14, 2018** and **June 11, 2018**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By **May 11, 2018**, the District will develop written guidance regarding 1) the requirement that an IEP address a student's behavior and include a BIP, when needed to provide FAPE; 2) procedures for accurately recording and tracking student disciplinary actions and disciplinary removals; and, 3) the requirement to hold a manifestation determination when a student's placement has been changed through discipline. The guidance will include specific examples. The guidance will be provided to the school principal and assistant principal(s), certificated special education staff, including educational staff associates (ESAs), special education paraeducators, staff who work in the ISS room, and school security or resource officers assigned to work at the Student's former middle school.

By **May 14, 2018**, the District will provide OSPI with a copy of the draft guidance. OSPI will approve the written guidance or provide comments by May 25, 2018 and provide additional dates for review if needed.

By **June 8, 2018**, the District will ensure that the principal, assistant principal(s), and other required staff at the middle school receive and review the written guidance. By **June 11, 2018**, the District will provide OSPI with documentation showing that it provided all required individuals with the written guidance. This documentation will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross-reference the list with the actual recipients.

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

Dated this ____ day of April, 2018

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

THIS WRITTEN DECISION CONCLUDES OSPI’S INVESTIGATION OF THIS COMPLAINT

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