

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-91

PROCEDURAL HISTORY

On October 5, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the [REDACTED] 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 October 8, 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 October 29 and 30, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on October 30, 2018. OSPI invited the Parent to reply with any information he had that was inconsistent with the District's information. The Parent did not provide a response.

On November 27, 2018, OSPI requested that the District provide additional information, and the District provided the requested information on the same day. OSPI forwarded the information to the Parent on November 28, 2018.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation time period, which began on October 6, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUES

1. Did the District implement the Student's individualized education program (IEP), including the one-to-one-paraeducator and the behavioral intervention plan (BIP)?
2. Did the District follow procedures in addressing the Student's seizures and safety issues?
3. Did the District follow procedures for placing the Student in the least restrictive environment?

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. 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.

Transfer Students Who Transfer from an In-State School District: If a student eligible for special education transfers from one Washington State school district to Washington State school district and has an IEP that was in effect for the current school year from the previous district, the new school district, in consultation with the parents, must provide comparable services to those described in the student's IEP, until the new school district either: adopts the student's IEP from the previous school district; or develops, adopts, and implements a new IEP that meets the applicable requirements in WACs 392-172A-03090 through 392-172A-03110. 34 CFR §300.323(e); WAC 392-172A-03105(4). "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. Individuals with Disabilities Education Act (IDEA), 71 Fed. Reg. 46681 (August 14, 2006) (comments to the final regulations). Districts must take steps to adopt the IEP or develop and implement a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question A-4).

IEP Must State Amount of Services: An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student. An IEP must also include a statement of the program modifications or supports for school personnel that will be provided to enable the student to participate with other children with disabilities and nondisabled children in the above activities. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d). "The amount of services to be provided must be stated in the IEP, so that the level of [the district's] commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP." Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (34 CFR Part 300, Question 35).

Behavioral Intervention Plan (BIP): A behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive 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.

Related Services: Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education. It includes school health services and school nurse services. 34 CFR §300.34(a); WAC 392-172A-01155(1).

Entitlement to Receive Related Services: Each eligible student is entitled not only to receive special education, but also to such related services as are required to assist the child to benefit from that special education. Related services must be listed in the student's IEP. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d).

School Health and Nurse Services: School health services and school nurse services means health services that are designed to enable a student eligible for special education to receive FAPE as described in the student's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person. 34 CFR §300.34; WAC 392-172A-01155(3)(m).

Services Based on Peer-Reviewed Research: An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, that will be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel. Services must be designed to enable the student to make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities. 34 CFR §300.320; WAC 392-172A-03090(1)(d).

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

A student's IEP team has the responsibility to determine the student's LRE, and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9th Cir. 1994).

Participation with Nondisabled Peers: The student's IEP will address how the student will be educated and participate with nondisabled students in the general education classroom and in extracurricular and nonacademic activities. 34 CFR §300.320; WAC 392-172A-03090. If a student is placed outside of the general education environment, the IEP team should consider the student's participation in opportunities that will allow his or her interaction with nondisabled

peers, as appropriate to the needs of the student. *Letter to LaHood*, 23 IDELR 558 (OSEP, 1995). The district must take steps, including the provision of supplementary aids and services, to afford a student eligible for special education the equal opportunity to participate in nonacademic and extracurricular services and activities. 34 CFR §300.107; WAC 392-172A-02025.

FINDINGS OF FACT

Background Facts

1. During June 2018, the Student's Parent and his mother provided notice to the District of the Student's potential enrollment for the 2018-2019 school year. The Student was eligible for special education services under the category of intellectual disability and had previously attended school in another school district in Washington.
2. In early July 2018, the District began its search for a full-time paraeducator to support the Student's existing individualized education program (IEP), which provided for a 1:1 behavior paraeducator throughout the school day in all settings and a behavioral intervention plan (BIP), as well as access to a nurse in the office throughout the school day (See Appendix A – BIP).
3. On July 5, 2018 the special education teacher, the director of nursing, and the District's assistant special education director (assistant director) began discussing the availability of nursing services for the Student in accordance with the needs listed in the Student's IEP developed by his previous school (previous IEP). The previous IEP provided that the Student required a "nurse to be in the office and available to dispense medication if needed."¹
4. On July 23, 2018, the Parent emailed the special education teacher to confirm the Student's enrollment in the District for fall 2018. The special education teacher confirmed the appropriate services would be available within the existing life skills program to meet the needs listed in the Student's previous IEP and that a team review meeting would be scheduled when staff returned from summer break the following month to discuss the IEP, BIP, and safety plan.

¹ Email conversations between the Parent and the special education teacher in the summer before the 2018-2019 school year clarified that the Student would require access to a nurse or other personnel who would need to be trained to administer the Student's emergency medication within four minutes in the event the Student had a grand mal seizure. In emails to the special education teacher, the Parent noted that previously, a behaviorist had been designated and trained to administer the emergency medication to the Student instead of a nurse. A seizure management care plan (seizure care plan), dated August 18, 2018, was developed for the Student and later provided to the District. It contained more detailed information on the Student's seizure condition and steps to take in the event the Student had a seizure. The seizure care plan clarified that in the school setting, "[a registered nurse] or other personnel, per school policy, may administer the Emergency Medicine. If the student is on the school bus or if an appropriate person is not available in the school, then 911 should be called and a paramedic requested to give Emergency Medicine per order." The seizure care plan is attached to the Student's IEP.

5. On August 16, 2018, the District held a transfer review meeting. The Parent, Student, school nurse, school psychologist, school counselor, case manager, speech and language pathologist (SLP), and assistant principal attended.
6. The notes from the transfer review meeting confirmed that the Student met the eligibility criteria for an intellectual disability and qualified for specially designed instruction in all academic areas as well as related services in occupational therapy, physical therapy, and speech and language therapy. It was further agreed that the Student would continue to receive a 1:1 paraeducator. It was noted on the transfer meeting notes provided by the District that the Student was prone to four different types of seizures and requires medication if a seizure lasts more than four minutes. The Student's classroom teacher and case manager volunteered to administer the Student's emergency medication, if needed.
7. On August 21, 2018, the case manager emailed the assistant principal, school nurse, special education teacher, occupational therapist (OT), school counselor, school psychologist, SLP, and classroom teacher to provide information on where to locate the Student's IEP, evaluation, and BIP, and confirmed what was discussed at the transfer meeting about the Student's needs. In her email, the case manager noted the following: (a) Student "[i]s prone four different types of seizures. *If over 4 minutes, medication will need to be administered by the nurse. If the nurse is unavailable, [she] and/or [the classroom teacher] will be trained to administer his medication;*" (b) Student "[w]ill articulate that he has a 'shake'....this can lead to a seizure. Move him to a quiet environment/safe place. 90% of the time he will come down to baseline"; (c) Student "[w]ears sunglasses at all times. Has a helmet and self-regulates when to wear his helmet;" (d) Student receives "1-1 support for Behavior management;" (e) Student "[r]esponds well to "First/Then" "2 more and then...." and (f) "[Parent] is very involved and available to support if needed."
8. On August 23, 2018, the Parent trained the classroom teacher and the case manager on the administration of the Student's seizure medication, as indicated in the BIP.²
9. On September 6, 2018, the Student's behavior began to escalate in the classroom immediately after lunch (around 11:45 a.m.) and continued during a field trip that afternoon. The Student's behaviors made it unsafe for him to take the public bus back to school with the support of his 1:1 paraeducator. His Parent was called to pick him up while in the community. (See Appendix B – September 6, 2018 Incident Report).
10. According to the September 6, 2018 incident report completed by the District, the following strategies were used in an attempt to deescalate the Student's behavior: (1) use of a calm voice; (2) trading out of staff; (3) called Parent to talk to Student; (4) gave choices and wait

² It is unclear from the records provided if anyone other than the case manager and classroom teacher were trained by the Parent to administer the Student's medication in the event that the nurse be unavailable within a few minutes of the Student having a seizure.

time; and, (5) gave student an opportunity to express viewpoint and feel heard. Each of the above strategies are included in the Student's BIP.

11. On the morning of September 7, 2018, the case manager and Parent met to discuss the Student's IEP in light of the events on September 6, 2018.
12. During lunch on September 7, 2018, the Student began having behaviors involving aggression toward the paraeducator, which could not be deescalated. The Student's Parent was called to pick up the Student.
13. On September 10, 2018, the Student was scheduled to go bowling with his class from 1:00 p.m. to 1:45 p.m. That morning, due to safety concerns, the case manager emailed the Parent to request that the Parent provide transportation for the Student to the bowling alley in lieu of having the Student take the public bus with his 1:1 paraeducator. In the event that the Parent was unable to provide transportation, the case manager suggested that she or a paraeducator stay at the school with the Student and provide an alternative individual activity while the other students went bowling. The Parent did not want the Student segregated from his class. The Parent and case manager discussed the issue by phone and according to emails, it appears both the District and Parent were in verbal agreement that if the Student was "in a good space" he would attend the bowling trip that day, and that "if he [was] agitated at all, he should not leave campus."
14. On September 11, 2018, a meeting was held to discuss the Student's behaviors and his IEP/BIP in light of recent behavioral incidents and concerns.
15. Following the meeting on September 11, 2018, the Parent emailed the case manager and stated that it was imperative that the Student's 1:1 paraeducator be with the Student at all times. The case manager responded to the e-mail stating it was her understanding the Student's 1:1 paraeducator had been next to him at all times.
16. Also on September 11, 2018, the Student refused to eat his lunch and insisted that his paraeducator heat up and serve it to him until he was over being angry. The incident resulted in an escalation of the Student's aggressive behaviors, including the Student throwing objects. The Student had a frontal lobe seizure and his Parent was called to pick him up from School.
17. Later on September 11, 2018, the Parent emailed the classroom teacher and the special education teacher to express his concerns about what happened at lunch. The Parent alleged that he believed the school nurse triggered the frontal lobe seizure by insisting on the Student adhere to a non-IEP goal of "making [the Student] 100% self-sufficient in preparing his lunch." The Parent stated that it was his understanding that the role of the 1:1 paraeducator was to "help [the Student] navigate the school day and [the Student's] personal challenges." The Parent further stated that the Student reported being "pushed" in ways which he felt were not productive or necessary. The Parent offered to come in to train staff and/or to provide assistance until a "full time dedicated 1:1 para" became available for the Student.

18. On September 14, 2018, the assistant principal spoke with the Parent and requested that he (the Parent) review the expectations of school safety with the Student at home. The Parent responded that he had complied with the request.
19. On September 16, 2018, the autism specialist consulted with the assistant principal, special education teacher, and case manager by email on the issue of the Student throwing objects in the classroom and on concerns over safety during transportation. The autism specialist recommended providing the Student an alternative safe item that will not injure others if thrown and recommended not tying behavior incentives to community outings. The autism specialist further recommended: (1) making it clear in the Student's BIP that the Student should not leave campus when in an agitated state, and (2) building a protocol, probably every hour or even less, for when that occurs.
20. On September 17, 2018, the case manager responded to the assistant principal's email and confirmed that squishy balls and a fidget spinner, as well as other tactile items, were available on the Student's desk for him to access and that she would reinforce those items.
21. On September 19, 2018, the Student's IEP team met. Notes about the behavior incident on September 13, 2018 were added to the BIP, but it does not appear that any additional changes were made to the BIP. The IEP was changed to state that the Student required "health plan training" for staff in the school setting every time the health plan was updated and "medication training for identified staff" in "all school settings as needed when new identified staff is working with the Student." This was in lieu of requiring a nurse to be in the office and available to administer the Student's emergency medication. The documentation provided in the District's response states the Student's seizure care plan was attached to the IEP. The IEP's medical notes stated that the nurse would be the first line of care in the event the Student had a seizure but that both the classroom teacher and the case manager had also been trained to administer the medication.
22. On September 24, 2018, the autism specialist reviewed the Student's IEP and evaluation and provided feedback to the case manager and the special education teacher. A limited amount of background information about the Student was provided to the autism specialist prior to her review of the documents, which the autism specialist stated limited the scope of her review.
23. On September 25, 2018, the Student began having behaviors while on a hike with his 1:1 paraeducator during adaptive physical education. The Student became aggressive, started using inappropriate language, and began requesting to call his Parent. Upon returning to school, the Student began tearing down posters off the wall and engaging in other destructive behaviors. (See Appendix C – September 25, 2018 Incident Report). According to the Student's BIP and seizure care plan, each of the above behaviors, when demonstrated, are risk factors for a potential seizure (See Appendix A).
24. On September 25, 2018, there was a delay in the Student being able to call his Parent upon request to do so because the 1:1 paraeducator with the Student did not have a phone and another phone was not readily accessible.

25. In the District's response, the District stated that "there are cell phones all over the school if [the Student] needs to call [P]arents. If [the Student] is in a situation where a phone is not accessible he will have access to the phone that was provided to [the assistant special education director] by the [D]istrict."
26. In an email to the school, dated September 25, 2018, the Parent told the school that the Student told him he (the Student) had requested to use the phone to call the Parent after getting upset but that he was denied. The Parent alleged that the Student experienced a frontal lobe seizure as a result of not being able to contact him. He also alleged the Student suffered a cut to his hand that was not properly cleaned.
27. The Parent further stated in his email, dated September 25, 2018, that when he picked up the Student from school on September 25, 2018, he further found the Student riding the elevator by himself. The Parent requested an IEP meeting to discuss his concerns.
28. In the Parent's complaint, the Parent alleged that the above incident was one of three times the Student was left unattended in the elevator. In its response, the District acknowledged one occasion when the Student was permitted to ride in the elevator once unattended because the paraeducator was concerned for his (the paraeducator's) safety. In the District's response, the District stated that in the event a staff member feels unsafe with the Student, a teacher or administrator should be contacted. Following the incident with the elevator, all staff were told that the Student was not to ride in the elevator unattended.
29. A meeting was scheduled for September 26, 2018, to discuss the Parent's concerns about underlying issues between the Student and the classroom teacher. The Parent then requested that the meeting be rescheduled due to conflicts in his schedule.
30. On September 27, 2018, the assistant principal emailed the Parent to let him know that the Student was no longer permitted to attend community outings until the Student could consistently demonstrate safe behavior at school. "Safe behavior" was not further defined. The assistant principal additionally told the Parent in her email that she was working on setting up a meeting with the case manager and assistant special education director to discuss her concerns and to address next steps. The assistant principal recommended an emergency IEP meeting also be scheduled to document the change regarding community outings.
31. On October 1, 2018, the Parent emailed the District to request that he be permitted to accompany the Student to school as the Student's 1:1 until the dispute regarding community outings was resolved.
32. On October 2, 2018, the Parent emailed the school, highlighting his concerns about the Student's safety at school. The Parent requested that the Student be provided a designated 1:1 paraeducator during the day in lieu of the Student having multiple people fill the role of a single 1:1 paraeducator position.
33. On October 4 and 5, 2018, the Parent emailed the District regarding concerns that the school failed to properly document information it had received regarding the Student's needs for a

safe and appropriate environment, including important medical documentation relating to the Student's seizures. The Parent stated he had discussed his concerns with the Student's doctors who had offered to rewrite the Student's seizure action plan to be more clear regarding the Student's needs.

34. On October 8, 2018, the Parent met with the deputy superintendent of teaching and learning (deputy superintendent) and assistant special education director to discuss what supports were necessary for the Student to be able to safely attend school. In an email to the Parent, the deputy superintendent stated that it was agreed at the October 8 meeting that the District agreed to contact its behavior intervention specialist and to arrange for the specialist to begin working with the Student at school by October 10, 2018. The deputy superintendent also stated that the Parent could observe the Student in class upon the Student's return. The Parent was provided District policies and procedures regarding his future visit.
35. On October 9, 2018, the Parent emailed the deputy superintendent and stated he felt the previous training of District staff by the behaviorist had been inadequate and that he felt the Student would still be unsafe until the Student received support from a dedicated 1:1 paraeducator. The Parent alleged that the Student was not receiving a FAPE. The deputy superintendent asked the Parent to give the plan developed on October 8, 2018 time to be implemented. The Parent responded that he felt the Student was unable to return to school due to safety concerns unless he could accompany the Student as his 1:1.
36. On October 12, 2018, the Parent met with the District. Following the meeting, the Parent emailed the assistant principal and requested that there be a notebook/log kept to help better identify patterns and triggers, that the school provide a quiet space for the Student to deescalate, and that he be permitted to observe the next field trip. The assistant principal responded that she was in agreement with all of the above and that she would also like to schedule a meeting to discuss the behavior intervention specialist's observations. The case manager further responded that the school should be able to make the Student's classroom a quieter, more dimly lit area, and if that was not sufficient, she would work with the assistant principal to locate an alternative area.
37. On October 15, 2018, the Parent picked up the Student at school at 12:45 p.m. after the Student had a frontal lobe seizure. The Parent stated in an email that he knew the Student was having a frontal lobe seizure after receiving a text from the behavior intervention specialist that the Student "was struggling after communicating with her that he felt like he was being ignored." The Parent further alleged that when he went to pick up the Student, he found the Student in a brightly lit room even though they had agreed the room would be dimly lit.
38. On October 16, 2018, the Parent, Student, and one of the paraeducators met to specifically to help address some of the underlying issues between the Student and the paraeducator, which were believed to potentially be triggering behaviors for the Student.
39. On October 22, 2018, the case manager emailed the Parent that the District was offering to conduct a functional behavioral assessment (FBA) for the Student. It was explained to the

Parent that “the purpose of the FBA would be to continue to give us information that we can use to identify triggers and continue to improve his program here at [the District].” The Parent responded that he declined the offer unless a specific doctor, who completed the previous FBA for the Student, did the assessment. The case manager offered to have the Parent speak with the autism specialist who conducts the FBAs for the District.

40. Also on October 22, 2018, the District implemented a communication log with the Parent to help track behaviors and potentially identify new triggers.
41. On October 24, 2018, the assistant principal emailed the Parent to confirm that there would be a total of three paraeducators working individually with the Student throughout the day: one every morning, one during lunch, and one to support the Student during the afternoon. The assistant principal further confirmed that the behavior intervention specialist had been working alongside the three paraeducators the previous two weeks, in accordance with what the assistant principal believed had been agreed to at a previous meeting. According to the assistant principal, the reason for having three paraeducators was to have “multiple trained staff available to work with the Student” to be able to “tap in and out as needed based on [the Student’s] IEP.” The assistant principal offered to provide the Parent with a written report from the behavior interventionist in lieu of a meeting.
42. Also on October 24, 2018, the Parent communicated his desire to the assistant principal not to have a meeting with the behavior specialist regarding the FBA and instead requested that an IEP meeting be held to discuss the Student’s needs. In particular, it appears the Parent was in disagreement about there being multiple individuals used by the District to implement the 1:1 paraeducator support service for the Student.
43. On October 24, 2018, additional emails were exchanged between the Parent and the case manager in an attempt to schedule an IEP meeting the following day (October 25, 2018). The Parent requested the meeting be after 11:30 a.m. The assistant principal responded by offering to meet with the Parent on October 25, 2018 from 10:00 a.m. to 11:00 a.m.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged that the District failed to implement the Student’s IEP because it failed to provide a single person as a dedicated 1:1 paraeducator for the Student throughout the entire school day. The Parent additionally alleged that the District failed to implement the Student’s BIP.

Implementation of the 1:1 Paraeducator: When a student with a disability who has an IEP transfers to a new district in the same state, and enrolls in a new school within the same school year, the new district (in consultation with the parents) must adopt the child's IEP from the previous district or develop a new IEP. The district must also ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. An IEP must be written so that it is “clear to all who are involved in both the development and implementation of the IEP,” and must include sufficient information about the amount of services that will be provided so that the agency’s level of commitment to the student will be clear.

A transfer meeting was held on August 16, 2018, upon the Student's enrollment in the District. At the transfer meeting, the District followed proper procedures to develop a plan, in collaboration with the Parent, to provide supports and services comparable to those described in the Student's previous IEP, in order to ensure the Student received a FAPE until an IEP meeting could be held. Specifically, the District developed a plan, which included the provision of a 1:1 paraeducator for the Student throughout the school day in all settings. This is the same service the Student was receiving at his previous school. The documentation provided revealed that this service had previously been filled by both a nurse and a behaviorist, and was not always provided by a single individual. On September 19, 2018, an IEP meeting was held to adopt the Student's previous IEP. No documentation was found to support the Parent's allegation that there was agreement that the 1:1 paraeducator service would be or had to be provided by a single individual in order for the Student to receive a FAPE. However, the documentation provided does show that there were multiple communications between the Parent and the District after the adoption of the previous IEP, in which the Parent made clear he believed the Student's medical needs required the 1:1 paraeducator support to be implemented by a single individual in order for the Student to receive a FAPE (i.e., the same single individual would provide 1:1 support throughout the school day). The Parent additionally requested an IEP team meeting to discuss his concerns about the role and scope, as well as the implementation of, the Student's 1:1 paraeducator. It is not clear from the documentation provided if this IEP team meeting ever occurred.

OSPI finds that the District properly implemented the Student's IEP regarding the 1:1 paraeducator supplementary service. However, because of the ongoing confusion noted in the documentation provided regarding the role, scope, and implementation of the 1:1 paraeducator, OSPI strongly recommends the District hold an IEP meeting to discuss these issues if it has not yet had one and that the District provide prior written notice for those issues in which it disagrees with the Parent's requests.

Implementation of the Behavior Intervention Plan (BIP): The BIP should include, among other things, instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team as well as positive behavior interventions to address those behaviors. While reviewing the documentation provided, OSPI noted multiple instances where the District was properly implementing the BIP. For example, the District is (1) switching out staff members, (2) speaking to the Student in a calming voice, (3) offering choices, and (4) providing a calm space for the Student. Each of these strategies and interventions are provided for in the Student's BIP (See Appendix A).

However, the documentation provided shows that two incidents occurred on September 25, 2018, which violated the Student's BIP. First, the Student was permitted to ride in an elevator by himself without his 1:1 paraeducator. In the Parent's complaint, the Parent alleged that the Student was permitted to ride alone in the elevator on three occasions. The District's response acknowledged one occasion during which the Student was permitted to ride alone in the elevator after a staff member reported feeling unsafe. This incident was supported by emails sent between the Parent and the District, dated from September 25, 2018 to September 27, 2018. The Student's IEP indicates the Student requires a 1:1 paraeducator to be with him at all times for behavior support.

In its response to the complaint and in emails reviewed, the District acknowledged that this was a violation of the Student's IEP and that the Student should not be alone in the elevator without a staff member again.

Also on September 25, 2018, the Student participated in a hike in the woods with his adaptive PE class and 1:1 paraeducator. When the Student asked to call his Parent, the paraeducator was unable to produce a phone for several minutes and the Student was told he would have to wait. The Student's behavior escalated and the Student suffered a frontal lobe seizure and had to be picked up from school. According to the Student's BIP, the Student is supposed to be able to contact his Parent if upset to help him deescalate. In its response, the District stated that it has multiple phones available for the Student to use should the Student want to call his Parent and that an additional District phone provided to the assistant special education director can be made available. Regardless of how many phones are generally available, one was not available when needed on the hike.

OSPI finds the District failed to properly implement the Student's BIP on September 25, 2018 because the Student was left unattended in the elevator and was not provided access to a phone to call his Parent according to his BIP. It appears the District has remedied the errors that resulted in the failure to implement the BIP regarding the Student's unattended use of the elevator. The District acknowledged the Student should not be left alone in the elevator, providing a procedure for when staff members do not feel safe riding in the elevator (finding a teacher or administrator), and made sure staff members were aware that the Student is never to be alone in the elevator again. However, there may still be unresolved issues regarding the Student's need to access to a cell phone or other communication device in the event he needs to contact his Parent when not in close proximity to one of the shared cell phones available for use on campus. Therefore the District must reconvene an IEP meeting to discuss the Student's need for access to a phone on his BIP to ensure the Student will have timely access to a phone in all settings when needed for its intended purpose.

Issue 2: Procedures to ensure student safety regarding Student's seizure disorder – The Parent alleged that the District failed to follow safety procedures relating to the Student's seizure disorder. Eligible students are entitled not only to receive special education, but also to receive such related services as are required to assist the child to benefit from that special education, including school health and/or school nursing services. School health and school nurse services means health services that are designed to enable a student eligible for special education to receive FAPE as described in the student's IEP and as such, are considered related services that must be listed on a student's IEP. School nurse services are services provided by a qualified school nurse while school health services are services that may be provided by either a qualified school nurse or other qualified person.

Upon enrollment in the District, the Parent notified the District that the Student required administration of medication for a seizure disorder within four minutes of a grand mal seizure. The Student's previous IEP included school nurse services and specified that the Student required a nurse be available in the school office throughout the school day to administer the Student's emergency medication, if necessary. The District, which did not have 1:1 school nurse services

available at the time, contacted the Parent to discuss the Student's medical needs and how it could meet his needs. At a transfer meeting on August 18, 2018, the Parent agreed that another qualified person, other than a nurse, could administer the emergency medication to the Student if necessary as a school health service. This information was documented in the notes from the August 18, 2018 transfer meeting. The Parent trained the Student's classroom teacher and case manager in how to administer the emergency medication in the event the nurse was unavailable. At the IEP meeting on September 19, 2018, the IEP was developed to include "health plan training for staff every time health plan is updated" and "[m]edication training for identified staff as needed when new identified staff is working with [the Student]." These services were in place of the school nursing services included on the previous IEP and agreed to by the Parent.

By providing comparable school health services to meet the Student's need of having a qualified person available to administer emergency medication if needed and then adopting an IEP which met the Student's needs, OSPI finds that the District followed proper safety procedures relating to the Student's seizure condition.

However, while OSPI has found no safety violations as all school health services are properly included in the IEP and are currently being provided, OSPI notes that the Student's seizure action plan did not appear to be physically attached to the IEP, as stated in the IEP and throughout the District's response. OSPI further notes that there appears to be no record of a training log to document who has been trained or designated as an "identified staff member" for purposes of being authorized to administer the Student's emergency medication. While these inconsistencies do not rise to the level of a violation, OSPI has provided recommendations regarding this issue to help ensure the Student's safety in school moving forward. Specifically, OSPI recommends the seizure care plan be physically attached to or integrated into the IEP and that a training log be created and attached to that plan, detailing who has received training on the administration of the emergency medication, on what date, and by whom.

Issue 3: Least Restrictive Environment – The Parent alleged that the District has failed to provide the Student's program in the least restrictive environment because the District has refused to transport the Student to community outing activities until the Student can "consistently demonstrate safe behavior."

To the maximum extent that is appropriate, a student eligible for special education services will be educated in the general education environment with his or her nondisabled peers. If a student is placed outside of the general education environment, the IEP team should consider the student's participation in opportunities that will allow his or her interaction with nondisabled peers, as appropriate to the needs of the student. The district must take steps, including the provision of supplementary aids and services, to afford a student eligible for special education the equal opportunity to participate in nonacademic and extracurricular activities. Services must be designed to participate in extracurricular and other nonacademic activities.

The Student's class generally participates at least one community outing a week. The Student requires the support of a 1:1 paraeducator in all settings throughout the school day, including during community outings. OSPI's review of the documentation show the District provided the

Student 1:1 paraeducator support during bowling and other community outing activities in accordance with his IEP. However, despite being provided 1:1 paraeducator support, the Student began having behavior incidents during the transportation required to attend the community activity. Transportation provided was the local bus. When the Student began having behavior issues, the District told the Parent the Student could no longer be safely transported and instead offered an alternative activity with the Student's 1:1 paraeducator or case manager at school. The Parent expressed concern to the District that preventing the Student from participating in the community activity was resulting in unnecessary segregation of the Student. Prior to the District refusing to transport the Student, the District did not attempt to provide alternative transportation to the local bus, which was an additional option.

Despite the lack of consideration of alternative transportation, during the two incidents where the Student was not permitted to attend the community outing activity, the Student had exhibited behaviors prior to the field trip, which made it reasonable for the District to assume the Student posed a reasonable risk of harm to himself and others which made it unsafe to transport him that day. Further, the documentation shows the District had already considered the Student's need for supplementary aides and services prior to preventing the Student from being transported by providing the Student with a 1:1 paraeducator. When that supplementary aide and service failed to be successful, the District discussed bringing in its behavior intervention specialist to help develop a plan to enable the Student to be safely transported to community outing events. Accordingly, the documentation shows the District is currently providing the least restrictive environment for the Student and is considering its obligation to provide the Student with opportunities to integrate with nondisabled peers through nonacademic and extracurricular activities.

CORRECTIVE ACTION

By or before **February 15, 2019**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

By or before **January 31, 2019**, the District will schedule an IEP meeting at a mutually agreeable time for the Parent, Student, and District to discuss the Student's BIP. The team will discuss the following topics during the meeting, at a minimum:

- Cell phone (including what it will be used for, how it will be used, and how the Student will access it in all settings, including when off campus).

By **February 15, 2019**, the District will submit: 1) a copy of the meeting invitation; 2) a copy of the amended IEP or BIP; 3) a copy of any related prior written notices; 4) a copy of the agenda and notes on the topics discussed at the meeting; and, 5) any other related information.

DISTRICT SPECIFIC:

None.

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

RECOMMENDATIONS

1:1 Paraeducator: Despite the confusion about the implementation of the IEP's 1:1 paraeducator support between the Parent and the District, an IEP meeting was never held to discuss these concerns and that the language of the IEP may need to be revised to make sure what the 1:1 paraeducator support is needed for and how it is going to be implemented is clear by all, in accordance with 71 Fed. Reg. 46,667 (2006). Further, while the District does not have to agree with the Parent on how to implement the 1:1 paraeducator service, it should consider the Parent's opinion and any other relevant information, including medical documentation, and provide the Parent with prior written notice should the IEP team decline to include the Parent's request for a change to the IEP or how a particular service is going to be implemented. Accordingly, OSPI recommends the following:

- An IEP team meeting be held to discuss role and scope of 1:1 paraeducator, consider the Parent's input regarding implementation and provide prior written notice of any disagreement. The Parent may wish to consider providing any additional medical documentation it believes the District needs to consider; and,
- Develop a log or place to document who has received training on proper administration of emergency medication and who provided that medication (with date).

Safety Concerns and Seizure Care Plan: It is recommended that the seizure care plan be physically attached to the Student's IEP or integrated into the Student's existing IEP so that it is clear what the Student's triggers are, as well as what should happen in an emergency. It is also recommended that a log be kept of all individual staff members who are being trained to administer the emergency seizure medication to the Student, and that this log be readily available.

Least Restrictive Environment: In the emails of the documentation provided, there was discussion of holding an emergency IEP meeting to discuss the Student's needs related to transportation. If this has not yet occurred, it is recommended that an IEP meeting be held immediately to discuss the Parent's concerns with transportation and to discuss the Student's need for any supplementary aides and services and/or behavioral consultation supports as it relates to the Student's ability to be transported safely to community outing and other nonacademic events.

Dated this ____ day of December, 2018

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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