

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-48

PROCEDURAL HISTORY

On June 4, 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 Spokane 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 June 5, 2019, 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 June 27, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on June 28, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On July 8, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on July 9, 2019.

On July 8, 2019, OSPI received a request from the Parent's attorney for a copy of the complaint, which included a signed release of information from the Parent. OSPI forwarded a copy of the complaint to the attorney on July 10, 2019.

On July 23, 2019 and July 24, 2019, OSPI requested clarifying information from the District.

On July 24, 2019, OSPI interviewed the associate director of special education via telephone regarding the requested information.

On July 24, 2019, OSPI requested clarifying information from the Parent. On July 25, 2019, OSPI received the requested additional information from the Parent and forwarded it to the District on the same date.

On July 25, 2019, OSPI requested clarifying information from the Parent. On July 25, 2019, OSPI received the requested additional information from the Parent and forwarded it to the District on July 26, 2019.

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 June 5, 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 requests for services and/or accommodations to address the Student's behaviors, including requests for a behavior plan?
2. On April 23, 2019, did the District use restraint on the Student consistent with the requirements in WAC 392-172A-02110, including documentation and reporting requirements?

LEGAL STANDARDS

FAPE Entitlement: A free appropriate public education (FAPE) must be available to every student between the ages of three and 21 who has been determined eligible for special education and who resides in the state of Washington. The obligation to make FAPE available to each eligible child begins no later than the child's third birthday and an individualized education program (IEP) must be in effect by that date. If a child's birthday occurs during the summer, the child's IEP team will determine the date when services under the IEP will begin. 34 CFR §300.101; WAC 392-172A-02000.

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

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

WAC 392-172A-05105. *Andrew F. v. Douglas County Sch. Dist. RE-1*, further clarifies that to meet the IDEA's substantive obligations, a district must offer an IEP reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. 137 S. Ct. 988, 999-1000, 69 IDELR 174 (2017).

Parent Participation in IEP Meetings: Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Behavior: When considering special factors unique to a student, the IEP team must consider the use of positive behavioral interventions and supports,¹ as well as other strategies, to address behavior in the case of a student whose behavior impedes the student's learning or that of other. WAC 392-172A-03110(2)(i).

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).

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

¹ Throughout this complaint, positive behavioral interventions and supports are often referred to as "behavioral interventions" or "PBIS."

Emergency Response Protocols: If the parent and the school district determine that a student requires advanced educational planning, the parent and the district may develop emergency response protocols to be used in the case of emergencies that pose an imminent likelihood of serious harm, as defined in this section. Emergency response protocols, if developed, must be incorporated into a student's IEP. Emergency response protocols shall not be used as a substitute for the systematic use of a BIP that is designed to change, replace, modify, or eliminate a targeted behavior. Emergency response protocols are subject to the conditions and limitations as follows: a) the student's parent provides consent, as defined in WAC 392-172A-01040, in advance, to the emergency response protocols to be adopted; b) the emergency response protocols specify the emergency conditions under which isolation, restraint, or restraint devices, if any, may be used; the type of isolation, restraint, and/or restraint devices, if any, may be used; and the staff members or contracted positions permitted to use isolation, restraint, or restraint devices with the student, updated annually, and identify any required training associated with the use of isolation, restraint, or restraint devices for each staff member or contracted position; c) and any other special precautions that must be taken. WAC 392-172A-02105.

Isolation: Isolation as defined in RCW 28A.600.485 means: Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. WAC 392-172A-01107.

Isolation Conditions: Isolation shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of isolation as defined by RCW 28A.600.485 is subject to each of the following conditions: the isolation must be discontinued as soon as the likelihood of serious harm has dissipated; the isolation enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy; the isolation enclosure shall permit continuous visual monitoring of the student from outside the enclosure; an adult responsible for supervising the student shall remain in visual or auditory range of the student at all times; either the student shall be capable of releasing himself or herself from the enclosure, or the student shall continuously remain within view of an adult responsible for supervising the student, and any staff member or other adults using isolation must be trained and certified by a qualified provider in the use of isolation, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of isolation consistent with RCW 28A.600.485. WAC 392-172A-02110.

Likelihood of Serious Harm: Likelihood of serious harm as defined in RCW 70.96B.010 means: (1) A substantial risk that: (a) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide, or inflict physical harm on oneself; (b) Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or (c) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or (2) The person

has threatened the physical safety of another and has a history of one or more violent acts. WAC 392-172A-01109.

Imminent: Imminent as defined in RCW 70.96B.010 means: The state or condition of being likely to occur at any moment or near at hand, rather than distant or remote. WAC 392-172A-01092.

Restraint: Restraint as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to participate in activities safely. WAC 392-172A-01162.

Restraint Conditions: Restraint device shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of restraint as defined by RCW 28A.600.485 is subject to each of the following conditions: a) the restraint must be discontinued as soon as the likelihood of serious harm has dissipated; b) The restraint shall not interfere with the student's breathing; and c) any staff member or other adults using a restraint must be trained and certified by a qualified provider in the use of such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of restraint consistent with RCW 28A.600.485. WAC 392-172A-02110.

Follow-up and Reporting Requirements: School districts must follow the documentation and reporting requirements for any use of isolation or restraint consistent with RCW 28A.600.485. WAC 392-172A-02110. Following the release of a student from the use of restraint or isolation, the school must implement follow-up procedures. These procedures must include: reviewing the incident with the student and the parent or guardian to address the behavior that precipitated the restraint or isolation and the appropriateness of the response; and reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents. Any school employee, resource officer, or school security officer who uses isolation or restraint on a student during school-sponsored instruction or activities must inform the building administrator or building administrator's designee as soon as possible, and within two business days submit a written report of the incident to the district office. The written report must include, at a minimum, the following information: the date and time of the incident; the name and job title of the individual who administered the restraint or isolation; a description of the activity that led to the restraint or isolation; the type of restraint or isolation used on the student, including the duration; whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents. The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred. If the school or school district customarily provides

the parent or guardian with school-related information in a language other than English, the written report under this section must be provided to the parent or guardian in that language. RCW 28A.600.485.

Disciplinary Removal that Results in a Change of Educational Placement: Students eligible for special education may not be improperly excluded from school for disciplinary reasons. 34 CFR §300.530; WAC 392-172A-05140. The procedural rules for the discipline of students who are eligible for special education are based on four general principles: (1) a student eligible for special education should not be disciplined for behavior that is a result of his or her disability; (2) a student eligible for special education may be disciplined for behavior that is not a result of his or her disability, but only in a manner that is consistent with the discipline imposed on nondisabled students; (3) during a period of discipline, a student eligible for special education should continue to receive services that will allow him or her to progress in his or her education after 10 days of removal; and (4) when a student's disciplinary removal from school is significant enough to amount to a change in their educational placement, additional procedural requirements apply. *See generally* WAC 392-172A-05140 through 05155.

A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days; or, when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. 34 CFR §300.536; WAC 392-172A-05155. After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. WAC 392-172A-05145.

Supporting Behavior of Students with Disabilities: The IDEA requires individualized education program (IEP) teams to consider the use of positive behavioral interventions and supports for children with disabilities whose behavior interferes with their learning or the learning of others. When a child displays inappropriate behavior, such as violating a code of student conduct or disrupting the classroom, this may indicate that behavioral supports should be included in the child's IEP; this is especially true when (a) the child displays inappropriate behavior on a regular basis or (b) when the behavioral incidents results in suspensions or other disciplinary measures that exclude the child from instruction. If a child displays inappropriate behavior despite having an IEP that includes behavioral supports, this may indicate that the behavioral supports in the IEP are not appropriate for the child. In these situations, the IEP team would need to meet to discuss amending the current IEP to ensure that the interventions in the IEP can be implemented, or to

revise the behavior interventions that are currently in place. The IDEA requires that needed behavioral supports in the IEP, whether provided as special education, related services, or supplementary aides and services, be based on peer-reviewed research to the extent practicable. The supports chosen should be individualized to the child's needs. In addition to behavioral supports for children with disabilities, it may also be necessary, and consistent with IDEAL requirements, to provide supports for school personnel and training on the use of positive behavioral interventions and supports in order to appropriately address the behavior needs of a particular child. It is important to keep in mind, that in general, placement teams not place a child with a disability in special classes, separate schooling, or other settings outside of the regular educational environment solely due to the child's behavior if the child's behavior can be effectively addressed in the regular educational setting with the provision of behavioral supports. Schools should exercise caution in using disciplinary measures that remove a child from his or her current placement, such as suspension. Research has shown that exclusionary measures, in general, are not only ineffective at reducing or eliminating the reoccurrence of the misbehavior but may even be harmful to the child, possibly leading to lower academic performance, disengagement from school, and the decision to drop out. Parents have the right to request an IEP team meeting at any time, and public agencies generally must grant a reasonable request from a parent for an IEP team meeting. Parents may want to request an IEP team meeting following disciplinary removal or changes in the child's behavior that impede the child's learning or that of others, as these likely indicate that the IEP may not be appropriately addressing the child's behavioral needs or is not being implemented. See *OSEP Dear Colleague Letter on Supporting Behavior of Students with Disabilities*, (August 1, 2016).

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or behavior intervention plan. 34 CFR §300.530(e); WAC 392-172A-05145(5).

If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct an FBA, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or, if a BIP already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and, except for special circumstances, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan. 34 CFR §300.530(f); WAC 392-172A-05145(6).

When a disciplinary exclusion exceeds ten school days and the behavior in question is found not to be a manifestation of the student's disability, a district may apply the same relevant disciplinary procedures, in the same manner and for the same duration as it would to a student not eligible for special education, except that: the student must continue to receive services that provide a FAPE and enable the student to continue to participate in the general education curriculum and progress toward meeting annual IEP goals, even if services are provided in another setting; and receive, as appropriate, an FBA and behavioral intervention services that are designed to address the behavior violation so that it does not recur. 34 CFR §300.530(c)-(d); WAC 392-172A-05145(3)-(4).

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

Parental Notice and Procedural Safeguards: No later than the date on which the district makes the decision to remove a student, creating a change of placement through discipline for more than ten school days, it must notify the parents of that decision. 34 CFR §300.530(h); A copy of the parents' procedural safeguards under the IDEA must accompany this notification. 34 CFR §300.504; WAC 392-172A-05015(1); WAC 392-172A-05145(8).

Neighborhood School Placement Not Always Required: A student with a disability will be educated in the school he or she would attend if nondisabled, unless the student's IEP requires another arrangement based on the student's needs. If the student needs other arrangements, placement will be as close as possible to the student's home. 34 CFR §300.116; WAC 392-172A-02060(3).

FINDINGS OF FACT

2017-2018 School Year

1. In January 2017, while attending school in the District, the Student was found eligible for special education services under the category of speech or language impairment. The initial evaluation noted concerns in the areas of articulation, as well as in core language abilities, including receptive and expressive language; however, it noted that the Student's deficits in understanding and expression of spoken language may "not be due to a deficit in language skills per se: Rather, they may be related to self-confidence."

The evaluation included the following impact statement regarding how the Student's disability negatively impacted the Student's educational performance:

[Student's] documented delay prevents him from meeting grade level expectations in the area of Listening/speaking. The Washington State Common Core State Standards for Speaking & Listening states that children in all grades are typically expected to *demonstrate the use of developmentally appropriate speech sounds in connected speech, to express their*

*thoughts and ideas clearly.*² With or without accommodation, [Student] is not consistently displaying these skills. He continues to make speech errors that are no longer appropriate for his age. His speech is less intelligible than what is expected for his age. [Student's] communication skills are considered educationally significant, as he cannot express his thoughts and intents with age appropriate clarity. This affects the quality of his oral responses and presentations in class. He is not successful when verbalizing what he knows to his teacher(s). His relationships with peers are likely affected if he cannot be adequately understood by them when collaborating, or when discussing topics in small groups.

2. On March 1, 2017, the District developed a "Student Success Plan"³ ("success plan" or "504 behavior plan") that addressed the Student's school refusal behaviors (refusing to enter the school building and refusing to attend class) and physical and verbal aggression. The success plan stated:

In the fall, [Student] had difficulties entering the classroom and wanting to be at school. Interventions were implemented and he was successful. Teacher reports he was a model student once acclimated to the school environment. After Christmas break, [Student] reverted to his avoidant school behaviors. The following are new behaviors he is displaying: physical aggression, vomiting, urinating, and use of profanity. Presently, once he enters the classroom he is calm and will participate in preferred activities. However, he continues to avoid non-preferred activities. Since January 2, 2017, [Student] has attended 14 days out 34. The week of February 13th was the first full week that he has attended since Christmas break. It takes him an hour to two hours before he enters the classroom.

3. On December 11, 2017, the Student's individualized education program (IEP) team met to develop the Student's IEP. The following individuals were present: Parent, special education teacher, general education teacher, and District representative. The IEP included the following regarding the impact of the Student's disability:

[Student] is a male, first grade student with a documented delay in area of communication which impacts his ability to communicate at a level commiserate with his same aged peers. Currently [Student] has difficulty using /r/ in conversational speech. Typical children this age are able to speak clearly with adult like grammar and few pronunciation/articulation errors. With or without accommodations, [Student] does not yet display these skills, and therefore requires specially designed instruction to make progress in the area of communication.

² Emphasis in original.

³ The Student Success Plan stated:

A success plan is often written and implemented when a student requires supports in addition to the Individualized Education Program (IEP) but does not yet require a full Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP). In this case the team wants to get to know the STUDENT better, provide accommodations and supports, collect data, then determine if further supports are necessary. It is helpful to have student success strategies written down so that all adults who interact with the student have the same understanding (including specialists) as well as helpful for adults who may be unfamiliar with the student such as substitute teachers.

The December 2017 IEP contained one goal in the area of communication and provided the Student with 30 minutes weekly of specially designed instruction in communication in the special education setting, and indicated that the Student would spend 98% of his time in the general education setting. According to the Student's IEP, the Student did not have any behaviors that negatively impacted his learning or the learning of others. The IEP did not provide the Student any accommodations or modifications.

4. From January 18, 2018 to March 14, 2018, the documentation showed the Student had twelve behavior incidents that included aggression, non-compliance, refusing to go to class, and tipping over furniture, among other behaviors.
5. In March 2018, the Parent requested the District evaluate the Student in behavior and academics. The District denied the Parent's request. According to the Parent, the District denied her request because the Student was classified as a Student with a speech impairment.⁴ In her complaint, the Parent further alleged that the Student's teachers were often not aware of the Student's "success plan." In her complaint, the Parent alleged that the Student was being restrained and/or isolated at school, and that she would receive phone calls notifying her of the use of restraint or isolation, but that the IEP and success plan were silent on the use of restraint and isolation. The District did not develop a behavioral intervention plan (BIP) for the Student during this time and the Student did not have an emergency response protocol.
6. On March 26, 2018, the District provided the Parent with an IEP progress report on the Student's communication goal, which indicated the Student was making progress and stated the following: "Currently [Student] is able to use initial /r/ in 5/10 medial /r/ 1/10, final /r/ 7/10 during a structured activity. Nice growth [Student]!"
7. On May 29, 2018, the District provided the Parent with an IEP progress report, which indicated continued progress on the Student's IEP goal and stated the following: "We have continued to target initial prevocalic /r/. He is able to use in 9/10 opportunities by imitation. We have begun introducing initial vocalic /air, ar/: able to use /air/ in 3/10 opportunities, /ar/ 1/10. We will continue to work on his overall /r/ development in the fall..."
8. The timeline for this complaint began on June 5, 2018.

2018-2019 School Year

9. During the 2018-2019 school year, the Student was in second grade and attended an elementary school in the District. The Student continued to be eligible for special education services under the category of speech or language impairment.

⁴ On July 24, 2019, OSPI confirmed during a phone interview with the assistant director of special education that in March 2018, the IEP team declined a request by the Parent to evaluate the Student in the areas of behavior and academics. The notice of the denial of request to evaluate the Student was not included with the records originally provided to OSPI with the District's response because it was outside of the timeline for the investigation. OSPI requested the record from the District during the phone interview on July 24, 2019; however, it was not provided to OSPI prior to the end of the investigation period.

10. The first day of the 2018-2019 school year for the District was August 30, 2018.
11. On September 3, 2018, the District was off school for a holiday.
12. According to the attendance records kept by the District during the 2018-2019 school year, the Parent either requested to pick up the Student early, or the Student had an unexcused absence recorded for eighty-one (81) days.⁵ The attendance record indicated the following during the first semester of the 2018-2019 school year:
 - During the month of August 2018, the Parent requested to pick up the Student early on August 31, 2018.
 - During the month of September 2018, the Parent requested to pick up the Student early on September 10, 2018.
 - During the month of October 2018, the Parent requested to pick up the Student early on the following dates: October 4, 17, and 31, 2018.
 - During the month of November 2018, the Parent requested pick up the Student early on the following dates: November 2, 8, 9, 12, 13, 19, 20, and 21, 2018.
13. On November 12, 2018, the District was off school for a holiday.
14. On November 13, 2018, the Student's IEP team met to conduct an annual review of the Student's IEP. The IEP stated:

[Student] is a male, second grade student with a documented delay in the area of communication which impedes his ability to communicate at a level commensurate with his same aged peers. Currently, [Student] has difficulty using vocalic /r/(l.e.e., /ar, ear, air, ire, er, or, and rl/) in conversational speech. Typical children this age are able to speak without articulation errors. With or without accommodations, [Student] does not yet display these skills, and therefore requires specially designed instruction to make progress in the area of communication.

The Student's IEP included one communication goal and provided specially designed instruction in the area of communication for 30 minutes weekly and indicated that the Student would spend 98% of his time in the general education setting. The IEP did not indicate any behavioral concerns and no accommodations were provided.

The prior written notice (PWN), dated November 13, 2018, stated the District proposed the "annual update of the student's IEP as required by WAC regulations." No other proposals or refusals were noted.⁶

⁵ In the Parent's reply, the Parent wrote that the requests to pick up the Student and unexcused absences were frequently improperly marked on the Student's attendance record. The Parent explained that she often took the Student to school and was prepared to drop him off, but that she did not receive the support required for him to stay due to his school avoidant or school refusal behaviors exhibited during drop off, or that she would be asked to take the Student home because of his aggressive behaviors. The Parent explained to OSPI in her reply that she felt the notation of "Parent Request" was not an accurate.

⁶ Although the issue of prior written notice was not at issue in this complaint, OSPI notes that the prior written notice provided to the Parents did not contain all of the elements required of a prior written notice. The District is encouraged to review WAC 392-172A-05010.

15. On November 18, 2018, the District sent the Parent notice by mail that a multidisciplinary team (MDT) meeting had been scheduled for December 11, 2018, to discuss the Student's special education eligibility and evaluation. The meeting notice indicated that the school psychologist, general education teacher, special education teacher, and speech language pathologist would be in attendance.
16. On November 22 and 23, 2018, the District was off for Thanksgiving break.
17. On November 28, 2018 the District provided the Parent with PWN, which stated it was proposing to evaluate the Student because "there are concerns regarding [Student's] educational performance."
18. During the month of December 2018, the Student's attendance records indicated the Parent requested to pick up the Student early on the following dates: December 5, 12, 14, and 17, 2018.
19. On December 3, 2018, the Student's disciplinary record stated the Student refused to go to class at the start of the school day and once in the classroom, started ripping items off the wall and kicking doors. After 90 minutes of failed interventions—including asking the Student to come in the classroom—the Student was found outside the area near the office, refusing to comply with directions. The disciplinary report noted that the Student received 1 day of "behavior intervention, other."⁷
20. On December 4, 2018, the school principal, two assistant principals, school counselor, and support specialist met and updated the success plan to address the Student's behaviors of refusing to enter the building or going to class and becoming physically and verbally aggressive. According to the plan, the Student "[w]ill hit, kick, and throw things at adults. He will rip things off the wall, rip up teacher materials, break school supplies, knock over furniture and throw things. He uses profanity." The success plan included behavior interventions, reinforcements, responses to problem behaviors/disciplinary consequences, and strategies to teach the Student.

Under "response to problem behavior," the success plan provided that when the Student "refuses to enter the classroom in the morning and is wandering the halls," one should "ignore and not engage," and "He can wait in the office."

In response to "throwing or knocking over things," the success plan required one to "call office to have [Student] removed."

The Student did not have an emergency response protocol.

⁷ On July 24, 2019, the assistant director of special education (assistant director) explained to OSPI during a phone interview that the notation "behavior intervention, other" and "behavior intervention" referred to the restorative practice whereby the Student was given an opportunity to process behavioral incidents with educational or administrative staff before returning to class.

21. On December 4, 2018, the Student received a disciplinary referral after knocking a book bin off his desk during morning routine. According to the incident report, administration was called after the Student refused to take a break. The incident lasted for 45 minutes, during which the Student "refused to go to the office or other location," and "hid under his desk for a few minutes while trying to move him closer to the door through proximity." Attempts to engage the Student in verbal conversation about his success/reward plan were reportedly unsuccessful. According to the Student's disciplinary records and an interview with the assistant director, following the behavior, the Student debriefed with a counselor or behavior expert at the school and then returned to class.⁸
22. On December 6, 2018, the Student received a disciplinary referral after he was found eloping in the classroom/hallway area and having kicked a door. The Student reportedly refused to comply with adult directives when found and would not go to the office. According to the Student's disciplinary records and an interview with the assistant director, following the behavior, the Student debriefed with a counselor or behavior expert at the school and then returned to class. The incident was documented as having received a response of "behavior intervention, other."
23. The District included a progress report with its response, dated December 7, 2018. The progress report included progress notes on the Student's communication goal in his IEP. According to the progress note, there was a new communication goal developed in November, 2018, and the Student was "currently working on vocalic /r/ at the word level [and could] currently produce by imitation /ear/ words in 8/9, /air/ words 4/9, /ire/ words 6/9."
24. The District included an undated "Child Find Referral" form in the documentation for purposes of this investigation. The form indicated the Parent made a referral for an evaluation of the Student in the areas of social/emotional, reading, and written language. The form indicated that it was reviewed by the team facilitator on December 11, 2018, and that a date for a team assessment decision was set for the same day. The referral stated the Student had an IEP for speech only, but that the Parent was concerned about the Student's attendance, school refusal, aggressive and non-compliant behaviors, as well as the number of removals the Student had from school. The form stated the Parent expressed emerging concerns about the Student's reading and writing.
25. On December 11, 2018, the school principal, assistant principal, two resource room teachers, the speech/language pathologist, the school psychologist, and the general education teacher held an MDT meeting to discuss whether the Student required a reevaluation. Meeting minutes kept by the District indicated the Parent did not attend the meeting, although the group discussed information provided by the Parent, including the child find referral. The Parent signed the consent form for the evaluation recommended by the MDT on the same day. Information provided by the Parent included that the Student had a mood and anxiety disorder, took vitamin D, had selective mutism, and was going to start counseling after break.

⁸ The Student's disciplinary records stated that in response to the Student's actions, the Student received one day of "behavior intervention, other." See fn. 7.

The meeting notes stated, among other things, that the Student's behavior was affecting all areas of academics and his aggression was increasing.⁹ The MDT concluded that the Student would be referred for a reevaluation. A "Review of Referral for Special Education Evaluation" form was completed. The referral indicated the Student was academically below grade level and had problems with attendance.¹⁰

26. On December 12, 2018, the Student received a disciplinary referral after the Student refused to go to class at the start of the school day when directed by staff and the Parent. According to the incident report, the Student was rolling around on the ground, running in and out of the school building, was not responsive to interventions offered, and had to be carried back into the building multiple times by the Parent. The incident report noted that the behavior "lasted for about 45 minutes before mom chose to take him." The attendance record shows that the Parent requested to take the Student home from school early ("PRQ" or "parent request").
27. From December 24, 2018 through January 4, 2019, the District was off for winter break.
28. During the month of January 2019, according to the Student's attendance records, the Parent either requested to pick up the Student early ("PRQ" or "parent request"), or the Student had an unexcused absence on the following dates: January 10, 11, 14, 16, 17, 18, 23, 24, 29, and 31, 2019.
29. On February 6, 2019, the Parent signed a consent form to extend the 35-day evaluation deadline due to the following reason: "[Student] has not attended school regularly since before Winter Break. We will complete the evaluation as soon as possible and are working to meet with [Student] at alternative locations."
30. During the month of February 2019, according to the Student's attendance records, the Parent either requested to pick up the Student early, or the Student had an unexcused absence on the following dates: February 1, 4, 5, 6, 7, 8, 11, 13, 14, 15, 19, and 20, 2019.
31. On February 22, 2019, the Parent received a call from a District staff member, notifying her that the Student was going to be dropped from his classes and would need to re-register because he had missed 22 unexcused school days. The Parent stated in her reply that she was told that she would need to register the Student the following week.
32. On February 28, 2019, the Student's teacher emailed the Parent that "due to behavior concerns," the Student was welcome to ride the bus with the class for a school field trip the following week, but that she would like a Parent to attend to supervise him directly.
33. During the month of March 2019, according to the Student's attendance records, the Parent either requested to pick up the Student early ("parent request"), or the Student had an

⁹ Although this information was included in the meeting notes from the MDT meeting, the Student's IEP continued to state that the Student did not have behaviors that interfered with his learning or that of others.

¹⁰ As of November 29, 2018, the Student had been absent fifteen out of sixty-two school days.

unexcused absence on the following dates: March 7, 11, 18, 19, and 29, 2019. The Parent stated in her reply that she spoke with the District on each of those days regarding the Student's school refusal behaviors and that she attempted to bring the Student to school. The Parent reported she did not receive any support for the Student's school refusal behaviors and was unable to transition the Student into the school building or into his classroom.

34. The District's response included a copy of an invitation for the Parent to attend a meeting on March 6, 2019. It is unclear when or what method was used to send the meeting notice to the Parent.
35. The District's evaluation report, dated March 6, 2019, stated the Student was evaluated in the areas of academic, social/emotional, self-help/adaptive, language/communication, and intellectual development. The review of records indicated the Student had "multiple mental health diagnoses, including generalized separation anxiety, selective mutism, and disruptive mood dysregulation disorder." The most recent diagnoses, dated December 5, 2018, included anxiety and childhood emotional disorder. The evaluation results showed the Student performed in the low average range of nonverbal intelligence. Academically, the Student was at grade level in math but was below grade level in reading and writing. Behaviorally, the Student's social skills were in the well below average range, particularly in the areas of communication, cooperation, assertion, empathy, engagement and self-control. The Student's problem behaviors were in the well-above average range, particularly in the areas of externalizing, bullying, hyperactivity/inattention, internalizing, and autism spectrum. The Student's adaptive/self-help skills were at the twenty-first percentile when compared to others his age.

The evaluation recommended specially designed instruction in the areas of reading, writing, behavior/social and communication.

The evaluation further noted that although the Student's record was significant for chronic absenteeism, the Student's "mental health diagnosis of anxiety and history of separation anxiety" manifested itself in school refusal behaviors, and that these were manifestations of the Student's disability and were thought to be the determinant factor regarding the Student's educational performance. The evaluation recommended a placement for the Student in a program designed for students with severe behavior difficulties.

The evaluation report was signed by District staff and the Parent, indicating that the report "reflected his/her conclusions."

The PWN, dated March 6, 2019, proposed that the "results of evaluation indicate that [Student] is eligible to receive special education services under the category of Other Health Impairment." No other proposals or refusals were noted.

36. On the same day, March 6, 2019, the Student's IEP team developed a new IEP for the Student. The Student's IEP provided for annual goals in the areas of reading, writing, behavior/social,

and communication, and included the following specially designed instruction in the special education setting:

- Reading: 120 minutes per week (provided by the special education staff);
- Writing: 120 minutes per week (provided by the special education staff);
- Behavior/Social: 100 minutes per week (provided by the special education staff); and,
- Communication: 30 minutes per week (provided by the speech/language pathologist).

The Student's IEP provided the following accommodations and assistive technology:

- Shortened assignments
- Limited multiple choice
- Rephrase test questions
- Simplify test wording
- Extra time to complete assignments
- Extra time on tests/quizzes
- Provide individualized/small group instruction
- Read class materials orally
- Modify/repeat/model directions
- Preferential seating
- Utilize oral responses to assignments/tests
- Text-to-Speech

The IEP indicated the Student would spend 79% of his time in the general education setting. The IEP stated the Student's behavior did not negatively impact his learning or the learning of others. The IEP was signed by the Parent, indicating the Parent attended the IEP meeting.

37. On March 6, 2019, a progress report was provided to the Parents on the Student's communication goal. The progress report noted that the Student had made no progress due to the Student having only attended one week of school since December 2018.

38. On March 13, 2019, the Student's teacher emailed the Parent the following:

Yesterday was a bit of a rough day for [Student]. When he was locked out, he had to be escorted out of the room by [assistant principal], I had to call the office because he was throwing and kicking items in the classroom. This happened twice yesterday, both times he seemed to just want to walk up and down the hall so we let him. He did initiate wanting to come back into the classroom both times, and that's when I let him in. Once I was sure he was calm and safe again.

39. On March 13, 2019, the Student received a one-day suspension for throwing and knocking over items in the classroom. When the District attempted to intervene, "he ran away and was pulling items off the wall."

40. On March 16, 2019, the Parent's advocate emailed the school principal and asked if the late start of 10:45 would "count as an absence since 10:30 was the cut off time." The school principal responded that the school would list the late start in the Student's attendance record as a "school request in the system," and that the late start was "considered excused."¹¹

¹¹ The Parent stated in her reply that the attendance record had not been corrected to reflect the District's agreement in this communication. On eleven (11) days, the Student's attendance record stated the Student was "TYE" (tardy) and the "PRQ," (parent requested to pick up student early). In an email from OSPI to the District on July 23, 2019 and during OSPI's phone interview with the assistant director on July 24, 2019, OSPI

41. On March 25, 2019, the Student received a one-day suspension for being “nonresponsive with requests” in the classroom and for “[cutting] apart his daily point sheet aggressively with scissors.” When leaving the classroom, the Student ran through the hallway, tearing items off the wall. The Student also “directed profanity (verbal and non-verbal) towards staff and parent.”
42. On March 28, 2019, the Student received a two-day suspension for walking around the building and using profanity.
43. From April 1 through April 5, 2019, the District was off for spring break.
44. During April 2019, according to the Student’s attendance record, the Parent either requested to pick up the Student early, or the Student had an unexcused absence on the following dates: April 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, and 22, 2019.
45. On April 19, 2019, the Student received a disciplinary referral for “behavior that causes an adverse impact on the health and safety of other students or staff.” According to the disciplinary report, at two different times, the Student knocked over furniture in the classroom, walked out of the classroom and began ripping items off the walls. According to the Student’s disciplinary records and an interview with the assistant director, following the behavior, the Student debriefed with a counselor or behavior expert at the school and then returned to class.
46. On April 22, 2019, the Student received a disciplinary referral for knocking over the materials on his desk and refusing to leave the classroom when directed. According to the Student’s disciplinary records and an interview with the assistant director, following the behavior, the Student debriefed with a counselor or behavior expert at the school and then returned to class.
47. On April 23, 2019, the Student received a one-day short-term suspension for refusing to go to class, pulling items off the wall, failing to comply with directions, eloping from the principal assistant’s office, and becoming verbally and physically aggressive after being escorted to the principal’s office. The disciplinary report summary noted the Student kicked the principal’s assistant during efforts to deescalate the Student.

asked for clarification regarding the Student’s attendance records. In particular, OSPI noted that the Student’s attendance record appeared to indicate that the Student had been sent home early or had an unexcused absence for a total of eighty-one (81) days, but that it was unclear what had occurred on the days that were marked “PRQ” (“parent request”) or unexcused. The assistant director told OSPI he would be speaking to the school principal by the following day to get clarification and that he would report back to OSPI with additional information. Additional information was not provided to OSPI by the District before the end of the investigation time period. Accordingly, OSPI concluded from the attendance records and documentation provided by the Parent that the Student was absent from school or removed early 81 days during the 2018-2019 school year. Further, the District did not provide documentation to show that the Student received instruction on the days marked “PRQ” or unexcused.

48. On April 23, 2019, the District documented on a report of restraint that the Student was physically restrained by District staff. The restraint report stated, “[Student] started out being non-compliant with directions, using profanity and destruction of property. [Student’s] behavior then became more aggressive. He tipped over a chair and then kicked it down the hallway.” According to the report, the restraint began at 10:25 am and lasted for one minute. The report stated that no injuries resulted to either the Student or staff, that the District contacted the Parent “in person” on April 23, 2019 at 10:40 am, and that written notification was sent on May 8, 2019. The report did not contain any information regarding whether or how the incident was reviewed with staff. The report also showed that the restraint was not reviewed with District staff or the Parent. The recommendation to change resources stated, “Request consultation with Ed Specialist.”¹²

The Student received a one-day suspension for the incident.

49. On April 25, 2019, the Parent emailed the OSPI parent and community liaison regarding her concerns. She wrote, in part, that “In February, [Student] had 22 ‘unexcused absent’ days and [the District] decided to drop him from his class prior to going to the attendance board meeting—they had written notice of this timeframe being when he was put on new medication and daily communication with me about him. After the attendance board meeting with [coordinator of community truancy boards], [coordinator of community truancy boards] advised the school to stop coding the absences wrong? Now I seriously feel they are provoking him to get him out of there.”

50. On April 25, 2019, the District revised the Student’s success plan to address destroying classroom materials, physical aggression, running, and growling.

51. The Parent described the implementation of the success plan as follows:

...They also state that their success plan included reading quietly and breathing techniques, 9 times out of 10, that was not the case. What really happened with the success plan that they so called had that I had no idea about, was that I would drop [Student] off at 8:15am and he would go directly into the “quiet room” AKA the teddy bear room which used to be [teacher’s] AKA [speech/language pathologist’s] office. It states in this so called success plan, that [speech/language pathologist] would read quietly and do games as well as breathing exercises but that is not true at all. Every day he had school refusal, he was put into this small office room that was cleared out completely and made it bare and put a big teddy bear on the ground for him to lay on, there was no books, no games, nothing at all in this room and they would hold it shut for hours until he fell asleep or eventually calmed down. This process took him hours and hours later. [School counselor] would call and assure me he is okay, he went to class, but that he is still scared and is hiding behind the chairs, etc. After months of this, we begged for a real 504 behavioral plan, his counselor advised us we needed one immediately and it took until May 2019 to receive this plan...

¹² Documentation did not show whether the District had requested consultation with an educational specialist regarding the Student’s behaviors.

52. Also on April 25, 2019, the Student was given a two-day suspension for refusing to go to class and pulling items off the wall.
53. During May 2019, according to the Student's attendance record, the Parent either requested to pick up the Student early, or the Student had an unexcused absence on the following dates: May 6, 7, 8, 9, 10, 13, 14, 15, 17, 20, 21, 22, 23, 24, 28, 29, and 30, 2019.
54. In her reply, the Parent wrote that:

On [May 1, 2019] and [May 29, 2019] I sat in the office with [assistant principal] for 2 hours with [Student] discussing with her how [Student] needs more support at another school, and they cannot provide him with the help she knows he needs and will get if he goes to a behavioral classroom. It was mutually decided, that without further support to keep [Student] at school, that I would just take him home. These days, they have him marked as an unexcused absence, although we had direct face to face communication.
55. On May 7, 2019, according to the Parent, the District wanted to send the Student home for "wandering the halls, swiping papers off the wall, refusing to walk to class, etc."
56. Also on May 7, 2019, the District investigated an incident whereby the Student was involved in a behavior incident that escalated to the point that District staff intervened. A staff member restrained the Student, but used an improper Right Response hold. The District acknowledged that the staff member's certification for Right Response had previously lapsed. The Parent alleged that the staff member told the Student "Hit me in the jaw so I can press charges." The District was unable to substantiate the statement by the staff member but did acknowledge that the staff member told the Student that "when he is older, hitting people could get him in trouble, even send him to prison."
57. On May 9, 2019, according to the disciplinary report, the Student was suspended for one day. The report stated, "[Student] refuses daily to go to class. He is loudly verbal using profanity and wanders the halls ripping items off walls. He does not follow directions. Refused SPED (special education) services."
58. In her reply, the Parent wrote that "On [May 10, 2019] [Student] had a [substitute teacher] that marked him as tardy but present the rest of the day, and she even took a picture of him, sent it to me, and showed me he was being good and having a good day. Somehow the school has marked him absent."
59. On May 16, 2019, according to the Parent, the Student was sent home, but his attendance record indicated the Parent requested to take him home.
60. On May 17, 2019, the Parent stated she was called to pick up the Student at 12:57 pm.
61. On May 20, 2019, the District conducted a functional behavioral assessment (FBA) and developed a behavioral intervention plan (BIP) to address the Student's behaviors, including school avoidance, screaming, hitting and throwing objects, destroying materials, and leaving

the classroom without permission. The FBA listed the following behavioral interventions that had been attempted:

- Daily check in
- Zone of Regulation
- Reward system
- Break system
- Access to calming area with calming tools
- Explicitly taught calming strategies
- Second Step social skills training
- Kelso's Choices
- Point system
- Visual schedule
- Star chart
- School resource officer
- Work first then access preferred activity
- Modified day per Parent's request

The FBA identified antecedent, behavior, and consequence for the Student's behavior. The antecedent was attending school and entering the classroom. The behavior the Student engaged in was yelling, screaming, profanity, kicking, hitting, and destroying property. The consequence listed was that the Parent takes him home.

The Student's BIP identified interventions, such as visual supports, positive reinforcers, and a calming area to reduce problem behaviors.¹³ The target behavior was "non-compliance" and "verbal and physical aggression" and provided strategies for refusal to comply and physical aggression, including the "parents will be called if he leaves the classroom without permission or if the office is called because of his behaviors."¹⁴

The Parent stated in her complaint that she did not receive notification that a BIP was developed and being implemented and was not invited to the IEP meeting to discuss the results of the FBA and develop the BIP.

62. On May 20, 2019, the Student's disciplinary report stated the Student refused to go to class, shouted profanity and became verbally and physically aggressive towards staff and the Parent as she tried to drop him off at school. The report indicated that the Parent "pulled him out of school. On the grass [Student] took off his shoes refused to get in the car and then threw his shoes at the car. He eventually went with her."

63. From December 3, 2018 to May 20, 2019, the documentation showed there were fourteen behavior incident reports that included aggression, refusing to go to class, and ripping items

¹³ While use of a calming area may be included as part of a student's behavior intervention plan, its use must be for self-calming, not for isolation. The student must voluntarily choose to use the space for self-calming, the removal from the student's regular instructional area must be temporary, the door on the room or area used for self-calming must be unlocked at all times, and it should only be used for purposes of carrying out an appropriate positive behavioral intervention plan. WAC 392-172A-01107. Otherwise, the District must follow the procedures for using, documenting, and reporting isolation as defined by RCW 28A.600.485.

¹⁴ OSPI notes that developing a behavior plan for a student who is exhibiting school refusal behaviors, which includes having the parent take the student home early or another intervention involving removal of the student from the educational environment is contraindicated in school refusal literature and should not be included as a part of a behavior plan for students exhibiting school refusal or avoidant behaviors.

off the walls, among other behaviors, that resulted in six suspensions for a total of eight days of disciplinary removal. On the days the Student was not suspended, the Student frequently missed class time of 45 minutes to over an hour, or the Parent was called to pick up the Student from school early.

64. On May 22, 2019, the Parent stated in her reply that she walked into the school with the Student and the principal sat her down to discuss possibly homeschooling the Student, and buying a workbook at Costco because the Student was so behind and "there is no support at this school that they can provide..." The Parent stated she attempted to bring the Student to school, was refused support, and brought him home.
65. According to the Parent's reply, on May 23, 2019, she was called at 11:59 am to pick up the Student.
66. On May 24, 2019, according to the Parent, the Parent and the Student arrived to school and sat in the "office." The [Student] was "unable to walk to class and no support given from staff, counselors, or administrators so we mutually agreed to leave..." The Student's attendance record was marked "UNX" or unexcused absence.
67. On May 30, 2019, according to the Parent, the Parent and Student came to school and sat in the office and waited for "support from administrators and received no help so we left." The Student's attendance record was marked "UNX" or unexcused absence.
68. On June 6, 2019, according to the Parent, the Parent and Student came to school and sat in the hallway of the offices with "no support from the counselors or staff." The Parent eventually left the school.
69. From Jun 1, 2019 to June 13, 2019, the Parent alleged that she spoke with the District by phone several times regarding the Student's behavior. According to the Parent:
 - On June 3, 2019, the Parent spoke with someone at the District at 11:47 regarding picking up the Student because of his behaviors.
 - On June 4, 2019, the Parent contacted the guidance counselor at 8:55 am. The Parent told OSPI she had a 17-minute conversation with the counselor regarding the Student's behaviors.
 - On June 5, 2019, the District called the Parent three times during the school day regarding the Student's behaviors asking her to pick up the Student.
 - On June 7, 2019, the District called the Parent at 11:40 am to pick up the Student.
 - On June 10, 2019, the Parent was called at 8:12 am by the District. The Parent had multiple conversations that day with the school counselor regarding the Student.
 - On June 11, 2019, the Parent was called at 10:20 am by the District and again at 4:09 pm regarding picking up the Student.
 - On June 12, 2019, the Parent had a one-minute conversation with the District regarding the Student.
70. Between May 6, 2019 and June 24, 2019, the attendance record shows that of twenty-eight (28) school days, the Student had seventeen (17) unexcused absences and nine (9) Parent requested absences.

71. On June 14, 2019, the District's 2018-2019 school year ended.
72. On June 26, 2019, the District sent a letter to the Parent, notifying the Parent that the District had changed the Student's school location to a school that was not the Student's neighborhood school. The letter indicated that the Student had been enrolled in a behavior intervention (BI) program and that the behavior intervention classrooms would be located at a school other than the Student's neighborhood school, which had made it necessary to change the Student's location. The Parent indicated to OSPI that she had not been made aware that the Student's program had changed to a behavior intervention program and that she had not participated in an IEP team meeting to change the Student's IEP. The BI program was recommended by the March 2019 evaluation, which the Parent had signed but was not mentioned in the PWN.
73. On July 24, 2019, OSPI interviewed the associate director. OSPI obtained the following information from that interview:
- The District utilizes informal behavior plans on students with IEPs when it is determined by the IEP team that a student is not having behaviors that interfere with the learning of the student or of others, and that the informal plans are not part of the IEP.
 - The District requested relevant email communications from teachers as part of its investigation into the Parent's allegations but did not receive any at the time of the phone interview with OSPI because it "was summer break." The associate director stated the District accordingly had not included any emails with its response. OSPI reminded the District of its obligation to provide records to OSPI even during the summer months.
 - The associate director told OSPI that he would be interviewing the school principal the following day (July 25, 2019) regarding allegations of the use of isolation and concerns about the practice of calling the Parent to pick up the Student, and in response to clarifying questions about the Student's attendance. However, no follow up information was provided to OSPI regarding these allegations prior to the end of the investigation time period.¹⁵
 - The associate director told OSPI that it was his understanding that the Parent would drop off the Student at school and drive around the block, and then pick up the Student if the Parent found that the Student had not successfully transitioned into school building by the time she had circled the block. The District did not provide a response to the Parent's allegation that she did not receive any support to help transition the Student into the school building.

CONCLUSIONS

Issue One: Behavior – The Parent alleged that the District failed to follow procedures to respond the Parent's requests for services and/or accommodations to address the Student's behaviors, including requests for a behavior plan.

¹⁵ On July 30, 2019, the associate director emailed OSPI, stating that he had transitioned to a new position. Information requested by OSPI, including clarifying information from the school principal and additional documents requested by OSPI, including internal and external communications and clarification regarding the Student's attendance, were not provided to OSPI. OSPI relied on the documentation provided with the District's response, phone interview with the associate director, and with the Parent's reply, which was sufficient in responding to the allegations.

When considering special factors unique to a student, the individualized education program (IEP) team must consider the use of positive behavioral interventions and supports, as well as other strategies, to address behavior in the case of a student whose behavior impedes the student's learning or that of others. While the IEP is not required to include a functional behavioral assessment (FBA) and/or a behavioral intervention plan (BIP) in all circumstances, a district is required to conduct an FBA and develop or revise an existing BIP when the IEP team determines: (a) it is necessary for the Student to receive a free appropriate public education (FAPE), and/or (b) when the behavior that resulted in an educational change in placement is determined at a manifestation determination to be substantially related to a student's disability.

The standard for determining whether a student is provided a free appropriate public education (FAPE) is whether a student's IEP is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Like an IEP, a BIP should be tailored to the unique needs of the particular child and appropriately ambitious in light of the child's circumstances. In addressing the behaviors of students with disabilities, districts should utilize positive behavior interventions and supports. A behavior plan/BIP should not rely on the use of removals, restraints or isolation as a substitute for the systematic use of a behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior. If the IEP team determines a BIP is required for a student to receive a FAPE, it must be attached to the student's IEP. Attaching the BIP to the IEP provides the parent with the same procedural safeguards in developing and revising the behavior plan as revising the IEP.

Denial of FAPE for Failure to Address School Refusal Behavior

The Parent alleged that the District denied the Student a FAPE by failing to appropriately address his school refusal behaviors in his IEP. A FAPE must be available to every student between the ages of three and 21 who has been determined eligible for special education and who resides in the state of Washington. An IEP must aim to enable the child to make progress, the educational program must be appropriately ambitious in light of [the student's] circumstances, and the student should have the opportunity to meet challenging objectives.

At the commencement of the 2018-2019 school year, the Student was eligible to receive special education services under the category speech or language impairment, and had an IEP that provided for 30 minutes per week of speech services. The Student's IEP had one annual goal and throughout the first semester, the Student's progress reports indicated the Student was making progress on his speech goal. The Student also had an informal behavior plan ("student success plan"), which was developed to address the Student's school refusal and aggressive behaviors. The District confirmed on a phone interview with OSPI that it does not attach student success plans to IEPs and that they are often developed without meeting with a student's parents. Here, a multidisciplinary team (MDT) and other staff members, including the principal and school psychologist, met to develop or revise the Student's success plan several times throughout the 2017-2018 and beginning of the 2018-2019 school years. The documentation shows the Parents were not present at these meetings.

The Student's IEP team determined upon the creation of the success plan that the Student did not have behaviors that interfered with his learning and that the Student did not require positive behavioral interventions as part of his IEP to receive a FAPE. At the beginning of the 2018-2019 school year, the Student continued to make progress despite his behaviors and was not yet experiencing chronic absenteeism. Thus, here, the use of an informal success plan to address the Student's behaviors was not a denial of FAPE for the Student as his behavior needs did not yet indicate he required more substantial behavior interventions or supports as part of his IEP.

However, districts remain obligated to provide students with disabilities who have an IEP a FAPE. When a student with a disability's needs change or it is anticipated that their needs may change such that the student's IEP may no longer be appropriate or they are no longer making appropriate progress in light of their circumstances—even if they are making grade level progress—the IEP team should convene to determine whether a child requires behavioral supports *as part of their IEP*, regardless of the student's specific disability. The IEP team should also consider whether the student requires a reevaluation in the area of social/behavior. If the IEP team determines the student is having behaviors that are interfering with their learning and the learning of others, the IEP team should also consider what positive behavior supports the student requires, and/or if the student requires an FBA and/or a BIP. When an IEP team is considering whether the IEP needs to be reviewed and/or revised to include behavioral supports, the IEP team should consider the following regardless of the student's specific disability category and grade level progress: (a) incidents of student misbehavior and classroom disruptions; (b) violations of a code of student conduct; (c) disciplinary removals and other exclusionary disciplinary measures; and, (d) any other behavior aspects of the student's IEP related to behavior, which need to be addressed or revised to ensure the student receive a FAPE. *See OSEP Dear Colleague Letter on Supporting Behavior of Students with Disabilities*, (August 1, 2016).

By November 2018, the Student was experiencing each of the above scenarios, yet at the Student's annual IEP meeting in November 2018, the IEP team did not acknowledge that the Student's behaviors were interfering with the Student's learning in the IEP. Instead, an MDT met separately—and without the Parent—to revise the Student's success plan outside of the IEP process. Accordingly, the IEP team did not acknowledge that the Student required behavioral interventions as necessary for the Student to receive a FAPE, did not provide behavioral supports as part of the IEP, and did not include the Parent in the process of developing formal behavioral interventions as part of developing and revising the Student's IEP. Consequently, the Student did not receive the behavioral supports he required to address his school refusal behaviors, resulting in significant chronic absenteeism and near complete removal from the educational environment by the end of the 2018-2019 school year. By failing to address the Student's behaviors through the IEP process and denying the Parent's participation in the process, the Student was denied a FAPE and the District is in violation.

While OSPI acknowledges that the District conducted an FBA and BIP by May 2019, it has not yet revised the Student's IEP to indicate the Student's behaviors interfere with his learning and/or the learning of others. While OSPI generally defers to the decisions and expertise of IEP teams, the documentation here—including the District's own evaluation and the District's decision to

develop a BIP for the Student—overwhelmingly show that the Student’s behaviors were interfering with his learning and/or the learning of others and that the Student required behavior supports to receive a FAPE. Accordingly, the Student’s IEP should be revised to reflect this. The IEP team will be required to meet and revise the Student’s IEP to reflect the Student’s need for behavior supports.

The District will additionally be required to provide compensatory instruction to the Student for 1/3 of the amount of time the Student was out of school ($1/3 \times 81 \text{ days} = 27 \text{ days}$ or about 5.4 weeks of school) based on the Student’s March 2019 IEP, which OSPI finds to most accurately represent the Student’s needs, and which likely would have been implemented earlier had the District addressed the Student’s behavioral needs in November 2018, and implemented behavioral supports to enable the Student to be in school regularly at that time. Accordingly, the District will be required to provide 648 minutes of reading (11 hours), 648 minutes of writing (11 hours), 540 minutes of behavior/social (9 hours), and 162 minutes of communication (3 hours).¹⁶ All compensatory instruction will be provided individually by a special education teacher or speech language pathologist.

OSPI finds the March 2019 IEP to provide the most accurate representation of the Student’s needs because prior to that, the District declined to evaluate the Student’s behavioral and academic needs based on disability classification and the Student was not receiving a FAPE. However, because the Student was making progress on his one IEP goal prior to November 2018, the previous IEP only had speech services, and because compensatory instruction will be provided individually, it will be ordered at the rate of 1/3 days missed.

Furthermore, although OSPI acknowledges that the District has since tried to remedy the violation by reevaluating the Student in March 2019, conducting an FBA, and developing a BIP in May 2019, the IEP team did not meet to consider the Student’s behavioral needs when they first began to interfere with the Student’s learning in November 2018—which it should have done. This was when the Student first began experiencing more frequent violations of school conduct and removals. Furthermore, the BIP the District developed in May 2019 includes the use of Parent removals as a behavior intervention strategy—which is contrary to the literature on using positive behavioral interventions to support school refusal in students with disabilities. Accordingly, the District will be required to complete training on providing positive behavioral interventions and supports to address the issue of school refusal behaviors.

The District has further continued to utilize the use of removals by the Parent in the Student’s BIP in response to aggressive behaviors exhibited by the Student. As stated above, the use of removal is not a positive behavior intervention and is especially contraindicated in the literature for use in students with school refusal behaviors. The IEP team will accordingly be required to meet with the Parent and a behavior specialist or mental health expert with expertise in school refusal and use of positive behavioral interventions and supports to revise the BIP so that it no longer contains

¹⁶ Where the calculations of hours were not even, OSPI estimated the amount of time and rounded to the nearest hour to make it easier to schedule the provision of instruction.

removal as an intervention, and instead contains positive behavior interventions and supports based on the FBA.

Denial of Parent Participation

The Parent alleged that she was prohibited from participating in the development of the Student's behavior plan and FBA. Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. A behavior plan is part of an IEP when it is determined that a student requires positive behavior interventions and supports to receive a FAPE.

By continuing to address the Student's behaviors informally, instead of as part of the IEP, once it became clear the Student's behaviors were resulting in chronic absenteeism, the District bypassed the Parent's right to participate in the process of developing behavioral interventions as part of the IEP. This should have been done as part of the IEP development, which would have afforded the Parent the procedural safeguards that come with the IEP development process. Here, the District continued to develop behavioral interventions informally, using the student success plan outside of the IEP process. This is a denial of parent participation and is a violation.

Furthermore, the Parent alleged that the District did not obtain consent to conduct the FBA and that she did not have an opportunity to provide input into the FBA or BIP because there was no meeting to discuss the FBA and BIP once both were complete. While the Parent met with the principal to discuss the Student's behaviors, the documentation showed that an IEP team meeting never occurred following completion of the FBA to develop the BIP. The District will be required to hold an IEP team meeting to review the FBA and BIP to give the Parent an opportunity to provide input, and for the IEP team to revise the BIP, as appropriate, after receiving parental input.

The IEP team will also be required to discuss whether as part of the FBA/BIP, the Student requires a transition plan with behavioral supports to help the Student transition back into school full time to prevent further removals and to help the Student make progress on the current IEP.

Use of Isolation as a Behavior Intervention

The Parent alleged that the District inappropriately and regularly isolated the Student during the 2018-2019 school year in response to the Student's school refusal behaviors. Isolation means restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's use of a space voluntarily for self-calming or temporary removal of a student from his or her regular area to an unlocked area for purposes of carrying out an appropriate positive behavior intervention. Isolation should only be used when a student's behavior poses an imminent likelihood of serious harm and should be discontinued as soon as the likelihood of serious harm had dissipated. The enclosure shall allow for continuous visual monitoring of the student from outside the enclosure, the student shall remain in visual or auditory range at all time, and either the student shall be able to release himself from the enclosure or an adult should be present who is responsible for supervising the student. Staff involved must be trained in the use of isolation or a qualified provider in the use of isolation must

be otherwise available in case of emergency. School districts must follow the documentation and reporting requirements for any use of isolation consistent with RCW 28A.600.485.

The Parent reported the Student would be put in the isolation room when he was exhibiting separation anxiety or school refusal behavior. The Parent reported the Student could be locked in the room for time periods of up to a couple hours. The Parent reported that all reports of isolation were made by phone and that she never received a written report. On July 23, 2019, OSPI reached out to the District by email to request information regarding the Parent's allegations. On July 24, 2019, OSPI spoke to the assistant director of special education who told OSPI that he was going to be speaking to the principal at the Student's school regarding the Parent's allegations. The District did not respond to the Parent's allegations further or provide any additional information regarding or refuting these allegations. OSPI reviewed emails between the Parent and her advocate throughout the school year and communicated with the Parent, who told OSPI that the staff from the principal's office would call her to inform her the Student had been isolated in a room by the office where a large teddy bear had been placed, "the teddy bear room."

Although the Student's success plan and BIP both contained use of a "calming area" in response to school refusal and/or aggressive behaviors, use of the "teddy bear room" by the Student as described by the Parent was not voluntary, temporary, or part of a systematic use of a positive behavioral intervention plan designed to change, replace, modify, or eliminate a targeted behavior. Accordingly, it constituted isolation as defined in RCW 28A.600.485.

Further, the incidents as described by the Parent were inappropriate uses of isolation for the following reasons: (a) the Student's IEP does not include an emergency response protocol that permits the use of isolation; (b) the District did not provide any documentation to show the Student's behaviors, including school refusal behaviors posed an imminent likelihood of serious harm; (c) the Parent alleged that the Student was being kept in the isolation room for prolonged periods of time, sometimes over an hour long, and the District did not provide documentation to show the isolation ceased when an imminent likelihood of harm dissipated; (d) the District did not provide documentation to show that if isolation was used, that the enclosure met the requirements or that the Student was being supervised appropriately by trained staff; and, (e) the District did not provide any written documentation of the use of isolation.

The District is in violation and will be required to provide training to school involved in this complaint on the use of isolation, including on the reporting requirements of isolation.

Failure to Conduct a Manifestation Determination

The Parent alleged that the District failed to conduct a manifestation determination. After ten suspensions or removals, the district, parents, and other relevant members of the IEP team must conduct a manifestation determination to determine if the behavior that resulted in the removal was substantially related to the student's disability. If it is determined the conduct that led to the removals is a manifestation of the student's disability as documented in the IEP, the IEP team must either: conduct an FBA, and implement a BIP for the student, and except for special circumstances,

return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the BIP.

A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days; or, when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors, such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. Although the Student here only received a total of eight out of school suspensions, the pattern of having the Parent bring the Student to school and then being asked by the school to take him home, the Parent being called to pick up the Student early—sometimes following a prolonged isolation, or the Parent bringing the Student to school and attempting to get him to class on her own, but taking him home after being made to feel like she had no choice due to a lack of behavioral supports to get the Student into the classroom due to his school refusal behaviors, constituted a series of removals. The behaviors resulting in the removal was similar (school refusal resulting in kicking, tearing down paper and items on the wall, refusing to go in the classroom, being aggressive, and using profanity), and the Student was chronically absent as a result. The Student's removals by the Parents in addition to his out of school suspensions constituted a change in educational placement caused by removals.

Accordingly, after the Student was removed ten times, the District should have convened a manifestation determination to determine if the Student's behaviors were a manifestation of his disability. The District is in violation and will be required to develop a training on when a manifestation determination should be held, what constitutes a removal, as well as on strategies for preventing an unintended educational change in placement.

Issue Two: Use of Restraint – The Parent alleged that the District improperly restrained the Student on April 23, 2019. Restraint shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of restraint as defined by RCW 28A.600.485 is subject to each of the following conditions: (a) the restraint must be discontinued as soon as the likelihood of serious harm has dissipated; (b) the restraint shall not interfere with the student's breathing; and, (c) any staff member or other adults using a restraint must be trained and certified by a qualified provider in the use of such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of restraint consistent with RCW 28A.600.485.

Use of Restraint

According to the restraint form submitted by the District, the Student was restrained for one minute using a "one arm cross" after he "started out being non-compliant with directions, using profanity and destructive of property. [Student's] behavior then became more aggressive. He tipped over a chair and then kicked it down hallway." The restraint was accordingly in response to a likelihood of serious harm and dissipated after the harm (kicking the chair) ceased. OSPI finds

no violation related to the use of restraint in this situation. However, in its response, the District acknowledged that the staff member who performed the restraint was not certified in the use of restraints and used an improper hold. The District was in violation regarding the requirement that only certified staff perform restraint. The District responded to the violation by issuing a verbal warning to the staff member.

Follow Up and Reporting Requirements

Reporting requirements require that following a restraint, the incident must be reviewed with the student and the parent or guardian to address the behavior that precipitated the incident and the appropriateness of the response. The district must also take steps to review the incident with the staff member who administered the restraint to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid a similar incident.

Here, the restraint form was blank where it prompts the District to provide information about following up with the student and parent, as well as where it solicits information about whether the district reviewed the information with the staff member. Although the report indicated that the Parent was contacted and notified the day of the restraint, there was no information on the restraint form regarding how the restraint was reviewed with the Parent and Student and the District did not provide any other documentation. OSPI was unable to support a finding that the District reviewed with the Parent and Student regarding what precipitated the restraint and/or the appropriateness of the restraint. Accordingly, based on the information provided by the Parent, the District is in violation regarding its reporting obligation to review the restraint with the Parent and Student. However, the District did provide a letter with its response from the personnel file of the staff member who performed the restraint to show that it reviewed the incident with the staff member. The letter was dated May 7, 2019—nine days after the incident. Ideally, the incident should have been reviewed with the staff member closer to the actual event.

Within two business days, a district must submit a written report of the incident to the district office. OSPI has knowledge from previous investigations the incident report database maintained by the District is a central database.¹⁷ Thus, once a report is entered, it is automatically sent to the District's central office. Because the incident report was entered the day of the incident, it was sent to the District's central office the same day. OSPI finds no violation regarding the requirement that the incident report be sent to the District's office within two business days.

¹⁷ See SECC 19-19. During the investigation of SECC 19-19, the OSPI investigator determined based on the documentation provided to OSPI and during an interview with the associate director of special education for the District, that the restraint and isolation reports for the District are entered into a central database by the staff member who was involved in the restraint or isolation. The investigator further found that the written notification that is sent home is generated by the database and that the database also generates an email to the District special education administration, notifying them that a restraint or isolation occurred. Thus, once a report was entered into the database, it was considered "sent" to the District and that "unlike other districts, the school staff do not print out and send a paper copy of the report to the District office."

The written report must include at minimum the date and time of the incident, the name and job title of the individual who administered the restraint, a description of the activity that led to the restraint, whether there were any injuries, and any recommendations for changing the nature or amount of resources available to student or staff. The written report included all of the required information. No violation is found regarding the written reporting requirements. The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and must send written notification as soon as practical, but postmarked no later than five business days after the restraint occurred. The report stated that the Parents were verbally contacted at 10:40 am in person the day of the restraint (April 23, 2019) by the principal's assistant, and that written notification was sent on May 8, 2019. Although the verbal notification was sent within the required amount of time, the written notification was not sent within the required amount of time and the District is in violation.

The school will be required to complete a training on the appropriate use of restraint, including documentation and reporting requirements consistent with RCW 28A.600.485.

The District will also be required to hold an IEP meeting to discuss whether the IEP team believes the Student requires, and if so, whether the Parent consents, to an emergency response protocol being developed for the Student.

CORRECTIVE ACTIONS

By or before **September 6, 2019, September 13, 2019, October 18, 2019, January 10, 2020, and May 8, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting: By or before **September 6, 2019**, the District will convene an IEP team meeting, which will include attendance by the Parent and a behavioral specialist or mental health expert with expertise in school refusal behaviors, to discuss the following minimum issues:

- Revision of the Student's IEP to state that the Student has behaviors that interfere with the Student's learning or that of others and that the Student requires positive behavior interventions and supports;
- Review of the functional behavioral assessment (FBA) and behavioral intervention plan (BIP) to receive Parental input and to make revisions, as appropriate. The District was in violation of the requirement of ensuring parent participation by conducting the FBA and developing the BIP without parental input and will be required to provide documentation to show that it reviewed both documents with the Parents and considered the Parents' input;
- Revision of the Student's BIP to address the Student's school refusal and aggressive behavior with positive behavioral supports that do not include the use of removal;
- Whether the Student's needs require the development of a transition plan to help the Student transition back into school as a full time student and if so, what the time period of the transition plan will be, how progress on the transition plan will be measured, and who will be responsible for implementation of the transition plan; and,

- Whether the Student's IEP requires an emergency response protocol (ERP) be developed for the Student.

By **September 13, 2019**, the District will submit: 1) a copy of the meeting invitation; 2) information about the behavior specialist or mental health expert who was invited to the meeting; 3) a copy of the amended IEP; 4) a copy of any transition plan developed; 5) a copy of any revised FBA/BIP; 6) a copy of any emergency response protocol, if developed; 7) a copy of any related prior written notices; 8) a copy of the agenda; and, 9) meeting notes on the topics discussed at the meeting.

Compensatory Instruction: The District will be required to provide compensatory instruction at a rate of 1/3 of the time the Student was absent (27 days), based on the Student's March 2019 IEP. All compensatory instruction will be provided individually and in the special education setting.

Accordingly, the District will be required to provide 648 minutes of reading (11 hours), 648 minutes of writing (11 hours), 540 minutes of behavior/social (9 hours), and 162 minutes of communication (3 hours).

By or before **September 6, 2019**, the District will work with the Parent to develop a schedule for delivering 11 hours of specially designed instruction in reading, 11 hours of specially designed instruction in writing, 9 hours of specially designed instruction in behavior/social, and 3 hours of specially designed instruction in communication. Services will occur in a one-on-one setting and be provided by a certificated special education teacher and a speech and language pathologist. Compensatory sessions will occur outside of the District's regular school day, but may occur on weekends or over breaks. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. The District will provide OSPI with documentation of the schedule for services by or before **September 13, 2019**. 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 **April 30, 2020**.

The District must provide OSPI with documentation on **October 18, 2019** and **January 10, 2020** of the compensatory services provided to the Student. The District must provide documentation by **May 8, 2020** 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.

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 **May 8, 2020**.

DISTRICT SPECIFIC:

Training: By or before **October 11, 2019**, the District will be required to complete 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 on the following topics:

- (1) Compliance with RCW 28A.600.485 regarding the appropriate use of restraint and isolation, including documentation and reporting requirements;
- (2) Providing positive behavior interventions and supports to address the issue of school refusal in students with disabilities;
- (3) Compliance with the use of emergency response protocols, as defined in WAC 392-172A-02105;
- (4) What constitutes a "removal" or an educational change in placement; and the requirement that students eligible for special education may not be improperly excluded from school or the educational environment for disciplinary reasons. WAC 392-172A-05140
 - a. Training should include examples, including that the reliance on a parent to pick up a student from school in lieu of developing positive behavioral interventions and supports as part of a student's behavior intervention plan may constitute a removal that may result in an educational change in placement.
 - b. Training should also include strategies for how to avoid unintentional educational changes in placements due to removals based on behaviors, including holding an IEP team meeting to address a student's behaviors, and the requirement for IEP teams to address a student's behavior related needs regardless of disability classification when the behaviors are interfering with the student's learning or that of others. OSPI recommends the individual providing the training review *OSEP's Dear Colleague Letter on Supporting Behavior of Students with Disabilities*, (August 1, 2016).
- (5) Compliance with WAC 392-172A-05145 regarding the requirements for when a manifestation determination must be held.

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 **September 6, 2019**, the District will provide OSPI with the name of a trainer and an agenda for the training. By September 20, 2019, OSPI will provide feedback and comments, if necessary.

By **October 18, 2019**, the District will submit documentation that all special education staff at the elementary school at issue in this complaint participated in the training. Documentation 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

Right of Student to be Educated in Neighborhood School: The Parent alleged that the District changed the Student's program and location to a behavioral intervention program following its reevaluation of the Student in March 2019 without considering whether the Student could receive

behavioral supports in the neighborhood school. A student with a disability will be educated in the school he or she would attend if nondisabled, unless the student's IEP requires another arrangement based on the student's needs. If the student needs other arrangements, placement will be as close as possible to the student's home.

Here, the IEP team met in March 2019, following a reevaluation of the Student. At that meeting, the IEP team added specially designed instruction to the Student's IEP. According to the Student's IEP, the specially designed instruction is to be provided in the special education setting at the Student's neighborhood school. The PWN from that meeting did not indicate that the IEP team recommended a behavioral intervention program or that the IEP team recommend the Student's IEP be amended to indicate that the Student could no longer be educated at his neighborhood school. In June 2019, the District sent the Parent a letter, stating that the District had changed the Student's program to a behavioral intervention program and that because the behavioral intervention program was not housed at that neighborhood school, that the Student would not be attending the Student's neighborhood school. The statements in the letter sent by the District were contrary to what was indicated in the Student's IEP.

Although the letter sent to the Parent is outside the timeframe of this complaint, OSPI reminds the District that it would be a violation to change a student's program and location without having first discussed the change at an IEP meeting, provided the parent with prior written notice, and having revised the IEP to reflect the IEP team's decision that the student's needs require the student attend a school other than the student's neighborhood school—if that is what the IEP team decided. OSPI additionally reminds the District that it would be a violation of the District's requirement to educate students with disabilities in their least restrictive environment (LRE) to change a student with a disability's location just because the student requires a BIP or behavioral supports and/or to place all students with a disability who require behavioral supports in one location without individually making a determination about each student regarding their ability to serve that student's needs at their neighborhood school, and without first considering whether it can implement an individual student's BIP at the student's neighborhood school with necessary related services, accommodations, and other supports. OSPI strongly recommends that at the IEP team meeting it has ordered for other violations, that the IEP team discuss any issues related to the Student's program and location needs, and that the District ensure it is following procedures relating to its LRE obligation to first attempt to educate the Student in his neighborhood school according to the Student's IEP prior to recommending a school other than the Student's neighborhood school.

Note on Washington State Truancy Laws: When a student with an IEP has five unexcused absences, at some point after the second and before the fifth, the District is required to take data-informed steps to eliminate or reduce the student's absence. In addition, the District is required to convene an IEP meeting, including the parent, and with a behavior specialist or mental health specialist where appropriate, to consider the reasons for the absences. If necessary and with consent, the District should conduct an FBA and/or a BIP to address the behavior, develop a transition plan to determine a time frame for how the Student will transition back to school, and

data should be collected to determine progress. It is recommended that the District review RCW 28A.225.020(1)(c)(iii).

Prior Written Notice: Although not an issue raised in this complaint, OSPI noticed that several of the prior written notices provided to the Parents in the time period under investigation did not contain all of the elements of prior written notice required under WAC 392-172A-05010. The District is strongly encouraged to review WAC 392-172A-05010. OSPI is available for technical support, as necessary.

Dated this ____ day of August, 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.)