

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-02

PROCEDURAL HISTORY

On January 9, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On January 9, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on January 10, 2019. OSPI asked the District to respond to the allegations made in the complaint.

On February 1, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on February 4, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

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 period, which began on January 9, 2018. 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 period.

ISSUES

1. Did the District follow procedures for responding to the Parent's request for an independent educational evaluation (IEE), and for ensuring the IEE was provided at public expense without unnecessary delay?
2. Did the District follow the Family Educational Rights and Privacy Act (FERPA) procedures regarding emails sent pertaining to the Student?
3. Did a change in placement occur from March 2018 through the end of the 2017-2018 school year, and if so, did the District follow procedures for changing the Student's placement?
4. Did the District implement the Student's individualized education program (IEP), including providing specially designed instruction, from March 2018 through the end of the 2017-2018 school year?
5. Did the District follow procedures for issuing prior written notices addressing decisions made regarding the Student's special education program from March 2018 through the end of the 2017-2018 school year?

LEGAL STANDARDS

Independent Educational Evaluation (IEE): Parents of a student eligible for special education have the right to obtain an independent educational evaluation (IEE) of the student at public expense if they disagree with the district's evaluation. An IEE is an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the student in question. At public expense means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents. Each district will provide to parents, upon request for an IEE, information about where an IEE may be obtained and the district's criteria for IEEs. Parents are entitled to only one IEE at public expense each time the district conducts an evaluation with which the parents disagree. If the parents request an IEE at public expense, the district must either: initiate a due process hearing within 15 days to show that its evaluation is appropriate; or, ensure that an IEE is provided at public expense, unless the district demonstrates in a hearing under this chapter that the evaluation obtained by the parents did not meet agency criteria. If the parents request an IEE, the district may ask for the parents' reason why they object to the district's evaluation. However, the explanation by the parents may not be required and the district must either provide the IEE at public expense or initiate a due process hearing to defend its educational evaluation. 34 CFR §300.502; WAC 392-172A-05005.

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

Consent for Reevaluation: A district is required to obtain informed parental consent before conducting any assessments as part of a reevaluation of a student eligible for special education services. 34 CFR §300.300(c); WAC 392-172A-03000(3). Consent means that the parent: has been fully informed of all information relevant to the activity for which consent is sought in his or her native language, or other mode of communication; understands and agrees in writing to the activity for which consent is sought, and the consent describes the activity and lists any records which will be released and to whom; and understands that the granting of consent is voluntary and may be revoked at any time. 34 CFR §300.9; WAC 392-172A-01040(1).

Functional Behavioral Assessment (FBA): An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a behavioral intervention plan (BIP) that will reduce or eliminate the misbehavior. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2). The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which

includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015; *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4). Once the need for a reevaluation is identified, a district must act "without undue delay and within a reasonable period of time;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008). The IDEA does not specify who is qualified to conduct an FBA, for example there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

Education Records: Education records means the type of records covered under the definition of "education records" in the Family Educational Rights and Privacy Act (FERPA), 34 CFR Part 99. WAC 392-172A-05180. Under FERPA, "education records" means those records that are: 1) directly related to a student; and 2) maintained by an educational agency or institution or by a party acting for the agency or institution. These records include but are not limited to grades, transcripts, class lists, student course schedules, health records (at the K-12 level), student financial information (at the postsecondary level), and student discipline files. The information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail. 34 CFR §99.3. With respect to the issue of liability for disclosing information to parents when other laws or contractual obligations would prohibit it, public agencies are required to comply with the provisions of IDEA and FERPA, and must ensure that State law and other contractual obligations do not interfere with compliance with IDEA and FERPA. Federal copyright law protects against the distribution of copies of copyrighted document, such as a test protocol. Since IDEA and FERPA generally do not require the distribution of copies of an education record, but rather parental access to inspect and review, Federal copyright law generally should not be implicated under these regulations. *Letter to Shuster*, 108 LRP 2302, Office of Special Education Programs (August 2007).

Change in Placement: One of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016). The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated

with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student’s educational needs, and it clarifies that a decision has been made. Written notice must be provided to the parents of a student eligible for special education, or referred for special education, a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency’s proposal or refusal. 34 CFR §300.503; WAC 392-172A-05010.

FINDINGS OF FACT

2017-2018 School Year

1. During the 2017-2018 school year, the Student was in the fifth grade and attended a District elementary school (school 1). Pursuant to his January 27, 2015 initial evaluation, the Student was found eligible for special education services as a student with a specific learning disability (SLD).
2. According to the District’s response, prior to March 2018, the Student’s schedule was as follows:

Student’s schedule for Monday, Tuesday, Thursday, and Friday:

Time	Subject
7:55 a.m. – 8:10 a.m.	RULER ¹
8:15 a.m. – 8:50 a.m.	PCP/Specials (Music/Art, or Physical Education)
8:55 a.m. – 9:55 a.m.	Reading or Math (switched every 6 weeks)

¹ The District’s response described RULER as a “social/emotional literacy curriculum [...]”

9:55 a.m. – 10:25 a.m.	Scholar Reading or Scholar Math ²
10:30 a.m. – 11:00 a.m.	Writing/Social Studies or Science
11:05 a.m. – 12:00 p.m.	Recess and Lunch
12:10 a.m. – 1:05 p.m.	Reading 2 or Math 2
1:05 p.m. – 2:20 p.m.	Reading and Social/Behavior Specially Designed Instruction (SDI)

Student's schedule for Wednesdays.³

Time	Subject
7:55 a.m. – 8:25 a.m.	RULER
8:30 a.m. – 9:00 a.m.	PCP/Specials (Music/Art, or Physical Education)
9:00 a.m. – 9:20 a.m.	Writing/Social Studies or Science
9:25 a.m. – 9:55 a.m.	Reading or Math
10:00 a.m. – 11:05 a.m.	Reading and Social/Behavior SDI
11:05 a.m. – 12:00 p.m.	Recess and Lunch
12:05 a.m. – 12:50 p.m.	Reading 2 or Math 2
12:55 p.m. – 1:10 p.m.	Writing/Social Studies or Scholar Math 2

3. The District asserted in its response that on November 13, 2017, the District sent the Parent a letter, requesting consent for the Student's triennial evaluation.⁴ According to the District's response, on November 28, 2017, the Parent provided consent.
4. The District was on winter break from December 18, 2017 to January 2, 2018.
5. On January 2, 2018, the District emailed the Parent notice that an individualized education program (IEP) meeting had been scheduled for January 23, 2018, to review evaluation reports, the Student's eligibility determination, and to review the Student's IEP. The Parent responded the same day by email that she would attend. Included with her response was information the District requested via a parent questionnaire for special education reevaluation report form. On the form, the Parent expressed concerns about the Student's performance in math and requested the Student be tested to determine whether he required specially designed instruction in math.

² According to the District's response, "Scholar Reading and Scholar Math are specific intervention programs taught by reading and math specialists that provide individualized targeted instruction to students."

³ On Wednesdays, the Student's school had early release at 1:10 p.m.

⁴ Documents included with the District's response included a letter which was sent to the Parent and dated January 8, 2017, requesting the Parent's consent to evaluate the Student in the following areas: general background, reading, social/behavior, written language, and math. The District's response asserted that the date provided on this letter was a mistake. The contact log maintained by the District for the Student during the 2017-2018 school year indicated that the District additionally mailed the Parent a letter on December 13, 2017, to request consent from the Parent. According to the contact log, consent was provided on January 2, 2017. It is unclear if this was for the triennial evaluation or a separate evaluation.

Timeline for this Complaint Began on January 9, 2018

6. On January 9, 2018, the school psychologist emailed the Parent and proposed a date of January 23, 2018 to meet to review the results of the evaluation and for the Student's annual IEP review.
7. On January 12, 2018, the District ombudsman (ombudsman) emailed a special education program specialist (program specialist 1) to make her aware of several issues the Parent had brought to her attention in light of the IEP meeting scheduled for January 23, 2018, which included the following concerns of the Parent: whether the Student's "minutes or accommodations were being followed," the Parent's feelings that the Student was not making desired progress in reading, statements made by teachers to the Parent that the Student was "'goofing around' in class," questions the Parent had regarding whether [the Student] need[ed] a [functional behavioral assessment] FBA to address [the Student's] lack of focus" which the Parent believed "[impacted] his ability to learn in school," and the Parent's request to have "drafts of the eval and IEP in advance of the meeting" so that she could more adequately prepare for IEP meetings.
8. On January 19, 2018, the school psychologist emailed a draft copy of the evaluation report to the Parent. The Parent responded to the school psychologist and confirmed that she could attend the meeting as scheduled.
9. On January 20, 2018, the Student's special education teacher (special education teacher 1) emailed the Parent the draft IEP, "Notice of Special Education Procedural Safeguards for Students and Their Families" (procedural safeguards), and the District's "Superintendent Procedure 3247SP, Use of Isolation and Restraint of Students with IEPs and Section 504 Plans."
10. On January 23, 2018, an evaluation review meeting was held to review the report from the District's psychological evaluation.

The meeting was attended by the Parent, the school psychologist, two general education teachers (general education teacher 1 and 2), and special education teacher 1. As part of the evaluation, the Student was assessed in the following areas: general background, math, reading, social/behavior, and written language. The evaluation stated that the Student continued to meet the eligibility criteria for specific learning disability (discrepancy) and required specially designed instruction in reading and behavior/social skills. All meeting attendees signed the evaluation summary.

At the evaluation review meeting, the Parent indicated her dissenting opinion on the evaluation summary signature page. The Parent additionally provided the District with a written letter addressed to the principal, school psychologist, and special education teacher 1 in which she outlined seven concerns with the January 23, 2018 evaluation, including the "thoroughness, methodology and validity of information" contained in the evaluation. The Parent accordingly requested the Student receive a comprehensive evaluation in all areas to be conducted by an outside independent evaluator and provided the District a letter, detailing

her request. The Parent additionally requested the Student receive an "independent Functional Behavior Test," which was also outlined in the letter she provided the District.

11. Also on January 23, 2018, an IEP meeting was held to review and develop the Student's annual IEP. The principal (also serving as District administrator), Parent, general education teacher 1, special education teacher 1, ombudsman, and parent advocate attended the meeting and signed the IEP. The Student's performance in reading and social/behavior was reviewed by the IEP team. The Student's IEP contained five measurable annual goals in the following areas: reading (decoding), reading (fluency), social/behavior, social/behavior (participation) and social/behavior (positive-self talk). All progress on goals were to be recorded in a written progress report every trimester. The Student's IEP included seven accommodations and eight modifications.

The IEP provided the Student with the following specially designed instruction in a special education setting, to be monitored by a special education teacher:

- Reading, 30 minutes, 5 times weekly
- Social/behavior, 30 minutes, 3 times weekly

The Student's IEP provided that the Student would spend 86.48% of his time in the general education setting.

At the IEP meeting, the Parent provided the District with her letter, requesting an independent educational evaluation (IEE), which was previously shared at the evaluation review meeting. In the District's response, the District acknowledged that at the January 2018 IEP meeting, the Parent requested an IEE and an FBA to determine if the Student required a behavioral intervention plan (BIP). However, the District alleged that the school psychologist "offered to do further evaluation herself and that it believed that the Parent agreed."

12. On January 23, 2018, the District sent prior written notice to the Parent of its proposal to continue the Student's eligibility category for special education in the area of specific learning disability. The notice documented the IEP team's decision to continue providing the Student with specially designed instruction in reading and social/behavior, but noted the IEP team rejected considerations of adding specially designed instruction in math and was discontinuing instruction in written expression because "[the Student] [had] age appropriate math skills [and] [h]is written expression skills [had] improved and [were] within an average range for his age." The prior written notice further indicated that [the Student] had "met his written expression goals."
13. Also on January 23, 2018⁵, a second prior written notice was sent to the Parent regarding the District's intention to "initiate a FBA and BIP" which the notice indicated "the Parent had requested." The notice stated the "IEP team met to discuss [the Student's] recent evaluation,

⁵ The prior written notice that was sent to the Parent was dated January 2, 2018; however, OSPI confirmed with the District that this date was printed in error, as the IEP meeting occurred on January 23, 2018, and the prior written notice was sent to the Parent after the meeting occurred.

review his academic progress, review his IEP and to develop a Functional Behavior Analysis and Behavior Improvement Plan." The notice also stated that the Parent had "requested more time to think about changes she would like to request be made to the IEP." It was written on the notice that the "IEE and FBA [were] a district consideration." The notice additionally stated that the IEP team was "in agreement to give [the Parent] more time to make requests for changes to the IEP," and that the Parent had indicated that she would let the District know of her requests by January 30, 2018.

14. On January 24, 2018, the school psychologist emailed the Parent to follow up on the concerns the Parent had expressed at the IEP meeting regarding the psychological evaluation the District completed. The school psychologist told the Parent she had "never had a parent insist on an independent evaluation" and found it "a little shocking." The Parent responded the same day that she "truly didn't understand the process," but "[knew] what the [Student needed was] to be in a small group/one-to-one with minimal distractions."
15. On January 25, 2018, the school psychologist emailed the Parent and told her that she "didn't have a chance yesterday [January 24, 2018] to turn in [the Parent's] request for an independent evaluation," and said that she "[needed] to figure out who to send it to." The school psychologist asked the Parent if she "still [wanted] to make [the] request." In her response the same day, the Parent said it would be helpful for her if she "could meet up by phone so [she could] determine what [her] next steps should be." The Parent additionally reminded the school psychologist that she "told [special education teacher 1] [she] would get back to her about the proposed IEP plan by [January 30, 2018]." The school psychologist responded to the Parent by email that she was free until noon that day to discuss the Parent's concerns on the phone.
16. On January 30, 2018, the school psychologist emailed the Parent a consent form for a new evaluation. In her email, the school psychologist wrote:

In conversation we talked about the fact that [the Student's] struggles with attention, focus, and organization are all factors that impact his performance in most subjects. To address this, I need from you... the doctor and/or clinic that diagnosed him, the diagnosis and the date. I will review previous results as I believe he still needs support for social/behavior and reading. Upon further consideration, I don't believe he has a writing disability. He passed the smarter balance literacy portion which involves writing and on the test I gave he was within an average range. I imagine his performance is variable depending upon organizational demands, focus, and motivation. I will evaluate study/organizational skills and more than likely add this as an area of service. This way he can get support with longer writing assignments and more support in class in general.
17. On January 31, 2018, the Parent responded to the school psychologist that she still would like the Student to receive an IEE. In her email, the Parent stated:

While I understand that you were unaware of his disability, among other things prior to testing him; when coupled with my concerns with the Evaluation produced, Progress Reports along with attainment of goals established at the end of 2016 to be accomplished by end of 2017, I still feel that at this point it is in his best interest to be tested by an outside, independent testing facility or Evaluator and am standing by my decision.

18. On February 1, 2018, the school psychologist emailed the school psychologist team lead to explain her understanding of what had transpired regarding the Parent's request. In her email, she explained that it was a new situation for her and that there was some confusion with the process:

This is a new situation for me. I completed a reevaluation and discovered upon meeting with the parent that she was dissatisfied and wants an IEE. She had reached out to me prior to the reeval and recommunicated via email. She wanted the area of math tested so I did this. She did not reveal any other concerns but at the meeting she shared going to a special ed support group and she wants an IEE...The parent signed the evaluation and checked dissenting. I had a long phone conversation with her the next day. I told her if she provided documentation of his [diagnosis] I would reevaluate and change his category based on input from the meeting with her [and] evaluate study/organization skills. She seemed fine with this. I sent home a consent for a new reevaluation and discovered this morning her letter below. She CCed [the ombudsman] and [program specialist 1]. QUESTION do I notify someone of her desire for an IEE (like forward the attached letter she gave me at the meeting)?

19. On February 1, 2018, the school psychologist team lead for school 1 responded to the school psychologist that it was the school psychologist's responsibility to "forward the request to the regional supervisor [...] so that the district can begin considering the parent's request for an IEE." The same day, the school psychologist emailed program specialist 1 to let her know that she had received a request for an IEE from the Parent.

20. On February 2, 2018, program specialist 1 confirmed by email that she had received the school psychologist's email, notifying her of the Parent's request for an IEE.

21. On February 3, 2018, program specialist 1 emailed the school psychologist and requested information regarding when the Parent's request for the IEE was received to make sure the District "responded within necessary timelines" for the IEE.

22. On February 5, 2018, the school psychologist responded to program specialist 1 by email and provided her with the following information:

We had our evaluation/IEP Tuesday Jan 23rd and the parent came with the pages I attached. We spent time addressing the various points. The next day, 1/24, we exchanged several emails in which she shared it was a confusing process. Thursday the 25th we talked on the phone. I agreed to reevaluate him once during the meeting it was revealed that he has [a diagnosis] (but no diagnosis with the school nurse). I was thinking under this category instead of SLD I could justify recommending more support. She seemed satisfied with this. On Tuesday the 30th I emailed her that I was sending home a new consent and [prior written notice] PWN with her son and I did so. I thought things would be fine. The next day I received the email I attached – in which she wants the IEE. Sorry if [you're] under a strict time-line. This is the first time I've had this experience."

23. On February 4, 2018, program specialist 1 responded to the school psychologist's email: "Just to clarify, the request for an IEE came in on the 31st?" The school psychologist confirmed by email that the request came in by the Parent on January 31, 2018.

24. On February 7, 2018, special education teacher 1 emailed the Parent to inform her that the Student did not return to her class that day despite having received instructions about where to go. The principal followed up on special education teacher 1's email to the Parent and told the Parent that "[if] [the Student] [refused] to follow directions as [...] required to receive support per his IEP, he will need escorting daily and a consequence issued because he is purposely avoiding support services (interfering with school authority)."
25. On February 7, 2018, the mental health therapist emailed general education teacher 2 that she would be reaching out to the Parent regarding the FBA and to let her know that she would be "observing [the Student] across classes and settings and letting [the Parent] know what [she] sees."
26. On February 7, 2018, the Parent emailed general education teacher 1 with concerns regarding information she had received that the Student did not make it to special education teacher 1's class the previous two classes. She requested clarification regarding how the Student transitions between classes.
27. On February 10, 2018, general education teacher 1 responded to the Parent that generally, the Student is expected to monitor his own time independently during transitions.
28. On February 12, 2018, the Parent emailed the ombudsman that it had been "3 weeks since [she] had submitted a request for [an] Independent Educational evaluation." The Parent asked when she should have a response regarding her request for an IEE. The same day, the District sent a letter to the Parent, notifying the Parent that it had granted her request for an IEE. The letter stated it had received the Parent's request for an IEE on January 31, 2018. Enclosed with the letter was information on where the Parent could obtain an IEE, as well as a copy of the "District's Criteria for Independent Educational Evaluation at Public Expense."
29. Also on February 12, 2018, the Parent met with the mental health therapist regarding her request for an FBA.
30. On February 13, 2018, general education teacher 1 emailed the Parent and confirmed with her that he had agreed with special education teacher 1 that moving forward, he would call the Parent and confirm with her if the Student did not make it to his classroom in the afternoon.
31. On February 14, 2018, the mental health therapist emailed general education teacher 1, general education teacher 2, special education teacher 1, the academic intervention specialist, and principal to try and set up a meeting with the Parent to discuss proposed changes to the IEP. In her email, the mental health therapist wrote that the Parent "is requesting an FBA and some changes to [the Student's] recent reevaluation and that the CONNERS screeners that [the mental health therapist] passed out to [the Student's] teachers be used to inform the evaluations." The same day, the mental health therapist sent a second email to the same District staff members, outlining the plan she developed to work with the Parent and the Student's teachers to address the Student's behaviors at school and home.

32. On February 14, 2018, the principal responded to all parties, "I know mom ask[ed] for a re-evaluation so I want to keep you in the loop." The same day, the school psychologist clarified in an email, "I offered to reevaluate [the Student] (hoping to keep a satisfactory relationship) and [the Parent] ultimately refused this offer. Instead, she has asked the district to pay for an independent evaluation. At this point, I am not sure if it has been granted."
33. On February 15, 2018, general education teacher 2 responded to the mental health therapist's email in response to her proposed suggestions about how to support the Student's behaviors at school. General education teacher 2 noted that many of the suggestions proposed by the mental health therapist had already been attempted with the Student unsuccessfully at the beginning of the school year.
34. From February 19, 2018 to February 23, 2018, the District was on mid-winter break.
35. On February 21, 2018, the mental health therapist emailed general education teacher 1, general education teacher 2, principal, special education teacher 1, and the academic intervention specialist regarding staff member's continued concerns about the Student's behaviors. In her email, she "strongly advise[d] that a behavioral interventionist from the district be consulted and that an FBA be completed if the current behavior interventions [were] not working."
36. On February 21, 2018, the principal emailed special education teacher 1 that she would like to "move forward with an FBA for the student." In her email, school 1 principal wrote, "I'm not seeing a change in behavior and I'm hearing this from teachers. Teachers – let me know if I'm incorrect about this student."
37. On February 26, 2018, special education teacher 1 responded to the principal's email that she thought "it would be most helpful to have an observation and FBA conducted by an outside source." She added that "it [was] the Parent's right to request this. I'm not sure if the district will support or recommend parents to have outside testing done for a student."
38. On February 27, 2018, program specialist 1 emailed the program supervisor to highlight language used by the mental health specialist, specifically that she "is recommending 'strongly' [sic] that a behavior interventionist from the district be consulted and that an FBA be completed if the current behavior plan and interventions are not working."
39. On February 28, 2018, the visual arts teacher emailed general education teacher 2 regarding behaviors the Student exhibited in her class that day. In particular, she mentioned that she had to "say something twice about him swinging his arms and body in the hallway before students came into the hallway, [...] ask twice to stop touching materials while [she] was giving instructions," and "repeatedly ask him to stop playing with her with the wire or being silly (dancing around)," and was constantly threatening to take away his art privilege. She explained that the Student "was definitely not focused on what he should be doing" and that she had to repeat herself to the Student "more than once." The visual arts teacher's email was forwarded by the principal to the Parent on March 3, 2018.

40. On February 28, 2018, the Student additionally received a disciplinary referral for “defiance,” “physical aggression,” and “leaving/walking away without teacher permission” while on the playground. It was noted that he was also “possibly exhibiting emotional dysregulation.” As a result of his behavior, the principal called the Parent and the Student received a lunch detention.
41. On March 7, 2018, an incident occurred between the Student and special education teacher 1. According to the District’s response, the Student “was throwing the ball, and refused to stop after being asked” by special education teacher 1. “[Special education teacher 1 asked him to give her the ball, and [the Student] again refused. At that time, [special education teacher 1] held his hand still so he would stop throwing the ball and disrupting class.”
42. On March 8, 2018, the Parent emailed the principal her account of the incident. According to the Parent, on March 7, 2018, special education teacher 1 “grabbed [the Student’s] left wrist and took the ball scratching [the Student] in the process.” According to the Parent, the Student told another staff member that afternoon that [special education teacher 1] “was being abusive and grabbed [his] arm and scratched [him].”
43. On March 8, 2018, the principal confirmed by email that she had received the Parent’s report on March 7, 2018 at 4:50 p.m., and that she would investigate the incident and meet with the Parent early the following week. In her email, she confirmed her understanding with the Parent of the Parent’s request that special education teacher 1 no longer work with the Student because of the incident. The principal informed the Parent that she had arranged for the Student to receive specially designed instruction for 45 minutes a day in the office conference room. She told the Parent the Student would not be able to continue receiving math support and that the Student may be pulled out from reading and math class in order to receive the specially designed instruction. There was no mention in the principal’s email of an IEP meeting:
- In the meantime, I will review [the Student’s] schedule to have [special education teacher 2] (certificated teacher, endorsed in special education) work with him for 45 minutes a day in the office conference room; you are more than welcome to observe. He will no longer be able to receive math support from the academic intervention specialist due to [special education teacher 2’s] schedule with other students and it may also require pull out of reading or math class. [The Student’s] IEP minutes are a priority...”
44. According to the District’s response, following the Parent’s request, the Student was placed in a “Resource Room” placement. Special education teacher 1 was the only certified special education teacher for students placed in a full time Resource Room placement at the Student’s school. The District asserted in its response that when the Parent notified it that she did not want the Student working with special education teacher 1 who was assigned to the Resource Room, that there were no other individuals qualified to provide specially designed instruction to the Student who could implement the Student’s IEP. Accordingly, the District asserted in its response that special education teacher 1 continued to provide “some” specially designed instruction to the Student.

45. In its response, the District admitted that a change of placement occurred in March 2018 and that the District did not follow procedures for this change. The District further admitted that the change in placement resulted in a reduction of minutes of specially designed instruction that materially altered the Student's educational program. Neither the Parent in the complaint nor the District in its response specified in how large a reduction occurred in the number of minutes of specially designed instruction provided to the Student, beginning in March 2018.
46. The District additionally acknowledged that the change in placement was not based on the results of a reevaluation, that the District did not effectuate the change through the appropriate IEP team procedures, and that the Parent was not properly provided prior written notice of the change.
47. On March 9, 2018, the principal emailed the Parent to notify her that she changed the composition of the Student's class that day, following her observation of the Student and behaviors the Student was exhibiting in class. Specifically, she told the Parent that she:
walked in to see [the Student] standing up with 1 foot on the seat part of his chair and playing with a purple/red color wrist band. I told him to sit down and put the wrist band in my hand. I asked for it twice. He complied this time. I asked the substitute how everything was going. The substitute replied, excellent for two students and that [the Student's] behavior was not good (50/50). He wasn't listening, not following directions and would not sit down. At this point, I decided to move the teacher and 3 5th graders into the classroom with the 4th graders, giving them 2 teachers to support the class.
48. On March 10, 2018, the school 1 principal emailed the Parent that she had completed her investigation into the incident that occurred on March 7, 2018, and would meet with the Parent early the following week to discuss.
49. On March 12, 2018, general education teacher 1 emailed the principal regarding behavior difficulties he was having with the Student. In particular, he reported concerns that the Student was "running all the way across the playground, screaming and waving his book over his head" while everyone else in class was "sitting and writing, meeting expectations." Additionally, general education teacher 1 reported several other incidents of "defiant" and "work avoidant behavior," which was "actively disturbing all the people working around him." As a result of the Student's behaviors, the Student was sent to the office.
50. On March 12, 2018, the principal emailed the Parent the report she received from general education teacher 1 regarding the Student's behaviors and explained the Student was in the office that day.
51. On March 15, 2018, the principal sent the Parent a disciplinary referral regarding the Student's behavior at school involving an allegation of "damaging school property" and throwing markers at another student.
52. On March 16, 2018, during the investigation of the March 7, 2018 incident, special education teacher 1 emailed her husband to ask his opinion about how she should respond to the allegations made against her. The Parent alleged the email special education teacher 1 sent

contained some of the Student's personally identifiable information (PII). In its response, the District acknowledged that the email special education teacher 1 sent to her husband on March 16, 2018 contained some of the Student's PII and that it did not appropriately safeguard the Student's PII as required by the Family Educational Rights and Privacy Act (FERPA). Specifically, the District admitted it disclosed the Student's PII without consent from the Parent to an individual who was not employed by the District and who did not have a legitimate educational interest to the information.

53. On March 20, 2018, the Parent visited the Student at school. Following her visit, the Parent emailed the principal that she no longer consented to special education teacher 1 working with the Student. She expressed that "[the Student] [was] not comfortable working with [special education teacher 1] after the incident that occurred on 3/7/18," and stated that, "[a]fter observing the lesson while in the front office and also in the room next to her office on 3/19/18, [she] [could not] accept [the principal's] proposed solution." The Parent said she would "reach out to [program specialist 1] for additional options." The principal responded to the Parent's email the same day and suggested they talk about what had happened. She additionally told the Parent she would forward her email to program specialist 1.
54. Also on March 20, 2018, the Parent emailed the special education program supervisor and informed her of the individual expert she had selected to complete the IEE (IEE provider).
55. On March 27, 2018, the principal emailed the Parent that she was "still waiting to hear from a private psychologist to schedule a time to observe [the Student]." She asked the Parent to "[p]lease forward her number so [she] may contact her to schedule a meeting and a visit."
56. On March 30, 2018, the Student received a disciplinary referral for breaking a posted rule and making hurtful comments/bullying another student during class instruction. The Student's Parent was contacted regarding the Student's behavior.
57. On April 6, 2018, the Parent spent the day at school observing the Student. Following her visit, the Parent expressed concerns to the ombudsman and confirmed that she still did not want the Student receiving instruction from special education teacher 1.
58. From April 9, 2018 to April 13, 2018, the District was on spring break.
59. On April 12, 2018, the ombudsman emailed the program supervisor to request the status of the IEE. In her email, the ombudsman reminded the program supervisor that the Parent had selected the IEE provider and was waiting to be contacted regarding next steps.
60. On April 13, 2018, the ombudsman emailed program specialist 1 regarding concerns the Parent had relayed to her about the Student. In particular, she relayed the Parent's concerns that the Student was not receiving his minutes of specially designed instruction and was waiting to hear from program specialist 1 regarding her ideas. The ombudsman responded that the Parent was "wondering if [the Student could] get [specially designed instruction] for

reading with the reading specialist.” The ombudsman mentioned four additional concerns expressed to her by the Parent and requested a time to talk the following week.

61. On April 13, 2018, a District special education program supervisor (program supervisor) responded to the ombudsman that she was working with the District’s contracts department and one of the District’s special education directors (director 1) to determine whether the District had a current contract with the IEE provider. The program supervisor further explained that once she had the information, she would have a clearer timeline for when the IEE would be complete. That same day, the ombudsman emailed the Parent that the District was working on securing the IEE for the Student.
62. On April 16, 2018, the Parent emailed the ombudsman that the IEE provider had received a response from the program supervisor on April 13, 2018, and was waiting on further instructions for when she could move forward.
63. On April 28, 2018, the special education program supervisor emailed the IEE provider to ascertain her rates and estimated the number of hours needed for the IEE.
64. On April 30, 2018, the IEE provider responded to the special education program supervisor’s email and provided her with the requested information. The IEE provider clarified that the evaluation was for a “cognitive, academic, and social/emotional assessment.”
65. Also on April 30, 2018, another District special education director (director 2) requested additional information from the IEE provider, which she said was necessary to draft the contract. The IEE provider responded with the information on May 1, 2018.
66. On May 7, 2018, District staff, the Parent, and the ombudsman exchanged emails regarding the IEE as follows:
 - The program supervisor emailed director 2 to request an update on the status of the IEE. The ombudsman noted that the Parent said the IEE provider still hadn’t received the “go ahead for the IEE.”
 - The ombudsman and the IEE provider additionally emailed the program supervisor and director 2 to ask if there were any updates on the progress on the IEE contract.
 - The program specialist responded to the ombudsman and director 2 that it was “in [director 2’s] hands,” and requested an update from director 2.
67. On May 8, 2018, District staff, the Parent, the ombudsman, and the IEE provider exchanged emails regarding the IEE as follows:
 - The Parent emailed the ombudsman that she “hadn’t heard back about when the evaluation can begin” and requested that the ombudsman “please find out when the contract will be finalized.”
 - The ombudsman emailed director 2 to request “an answer or some communication to [the Parent] about the IEE,” noting that [the Parent] [had] been waiting for quite a while.”
 - The IEE provider emailed director 2 that she “wanted to follow up and see if there is any information [she could] provide,” and “to inquire where [they were] in this process?”

68. On May 9, 2018, director 2 emailed the ombudsman and IEE provider to let them know the contract for the IEE was still in process of being finalized.
69. According to the District's response, on May 9, 2018, the contract specialist emailed a "Personal Services Contract" to the IEE provider.
70. On May 14, 2018, the ombudsman emailed the Parent to confirm that the IEE provider had received the contract. The Parent responded the same day that the IEE provider had received the contract on May 9, 2018, had returned her signed copy, and was waiting on confirmation of receipt so she could begin her evaluation. The ombudsman then emailed director 2 to confirm that the IEE provider had received and returned the signed contract and requested an update.
71. Also on May 14, 2018, the IEE provider's office completed its intake of the Student.
72. On May 15, 2018, director 2 emailed the contracts specialist to ask if the IEE provider could begin her evaluation. The same day, the ombudsman emailed the Parent and told her that she was told by the contract analyst that the IEE provider could get started with the IEE even though the contract had not yet been finalized. In her email she wrote:

The contracts specialists said there are a few more approvals that need to happen on our end so the psychologist won't receive the final copy quite yet, but it will be okay for him/her to go ahead and begin the work with [the Student] and then send invoices. [The contracts specialist] will process them. Can you let your evaluator know? I hope this helps get things moving!
73. According to the District's response, on May 15, 2018, the contracts specialist and director 2 reviewed and approved the contract and sent it to the District's accounting department for the final approval.
74. On May 17, 2018, the principal emailed the Parent regarding a behavior incident involving the Student and a complaint received about the Student from another parent at the school.
75. On May 22, 2018, the IEE provider emailed program specialist 1 to schedule a time to conduct a site visit, noting that "[p]art of the evaluation [for the Student] requires me to do a functional behavior analysis [FBA]."
76. On May 24, 2018, the Student was offered assignment to another District school (school 2) for the sixth grade in a general education placement—an option school to which the Student's Parent had to apply. On May 25, 2018, the Parent accepted the assignment offer for the 2018-2019 school year. The Student was subsequently issued an assignment ticket reflecting his new school assignment, effective September 5, 2019.
77. According to the District's response, on May 30, 2018, the personal services contract for the Student's IEE was received by the accounting department for the District.

78. On May 30, 2018, the Parent emailed the ombudsman to notify her that the IEE provider had begun the IEE. In her email, the Parent told the ombudsman that “[the IEE provider’s] contract states that classroom observation should be coordinated through [the program supervisor] or [program specialist 1] and she hasn’t received a response to her request. I suggested to [the IEE provider] that she contact [school 1 principal] directly as there are only a couple of weeks before the end of the school year.” That same day, the ombudsman reached out to program specialist 1 who confirmed that she had spoken with the IEE provider that day to discuss details of the IEE.
79. Testing of the Student by the IEE provider occurred on May 29, 2018, June 11, 2018, June 25, 2018, and July 30, 2018. Observations in the school setting of the Student were completed by the IEE provider on June 7, 2018 and June 12, 2018.
80. On August 22, 2018, the IEE provider completed her psychological evaluation. Documents provided with the District’s response show an FBA was completed by the IEE provider the same day. Paper copies of each evaluation were mailed to both the Parent and the District and provided as a single report. The IEE provider agreed to attend an IEP meeting to review the evaluation. The completion date of the IEE was within the timeframe specified in the contract the IEE provider signed with the District.
81. The psychological evaluation included assessments of the Student in the following areas: cognitive, academic functioning, and social/emotional functioning. As part of her evaluation, the IEE provider also conducted clinical interviews with the Student, Parent, and several of the Student’s teachers. The report developed by the IEE provider from the results of the psychological evaluation included a diagnosis of Attention Deficit/Hyperactivity Disorder, predominately inattentive presentation, severe, as well as specific learning disabilities in reading (specifically word reading accuracy and clarity or organization of written expression). The IEE report included several recommendations for school and home supports.
82. The IEE provider additionally completed an FBA for the District and included it with her IEE report. The report was titled “functional behavioral assessment.” The FBA included indirect and direct assessments of the Student’s behavior. The FBA identified two behaviors of concern, including off-task behaviors and non-compliance, and developed and tested a hypothesis that the function of these behaviors were peer attention and sensory stimulation. The FBA included multiple recommendations for addressing these behaviors in a school setting. The recommendations included with the FBA were reported separately from the recommendations included with the psychological report.
83. In its response, the District conceded that it failed to implement the Student’s IEP, including providing specially designed instruction from March 2018 through the end of the 2017-2018 school year.
84. In its response, the District additionally admitted that it did not follow procedures to provide the Parent with prior written notice from March 2018 through the end of the 2017-2018 school year.

CONCLUSIONS

Issue One: Independent Educational Evaluation (IEE) – The first issue was whether the District followed procedures for responding to the Parent’s request for an independent educational evaluation (IEE), including ensuring that the IEE was provided at public expense without unnecessary delay.

Parents of a student eligible for special education have the right to request an IEE of the student at public expense if they disagree with the district’s evaluation. When a parent requests an IEE at public expense, the district must either: initiate a due process hearing within 15 days to show that its own evaluation is appropriate; or, ensure that an IEE is provided at public expense. On January 23, 2018, the Parent provided the District with a letter addressed to the school principal, special education teacher, and school psychologist, requesting an IEE for a comprehensive psychological evaluation at both her evaluation review meeting and the IEP meeting held that day. The District responded on February 12, 2018, that it agreed to provide the IEE at District expense. The District accordingly met its obligation to respond to the Parent’s request within 15 calendar days.

Although the District met its obligation to respond to the Parent within 15 calendar days, documentation provided with the District’s response indicates there was confusion surrounding the District’s obligation to respond to the IEE and regarding the Parent’s right to request an IEE—issues which are more appropriately addressed below in the recommendations section of this decision.

The Parent alleged in her complaint that there was unnecessary delay on the part of the District in providing the IEE due to delays that came about during the District’s contracting and processing of its agreement with the IEE provider for the IEE. The Parent stated in her complaint that she had requested the IEE in January 2018, provided the District with the contact information of the IEE provider of her choice in March 2018, and that the IEE was not completed until the end of August 2018, nearly six months later. In its response, the District stated it felt there was no unnecessary delay because the contracting requirements required time to complete and process and noted that it permitted the IEE provider to begin her evaluation of the Student prior to the contract being finalized to ensure the evaluation could be completed prior to the end of the school year.

Documents included with the District’s response revealed multiple efforts made by the Parent, IEE provider, and the District ombudsman to try and help facilitate the contract process to ensure a timely delivery of the IEE’s provider’s final report. OSPI acknowledges that it can take time to set up a contract and that there is no specific timeline for when an IEE must be completed. Whether unnecessary delay occurred is fact specific and depends on the particular circumstances. It is acknowledged that the Parent here did not submit the contact information for the individual IEE provider she had chosen to the District until March 2018—which was over a month after she made her initial request at the January 2018 IEP meeting. This may have contributed to a delay in the Parent receiving the final IEE report; however, documents included in the District’s response show there were unique circumstances surrounding the IEE and FBA evaluation process that caused additional delay.

In its response, the District acknowledged that in March 2018, the Student experienced a change in placement that materially altered his educational program, and that the District violated procedures by failing to first evaluate the Student prior to changing his placement. In March 2018, the District entered into a contract with the IEE provider to fund the IEE requested by the Parent, which included funding for enough hours for the IEE provider to additionally complete an FBA for the Student. Although the Parent had requested the District provide an FBA for the Student at the January 2018 IEP meeting—which was the same meeting during which the Parent requested the IEE psychological evaluation—because the District had not yet completed its own FBA for the Student, the Parent did not have a legal right to request an IEE for an FBA. When requesting an IEE, a parent must have a district evaluation to disagree with first. Accordingly, it appears the District entered into one contract with the IEE provider to complete the IEE and the FBA. Although the details of the contract are not at issue for the purpose of this complaint and are not under review, it is important to distinguish that the FBA included in the IEE provider’s report was not part of the Parent’s IEE. This remains true even though the IEE provider provided both reports to the District and Parent in a single document and even though in its response, the District refers to the document as “the IEE.”

The issue is, therefore, did the District meet its obligation to fund the Parent’s IEE at District expense without unnecessary delay when it utilized the same provider for the FBA that the Parent had chosen for the IEE? The documents provided in the District’s response show that the IEE provider was working on the IEE psychological evaluation and the FBA simultaneously. On the IEE report, the IEE provider listed May 29, 2018, June 11, 2018, June 25, 2018, and July 30, 2018 as dates of testing for the psychological evaluation. On June 7, 2018 and June 12, 2018, the IEE provider visited the Student at school for the purpose of observing the Student as part of her psychological evaluation. However, June 7, 2018 and June 12, 2018 were additionally listed as dates of observation on the FBA report. Because testing and observation dates occurred simultaneously for both evaluations, it is unclear how much, if any of a delay, was caused by both evaluations being conducted by the same provider. For this reason, OSPI is unable to substantiate an allegation that there was an unnecessary delay due to the District’s decision to utilize the IEE provider to complete the FBA while the IEE was in progress.

However, the District’s use of the IEE provider to also complete the District’s FBA simultaneously, without the Parent’s knowledge or consent, and to have the IEE provider provide the FBA report to the District within the Parent’s IEE report (which should have been provided to the Parent) raises questions as to whether the comprehensive psychological evaluation was truly independent, or whether it was part of the District’s FBA evaluation. OSPI notes that the Parent expressed confusion upon receiving the IEE regarding what the evaluation was for, and that the Parent believed the IEE was an FBA, which she asserted she did not request. Upon review of the IEE provider’s report, it is clear the IEE provider completed both a comprehensive psychological and an FBA. As previously discussed, these two reports should be treated separately—the comprehensive psychological evaluation as the Parent’s IEE and the FBA as the District’s FBA.

In conclusion, the District met its obligation to provide the Parent with her requested IEE for a comprehensive psychological evaluation at District expense without unnecessary delay. However,

OSPI notes that the process caused confusion for all parties involved and resulted in a lack of transparency about how, why, and when the FBA was developed, and why it was included as part of the Parent's IEE report when it was not part of the IEE. It is possible this may have additionally contributed to District noncompliance with procedures regarding the development of the FBA, including obtaining necessary consent and providing the Parent with timely and sufficient prior written notice of its decision to initiate an FBA (see Issue 5: Prior written notice). OSPI accordingly will be recommending the District review its procedures for funding and providing a Parent requested IEE when simultaneously utilizing the same provider as an independent contractor for a District evaluation to ensure compliance with all relevant procedures and to prevent conduct that would jeopardize the independence of the IEE or cause unnecessary delay of the IEE.

Issue Two: The Family Educational Rights and Privacy Act of 1974 (FERPA) – The second issue is whether the District followed FERPA procedures regarding emails sent pertaining to the Student. The Parent alleged that while reviewing information obtained in a records request, she learned that on May 7, 2018, the Student's special education teacher sent an email containing the Student's personally identifiable information (PII) to an individual outside the District. In the District's response, the District acknowledged that it "did not appropriately safeguard [the Student's] PII as required by FERPA. [The Student's] PII was disclosed without consent from Parent to an individual who is not employed by the District and who does not have a legitimate educational interest in the information." Accordingly, the District violated FERPA by disclosing the PII of the Student on May 7, 2018 and the relevant District staff will be required to complete training on FERPA.

Issue Three: Change in Placement – The third issue is whether a change of placement occurred from March 2018 through the end of the 2017-2018 school year, and if so, whether the District followed procedures for changing the Student's placement. Factors to consider when determining whether a change in placement has occurred may include whether a material change in the student's educational program has occurred, whether there has been a substantial change to the extent the student will be educated with students without disabilities, and whether the new placement option is the same option on the continuum of alternative placements. Parents must be provided prior written notice of a change in placement and changes in placement that materially alter the student's educational program must be based on the results of an evaluation.

In its response, the District acknowledged a change of placement occurred in March 2018 when the District agreed to have the Student receive some of his specially designed instruction in the principal's office instead of in his designated classroom as provided in his IEP, following a disagreement between the Parent and the Student's special education teacher where the Parent requested the Student no longer receive instruction from the special education teacher. In its response, the District conceded that the change "materially altered [the Student's] educational program," that "the change in placement was not based on the results of a reevaluation," that "the District did not effectuate this change through appropriate IEP team procedures," and that "the Parent [was not] provided with prior written notice of this change." The District accordingly did not follow procedures for changing the Student's placement in March 2018. The District will be required to provide training on how to respond to parent requests that specific District staff

members not provide instruction, how to identify non-disciplinary changes in placement, and the proper procedures regarding changes in placement.

Issue Four: IEP Implementation – The fourth issue is whether the District implemented the Student’s IEP, including providing specially designed instruction from March 2018 through the end of the 2017-2018 school year. Specially designed instruction must be provided at no cost to the parents, consistent with a properly formulated IEP to meet a student’s unique IEP needs.

In the District’s response, the District admitted that starting in March 2018 and continuing until the end of the 2017-2018 school year, the Student did not receive the full number of minutes of specially designed instruction required by his IEP. According to the Student’s IEP, the Student was supposed to receive specially designed instruction in reading for 30 minutes, 5 times per week, and in social/behavior for 30 minutes, 3 times per week. It does not appear from the documents provided by the District or Parent that any records were kept regarding how much specially designed instruction was provided once the Student began receiving specially designed instruction in the conference room by the principal’s office instead of in his classroom.

The District’s response also noted that special education teacher 1 was the only individual at the Student’s school who was qualified to provide specially designed instruction to the Student; however, from March 2018 through the end of the 2018-2019 school year, the Parent refused to give permission for special education teacher 1 to provide instruction to the Student. Parents do not have a right to choose which District staff member provides instruction to their child. It is noted that there was confusion in this situation because it appears the District communicated with the Parent following her allegation of abuse that it was attempting to accommodate her request. However, following completion of its investigation and negative finding of abuse, the District should have returned the Student to his classroom where he could have received instruction according to his IEP. The Parent could have then chosen to decline the Student’s receiving of special education services, including specially designed instruction. The distinguishing factor here is that the District choose to unilaterally remove the Student—without following proper procedures—to inappropriately accommodate the Parent’s request regarding her concerns with the special education teacher. Consequently, the District failed to implement the Student’s IEP regarding the number of minutes of specially designed instruction. The District will be required to provide compensatory services to the Student in specially designed instruction in reading and social/behavior.

From March 2018 through June 2018, according to the Student’s IEP, the Student was supposed to receive 150 minutes per week of specially designed instruction in reading and 120 per week social/behavioral skills. According to the District’s response, the Student’s IEP was not implemented during this time for the reasons previously discussed. Instead, the Student received instruction informally in the conference room off the principal’s office—sometimes by the special education teacher and sometimes by other District staff. It does not appear that records were kept during this time to track the number of minutes of specially designed instruction provided to the Student; however, in its response, the District admitted the Student experienced a reduction in the number of minutes he should have received which “materially altered his educational program.” It is additionally not clear if or how much educational progress the Student made from

March 2018 through the end of the 2017-2018 school year. According to the Student's most recent IEP, the Student continues to require specially designed instruction in reading and social/behavioral skills. Because it is evident the Student was provided some specially designed instruction from March 2018 through June 2018 but clear he did not receive the full amount, the District will be required to provide one-third of the amount the Student did not receive. This amounts to 13 hours of specially designed instruction in reading and 10 hours in social/behavioral skills) as compensatory instruction.

Issue Five: Prior Written Notices – The fifth issue is whether the District followed procedures for issuing prior written notices, addressing decisions made regarding the Student's special education program from March 2018 through the end of the 2017-2018 school year.

When a district changes a student's placement for longer than ten days, the IEP must be amended and a prior written notice must be provided to the parent and other applicable procedural safeguards must be implemented. The District admitted that it failed to provide prior written notice when it changed the Student's placement in March 2018.

In addition, prior written notice must be given to a parent any time the district proposes to initiate a new evaluation for a student, including functional behavioral assessments (FBA). Prior written notice must be given within a reasonable amount of time prior to the district intending to take the proposed action. Prior written notice provided by the district must be clear regarding what decision the district has made. Here, the prior written notice issued by the District following the January 2018 IEP meeting indicated that it was proposing to initiate an FBA/BIP, while also stating that the FBA/BIP was a "district consideration" and that it was "proposing to continue the IEP." The prior written notice was unclear regarding whether the District had agreed to the Parent's request or whether it only decided to further consider the request. By March 2018, the Student's behaviors increased, and multiple District staff expressed concern that the Student needed an FBA. By March 2018, the District agreed in emails—which the Parent was not copied on—to do an FBA for the Student. It is unclear if this was an extension of the conversation that took place at the January 2018 IEP meeting. Regardless, the District failed to reach out to the Parent to obtain consent and failed to provide prior written notice to the Parent of its decision to initiate an FBA for the Student.

CORRECTIVE ACTIONS

By or before **April 5, 2019, April 19, 2019, May 6, 2019, May 17, 2019, July 3, 2019, and September 13, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Instruction: By or before **April 5, 2019**, the District will work with the Parent to develop a schedule for delivering a total of 13 hours of specially designed instruction in the area of reading and 10 hours in the area of social/behavior skills. Services will occur in a one-on-one setting and be provided by a certified special education teacher. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or

otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **September 4, 2019**. The District will provide OSPI with documentation of the schedule for services by or before **April 19, 2019**.

The District must provide OSPI with documentation by **May 6, 2019** and **July 3, 2019** of the compensatory services provided to the Student. This documentation must include the dates, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **September 13, 2019**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation that it has fulfilled this requirement by **September 13, 2019**.

DISTRICT SPECIFIC:

FERPA Violation: There is no indication that the noncompliance identified during this complaint investigation regarding the single incident of a FERPA violation is systemic, and the documentation reflects the District's acknowledgement of the issue and willingness to address it. To address the IDEA and WAC 392-172A-05030 requirement that corrective action addresses both student specific corrections (as above) and the appropriate future provision of services for all students eligible for special education, the following will occur:

- By **April 12, 2019**, the District special education director will meet with the principal and teacher involved in the action discussed within this complaint decision specific to the release of confidential information, and review the FERPA requirements, along with all relevant WACs and school district policies. These actions should ensure that the staff involved understand the required actions needed in the event that a similar situation should occur in order to protect students' personally identifiable information.
- By or before **April 19, 2019**, the District will provide OSPI with documentation of that meeting, attendees, and the topics reviewed.

Training on Prior Written Notice and Change in Placement Procedures: By **May 10, 2019**, the District will provide training for all special education teachers, principals, assistant principals, and any general education teachers with students eligible for special education in their classes at the school identified in this complaint (school 1). The training will address the topics identified in this complaint, including:

- Procedures for changing student placements;
- Implementing IEPs as written;
- Providing sufficient prior written notice;
- Obtaining parental consent to evaluate students; and,
- Appropriately responding to parent requests that a student not receive instruction from a particular staff member who is responsible for implementing the Student's IEP to prevent noncompliance with IEP implementation or unintentional changes in placement.

The training will be provided by a trainer who is not an employee of the District. OSPI recommends that the District contact the local Educational Service District to discuss training needs.

By or before **April 5, 2019**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **April 19, 2019**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by April 26, 2019 and additional dates for review, if needed.

By **May 10, 2019**, the District will conduct the training regarding the topics raised in this complaint decision.

By **May 17, 2019**, the District will submit documentation that the staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) separate official human resources roster of all staff required to attend the training so OSPI can verify that all required staff participated in the training.

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

RECOMMENDATIONS

Misstatements Regarding a Parent's Right to an IEE – When reviewing the documents included with the District's response, OSPI noted that when responding to the Parent's initial request for an IEE, and when discussing the IEE internally, the District made comments to suggest that staff believed the District does not provide or fund outside evaluations when requested by parents. This is not entirely accurate or supported by state or federal regulations. The District's special education director is encouraged to review this decision in light of 34 CFR §300.502 and WAC 392-172A-05005(1), which govern the provision of IEEs, and discuss these requirements with the appropriate staff to ensure that similar misstatements do not occur in the future, should similar circumstances arise. OSPI staff are available to provide technical assistance, if requested.

Maintaining independence of IEE – OSPI concluded that the District complied with its obligation to provide the Parent with an IEE at District expense without unnecessary delay for the reasons discussed in the conclusion. However, because the District: (1) chose to use the same provider the Parent chose for her IEE to complete its FBA; (2) had the FBA completed by the IEE provider at the same time the IEE provider was completing the IEE for the Parent; (3) chose to have the IEE and FBA provided to the Parent in a single document once both were completed instead of keeping its report separate from the Parent's IEE, and, (4) did not follow procedures regarding the provision of the FBA, including providing proper prior written notice and obtaining consent from the Parent for the FBA, there was much confusion and concern about the independence of the IEE

from other District evaluations. It appears that this confusion may have additionally contributed to a communication breakdown between the Parent and District that could have been avoided. OSPI encourages the District to review its policies and procedures for selecting and working effectively with independent contractors to complete outside evaluations that are occurring simultaneously to District funded IEEs to prevent a similar situation and communication breakdown from happening in the future under similar circumstances.

The District is further reminded that it is the responsibility of the parent to determine the scope of their evaluation with their IEE provider, with the caveat that with respect to what the District can fund, the IEE is limited in scope to the evaluation the District has already completed. It is recommended that the District's director of special education review the regulations and policies relating to the provision of IEE with all appropriate staff and determine whether additional training or written guidance may be needed to ensure future compliance with all state and federal regulations.

Dated this ____ day of March, 2019

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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