

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 15-82**

### **PROCEDURAL HISTORY**

On December 18, 2015, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Vancouver 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 December 18, 2015, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. The District was asked to respond to the allegations made in the complaint.

On January 4, 2016, OSPI granted the District an extension of time to submit its response.

On January 15, 2016, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. The Parent was invited to reply with any information she had that was inconsistent with the District's information.

On January 27, 2016, OSPI received the Parent's reply. The information was forwarded to the District on the same day.

On January 29, 2016, OSPI received additional information from the Parent and the information was forwarded to the District on the same day.

On February 1, 2016, OSPI asked the District to provide additional information. OSPI received the requested information on February 1, 2016, and the information was forwarded to the Parent on the same day.

On February 8, 2016, OSPI asked the District to provide additional information. OSPI received the requested information on February 8, 2016, and the information was forwarded to the Parent on February 9, 2016.

On February 12, 2016, OSPI received additional information from the Parent and the information was forwarded to the District on the same day.

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

### **OVERVIEW**

At the beginning of the 2015-2016 school year, the Student attended a full-time special education program at a District elementary school and was eligible to receive special education and related services under the category of Autism. Two weeks into the school year, the Student's individualized education program (IEP) was amended and the IEP team discussed changing the Student's placement to a structured learning

center (SLC) program at another District elementary school. The Student then began attending the SLC program in October 2015, but exhibited unsafe behavior. As a result, the District suspended the Student and changed his placement so that he would receive tutoring two times per week, until a more permanent placement could be found. The District then proposed changing the Student's placement to a private school, but the Parent did not believe the Student would be successful at the private school and objected to the distance from the family's home to the private school. The Parent asked that the Student instead attend a program in the District and be provided 1:1 paraeducator support. The District then determined that the Student's placement would be changed to the private school.

The Parent alleged that the District failed to implement the Student's IEP, including providing 1:1 paraeducator support during the 2015-2016 school year. The Parent also alleged that the District failed to follow procedures for determining the Student's placement during the 2015-2016 school year. Additionally, the Parent alleged that the District failed to follow procedures for developing a behavioral intervention plan (BIP) for the Student during the 2015-2016 school year. The District denied the allegations.

### **SCOPE OF INVESTIGATION**

This decision references events which occurred prior to the investigation time period, which began on December 18, 2014. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

### **ISSUES**

1. Did the District implement the Student's individualized education program (IEP), including providing paraeducator support, during the 2015-2016 school year?
2. Did the District follow procedures for determining the Student's placement during the 2015-2016 school year?
3. Did the District follow procedures for developing a behavioral intervention plan (BIP) for the Student during the 2015-2016 school year?

### **LEGAL STANDARDS**

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §300.320 through §300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

Changes in Placement: The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. If a substantial or material change in the student's educational program has occurred, then the school district must provide prior written notice. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's individualized education program (IEP), the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324; WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. 64 Fed. Reg. 48, 12479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral analysis (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, the IEP Team must include a BIP in the child's IEP to address the

behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

Suspensions and Expulsions: When a district suspends or expels any student, it must make sure the removal is consistent with state laws and regulations governing discipline for all students, in addition to protections afforded eligible special education students under IDEA. A suspension is 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. WAC 392-400-205(2). An expulsion is a denial of attendance for a period of time up to, but not longer than, one calendar year from the time a student is removed from his or her current school placement by a school district superintendent or a designee of the superintendent. WAC 392-400-205(6).

Disciplinary Removal that Results in a Change of Educational Placement: A change in placement occurs when a student is removed from his/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 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 total more than ten days in any school year. 34 CFR §300.536; WAC 392-172A-05155.

Manifestation Determination: Within ten school days of any decision to change the placement of a student eligible for special education because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team (as determined by the parent and the school district) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine: (a) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or (b) If the conduct in question was the direct result of the school district's failure to implement the IEP. The conduct must be determined to be a manifestation of the student's disability if the school district, the parent, and relevant members of the student's IEP team determine that the student's conduct was caused by, or had a direct and substantial relationship to, to the student's disability; or, that the student's conduct was a direct result of the school district's failure to implement the student's IEP. 34 CFR §300.530; WAC 392-172A-05145(5).

If the school district, the parent, and relevant members of the student's IEP team determine the conduct was manifestation of the student's disability, the school district must take immediate steps to remedy those deficiencies. Additionally, the IEP team must either: (a) Conduct a functional behavioral assessment, unless the school 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 (b) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(c) Except as provided in the case of special circumstances defined in WAC 392-172A-05145(7), return the student to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan. 34 CFR §300.530; WAC 392-172A-05145(5 & 6).

If the school district, the parent, and relevant members of the student's IEP team determine the behavior that gave rise to the violation of the school code conduct was not manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to students eligible for special education in the same manner and for the same duration as a district would apply discipline procedures to students without disabilities, except that the student must: (a) Continue to receive educational services, that provide a FAPE, so as 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; and (b) Receive, as appropriate when a student's removal is not a manifestation of the student's disability, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. The services may be provided in an interim alternative educational setting and the student's IEP team must determine the appropriate services. 34 CFR §300.530; WAC 392-172A-05145(3 & 4).

## **FINDINGS OF FACT**

### **Background Facts**

#### **2012-2013 School Year**

1. At the beginning of the 2012-2013 school year, the Student attended a District special education developmental kindergarten program located at a District elementary school (elementary school 1). At that time, the Student was eligible to receive special education and related services under the category of developmental delay. In November 2012, the Student was reevaluated due to concerns about the Student exhibiting unsafe behaviors. As a result of the reevaluation, the Student's eligibility category was changed to emotional behavioral disability. The Student was then moved to another District elementary school (elementary school 2) and assigned to a special education structured learning center (SLC) program.
2. In March 2013, the Student was again reevaluated due to concerns about the Student's communication skills. The reevaluation results indicated that the Student exhibited difficulties communicating his needs and would "thus act out due to frustration." The Student's evaluation group then recommended that the Student's placement be changed to a special education structured communication center (SCC) program located at another District elementary school (elementary school 3).
3. In May 2013, staff at the SCC program reported that the Student's communication skills were more developed than most other students in the SCC program and

believed that the Student's behaviors, more than his communication deficits, were impacting his education. The SCC staff recommended the Student return to the SLC program at elementary school 2.

### **2013-2014 School Year**

4. The Student began the 2013-2014 school year in a special education SLC program located at elementary school 2. However, in October 2014, the District conducted a reevaluation of the Student and changed the Student's placement to a day treatment program for students with substantial behavioral needs.
5. In January 2014, the Student was again reevaluated. The reevaluation report stated that "based on the findings from this evaluation, [the Student] presents as a student with the educational diagnosis of Autism." The report also stated that in order for the Student to be successful, he needed a program that had a high level of structure, with consistent and clear expectations, minimal transitions, and a smaller staff to student ratio. "He responds best to explicit and discrete instruction in a one-on-one interaction. He would benefit from visuals, and other communication supports, such as [a] visual schedule, picture communication, and social stories." The evaluation report recommended the Student receive specially designed instruction in the areas of social/emotional/behavioral, communication, writing, reading, and math. The evaluation report also recommended the Student receive occupational therapy as a related service and the following supplementary aids and services:
  - Speech Language Pathologist (SLP) Consultation
  - Occupational Therapist (OT) Consultation
  - Assistive Technology
  - Assistive Technology Consultation
  - Additional Adult Support
6. The Student continued to attend the day treatment program for the remainder of the 2013-2014 school year.

### **2014-2015 School Year**

7. The Student began the 2014-2015 school year attending the day treatment program. In December 2014, the Student moved to an SCC program located at another District elementary school (elementary school 4). In February 2015, the Student's IEP team developed the Student's annual individualized education program (IEP). The February 2015 IEP included annual goals in the areas of social/emotional/behavioral, math, reading, writing, and communication. The IEP provided for multiple accommodations to be provided on a daily basis. The IEP also provided for the following specially designed instruction and related services in a special education setting:
  - Occupational Therapy – 30 minutes per week
  - Communication – 30 minutes per week
  - Social/Emotional/Behavioral – 1,040 minutes per week
  - Math – 150 minutes per week

- Reading – 150 minutes per week
- Writing – 150 minutes per week

Additionally, the February 2015 IEP also provided for the following supplementary aids and services:

- Additional Adult Support – 1,675 minutes per week provided by a special education teacher
- Assistive Technology – 1,675 minutes per week provided by a special education teacher
- Assistive Technology Consultation – 60 minutes annually provided by a speech language pathologist (SLP)
- SLP Consultation – 30 minute per week provided by a an SLP
- OT Consultation – 100 minutes annually provided by an occupational therapist (OT)

8. Also in February 2015, the IEP team developed a behavioral intervention plan (BIP) for the Student. The BIP stated that the Student had made progress in decreasing his aggressive and impulsive behaviors since transitioning to elementary school 4. However, the Student continued to exhibit the following behaviors: running from staff, swiping materials off desks, throwing items, biting his hand, ignoring instructions, laughing hysterically, yelling, screaming, kicking, and flopping on the floor. The BIP stated that it had been determined that the function of the Student's running while he is on break is "attention-maintained." The function of running while he is working is "escape maintained." The function of swiping materials off his desk, laughing hysterically, biting his hand while working, and ignoring instructions is a both "escape and sensory-maintained." The Student's yelling, screaming, kicking, flopping, and throwing items in the leisure area was often "sensory maintained" and was often due to loud noise in the environment. To decrease the Student's running from staff, swiping material off desks, throwing items, biting his hand, ignoring instructions, yelling, kicking, and flopping, the Student would be taught to ask for headphones when it was too loud. The Student would also have a separate work area to work on structured tasks. The work area would have dividers to block external stimuli. The BIP also stated that reinforces would include access to a book series the Student enjoyed, drawing on a whiteboard, and snacks. It is unclear from the BIP when the reinforcers would be used. The BIP also stated that the following were consequences for the target behavior:

- Staff will ignore running in the classroom until the Student realized that staff aren't going to chase him. Staff will catch him as he walks by them once he stops running.
- Staff will give him extra attention when the Student appropriately communicates that he wants attention.
- Staff will stay in close proximity to the Student at all times and gradually give him more space as he shows he is ready.
- Staff will make sure all work is at his instructional level and not too frustrating.
- Staff will start off work tasks with easier work and then gradually get more difficult as he builds confidence.

9. The Student continued to attend the SCC program at elementary school 4 until the end of the 2014-2015 school year.

### 2015-2016 School Year

10. The District's 2015-2016 school year began on September 2, 2015. At that time, the Student continued to attend the SCC program located at elementary school 4 and the Student's February 2015 IEP and February 2015 BIP were in effect.
11. The Student was absent September 2-4, 2015.
12. On September 3, 2015, the Parent contacted a District special services manager (special services manager 1), asking that an IEP meeting be scheduled as soon as possible to discuss the Student's placement. On September 4, 2015, the Parent emailed the school psychologist who worked at elementary school 4 in regard to scheduling an IEP meeting to discuss the Student's placement. The Parent stated that she had tried to take the Student to the SCC program on the first day of school, but the attempt had failed. The Parent also stated that she felt like she was "failing" the Student by taking him to the SCC program at elementary school 4. The Parent proposed moving the Student to another elementary school. In response, a meeting was scheduled for September 10, 2015.
13. The District was on break on September 7, 2015. According to the attendance record, the Student was absent on September 8, 2015.
14. On September 9, 2015, the Student was present at elementary school 4. Based on the District's documentation, the Student continually tried to elope from the cafeteria. As a result, the Student's special education teacher (SCC teacher) directed her attention to keeping the Student safe, and the school principal assisted in monitoring the other students in the SCC program. The principal later emailed District special education administrators, asking that the District provide additional staff support for the SCC program.
15. On September 10, 2015, the Student's IEP team met to discuss the Student's progress and review his IEP, BIP, and instructional needs. According to the meeting notes, the Parent expressed concerns about getting the Student to school because the Student no longer wanted to go to school. The IEP team discussed that the Student's behavior and academic progress improved when he attended the day treatment program. The IEP team also agreed to look into changing the Student's placement to an SLC program located at yet another District elementary school. Additionally, the IEP team amended the Student's February 2015 IEP so that the IEP no longer provided for assistive technology or an assistive technology consultation as supplementary aides and services. The amended IEP also no longer provided for the following accommodations:
  - Augmentative communication throughout the Student's school day
  - Consultation/Training – 1x weekly with an ACC specialist or SLP
16. Also on September 10, 2015, the Student's IEP team amended the Student's February 2015 BIP. The amended BIP stated that the Student exhibited unsafe behaviors, such as running away from staff an average of eight times per day, biting



his hands, and trying to walk on his ankles. The Student also exhibited aggressive behavior and would hit staff and other students. Additionally, the Student exhibited “escape maintained” behaviors that manifested in the Student throwing items off of his desk, and ripping up his work when he was asked to perform undesired activities. The BIP stated that in order to decrease the Student’s target behaviors of running from staff, swiping materials off his desk, throwing items, biting his hands, ignoring instructions, throwing food, walking on his ankles, yelling, biting himself, kicking staff and students, and punching staff and students, the Student would be taught to ask for headphones when it was too loud, verbally indicate that work was too hard, and ask for help from staff when needed. The Student would continue to have his own separate area for structured work tasks, which would have a divider blocking external stimuli. Additionally, the Student would be given shortened work, clear expectations of behavior, “first/then for unpreferred activities” and a reward chart. The BIP also stated that staff would give the Student extra attention when he appropriately communicated that he wanted attention, would stay in close proximity to the Student at all times and gradually give him more space as he showed that he was ready, would make sure that all work was at the Student’s instructional level and not too frustrating, and start off work tasks with easier work and then gradually get more difficult as he builds confidence. The BIP further stated that when the Student exhibited the target behaviors, staff would use a visual timer to let the Student know how long he needed to remain calm before reengaging in the activity. Additionally, if the Student’s behavior escalated and the Student started to pace around the room, staff would redirect the Student to his work area, and use a visual timer and first/then visuals so he knew when the task ended.

17. According to the attendance record, the Student was absent for part of the school day on September 10, and the entire school day on September 11, 2015.
18. On September 11, 2015, the District completed prior written notice, proposing to change the Student’s IEP. However, the notice did not state what changes had been made to the Student’s IEP, and did not reflect why the IEP team had removed some of the supplemental aides and services and accommodations from the Student’s IEP. The notice did state that the IEP team had discussed changing the Student’s placement in the SCC program, and had decided that the Student needed to be in a program that focused more on behavior. The prior written notice did not state that the Student’s BIP had been amended.
19. Based on the District’s documentation provided in this complaint, after the September 10, 2015 IEP meeting, it was agreed that the Student would move to an SLC program located at elementary school 3. Prior to the Student moving to elementary school 3, a “transition meeting” needed to be scheduled with staff from elementary schools 3 and 4 in attendance.
20. On September 17, 2015, the school psychologist from elementary school 3 emailed the District members of the Student’s IEP team at elementary school 4, and staff members at the elementary school 3 to arrange a transition meeting.

21. Also on September 17, 2015, the Student's SCC current teacher emailed special services manager 1, stating that the Student had been having difficulties following the routines of the classroom. He often got up and ran around the classroom/cafeteria while throwing papers and other items off the table. That day, he had hit two other students while running around the classroom. The SCC teacher stated that the Student's behavior interrupted the Student's learning and the learning of others student in the SCC class. The Student required "constant close" 1:1 supervision to ensure that he stayed safely in the classroom, and did not hurt himself, or others. The SCC teacher believed the Student would benefit from learning in an environment that he was not constantly trying to escape. In response, special services manager 1 stated that she had contacted the Parent.
22. On September 23, 2015, the principal at elementary school 4 emailed special services manager 1, stating that the Student was crawling on top of cabinets and was very unsafe. As a result, the principal had asked the Parent to pick up the Student from school. Additionally, the principal asked if a date had been set for the transition meeting as the Student's dangerous behaviors were "really worrisome" to the principal and SCC program staff. In response, special services manager 1 stated that the school psychologist at elementary school 3 was working on setting up the transition meeting and that she would check in with the school psychologist. The principal later responded that it was taking a really "long time to set up a transition meeting" and that school staff had met with the Parent on September 16, 2015.
23. Also on September 23, 2015, the school psychologist from elementary school 4 emailed staff members at elementary school 3, asking for an update regarding the transition meeting. The school psychologist stated that it was taking much longer than usual to schedule a transition meeting and that the Parent was becoming frustrated. The psychologist suggested that the District find someone to cover for the SLC special education teacher at elementary school 3 so she could attend the transition meeting. In response, the principal from elementary school 3 said that he had contacted the Parent to let her know the District was working on scheduling the transition meeting. Based on the District's documentation, the transition meeting was later scheduled for September 29, 2015, but then rescheduled for September 30, 2015.
24. On September 24, 2015, the District completed prior written notice, proposing to initiate safety procedures. The notice stated that the Student had become "increasingly unsafe in the school environment: climbing on desks, tables, and cabinets. When [the Student] exhibited these unsafe behaviors the team will use CPI techniques to remove [the Student] from the unsafe situation." The notice also stated that the Student's "placement was changed 2 weeks ago and while he waits to attend his new placement in a SLC classroom his unsafe behaviors have increased in his current classroom."
25. On September 28, 2015, the special education teacher who taught the SLC program (SLC teacher) at elementary school 3 where the Student would be transferring,

emailed her school principal, asking that the principal attend the upcoming transition meeting. The SLC teacher also said that she had received information from the Student's SCC teacher that the Student was "very aggressive" and the Parent was against using a "resolution room." In response, the principal stated that he could only attend the meeting for about 15 minutes, due to a parent teacher conference.

26. Based on the District's documentation, a transition meeting occurred on September 30, 2015. It is unclear from the documentation who attended the meeting.
27. On October 1, 2015, the SLC teacher at elementary school 3 emailed her school principal, stating that the Student was "going to be tough" and asked what needed to be done to get the Student 1:1 paraeducator support. The SLC teacher stated that the Student had 1:1 paraeducator while he attended the day treatment program. In response, the principal stated that he was trying to contact the director of the day treatment program to see what supports the program had in place for the Student. The principal also asked to set up a time to review the Student's IEP and BIP/Aversive Intervention Plan.<sup>1</sup>
28. Also on October 1, 2015, the Student began attending the SLC program located at elementary school 3. Based on the District's documentation provided in this complaint, the SLC program is taught by a special education teacher with support from two paraeducators.
29. On October 2, 2015, the SLC teacher emailed her school principal and a District special services manager (special services manager 2). The SLC teacher stated that she needed 1:1 paraeducator support for the Student. The SLC teacher relayed that on October 1, 2015, one or two of the SLC program staff worked with the Student at all times. Most of the time, the SLC teacher worked with the Student. The SLC teacher stated that the Student was "very high needs" and the teacher was unsure why the Student had not been returned to the day treatment program given his aggressive behaviors. The SLC teacher also stated that she and the principal had discussed creating a classroom within a classroom for the Student. However, the SLC teacher stated this could not be located within her actual classroom given the "disruption, tears, hyper-activity" that the Student's behaviors caused her other students.
30. Also on October 2, 2015, the SLC teacher emailed the Parent to inform her that the Student had been placed in the "resolution room" that day for kicking, spitting, and hitting. The SLC teacher stated that the Student had spent 124 minutes in the resolution room, which was less time than he had spent in the room on October 1, 2015. The SLC teacher also stated that the Student had done some work that day and also took a calm walk with the teacher. The Student had missed eating lunch because he threw his lunch on the floor.

---

<sup>1</sup> Effective July 2015, aversive interventions were prohibited in the state of Washington. The District's documentation in this complaint does not show that the Student had an aversive intervention plan.

31. On October 5, 2015, the SLC teacher emailed special services manager 2 to provide information about the Student. The SLC teacher stated that on October 2, 2015, she was with the Student 100 percent of the time. If the Student did not have staff with him at all times, he would run through the classroom giggling and trying to get away. The Student would also hit people "out of the blue". The SLC teacher also stated that the Student had 1:1 paraeducator support at the day treatment program, which was "almost unheard of."
32. Also on October 5, 2015, the school principal at elementary school 3 emailed special services manager 2, stating that the SLC teacher had sectioned off part of the SLC classroom with a barrier, which had been designated for the Student. The Student was currently not doing his work while in the designated area, but he was not trying to leave the area. The principal also stated that the Student was "quite loud", but his escalations such as throwing pencils were not so intense that day, and were manageable. The Student was also able to be directed to the resolution room quite easily. The SLC teacher had gone back to teaching the SLC class and small groups that day, which left the Student on his own for a large portion of the day, as he was not yet ready to participate with the group. The principal stated that the biggest problems at the moment were that the Student was a distraction to other students, and that he was by himself most of the day.
33. Also on October 5, 2015, the SLC teacher emailed the school principal and special services manager 2 with information documenting the Student's need for 1:1 paraeducator support. The SLC stated that she had spoken to the Parent who had indicated that the Student's IEP provided for a 1:1 paraeducator, but elementary school 4 had never provided for one. The SLC teacher planned to look into this situation. The SLC teacher also stated that the Student had pushed over a barrier in the classroom that day, almost hitting another student, and had also shoved a game into some other students. Additionally, the Student had shoved heavy books off a counter and threw over chairs. The Student was a "high risk kid because the behaviors happen very quickly and without warning." The SLC teacher asked that the District provide the Student with 1:1 paraeducator support as the other students' safety, education, and well-being were being jeopardized, and staff had been hit, kicked, and spit on. The SLC teacher stated that the Student's behaviors had already been documented, and she did not understand the need to further document the behaviors. In response, special services manager 2 stated that the Student may need to spend time in an SCC program also located at elementary school 3.
34. On October 6, 2015, special services manager 2 emailed the SLC teacher and the school principal, stating that she had spoken with the director of the day treatment program, and he had provided information about the structure of the Student's school day while in the day treatment program. What the director had described was essentially an SCC program. Special services manager 2 had talked to the director about creating a blended program between the Student's current SLC program and an SCC program. The director of the day treatment program did not believe the day treatment program or an SLC program, were appropriate for the Student. Special services manager 2 stated that because this was the Student's fifth

school, the District needed to somehow make the current school work for the Student. Special services manager 2 did not want to move the Student yet again, and also stated that she was working to get the SLC teacher additional help.

35. On October 7, 2015, special services manager 2 emailed the director of the day treatment program, asking if the Student had a 1:1 paraeducator while he was in the program. In response, the director stated that the Student had a 1:1 paraeducator during the 2013-2014 school year, but not during the 2014-2015 school year.
36. Also on October 7, 2015, the Parent emailed the Student's SLC teacher, asking if the teacher had "any luck" in regard to getting the Student an assigned 1:1 paraeducator. The Parent stated that she was happy to provide the SLC teacher a copy of the Student's IEPs from when he attended the day treatment program, and elementary school 4. In response, the SLC teacher stated that she had access to the Student's IEP.
37. Also on October 7, 2015, the SLC teacher emailed special services manager 2, stating that the Student was no longer safe in the area of the SLC classroom that had been designated for him. The Student was now climbing on the windowsill and "hurtling" himself against the radiator. The SLC teacher stated that the Student would have to use the "resolution room" as an alternative. The SLC teacher also stated that the Student had a "tough day" that day, and at times had three adults with him, which left no one with the rest of the class. The SLC teacher believed this was becoming a "very serious safety issue" and also stated that the program paraeducators were giving up their break time to ensure the safety of the Student and others. The SLC teacher stated that things needed to change, and that the SLC program was not the appropriate placement for the Student. In response, special services manager 2 stated that she was working to find a solution for the Student, and hoped to have some answers the next day. Special services manager 2 later sent another email, stating that the Student did not fit any program, so the District needed to create a program that fit his needs. Special services manager 2 had ideas about a program, but needed the "manpower to execute the ideas."
38. Also October 7, 2015, special services manager 2 emailed the District executive director of special services and assistant director of special services regarding the Student. Special services manager 2 stated that the Student had been transferred into the SLC at elementary school 3 from elementary school 4, but the Student was not "an SLC kind of kid." The Student was "a high SCC kids, but too low for SCP." The Student's placement needed to be changed to an SCC program, but she needed to get the approvals for the request for paraeducators that she had submitted because the Student was going to need individualized attention. Special services manager 2 also stated that the Student had been successful at the day treatment program with 1:1 paraeducator support. However, when the 1:1 support was removed, he was not successful and the Student was also not successful in the SCC program at elementary school 4. Special services manager 2 also stated that when there were discussions about changing a student's placement, the assigned special services managers needed to "see and know" the student. "Just spending

about 3 minutes with [the Student] made it very apparent” to her that the Student “was not an SLC kid”. Special services manager 2 also stated that the director of the day treatment program was reportedly surprised that the Student had been moved to an SLC program.

39. On October 8, 2015, the Student’s SLC teacher emailed the Parent, stating that the Student had been sent to the resolution room three times on October 7, 2015 for a total of 175 minutes. The SLC teacher stated that the Student was very hyper and agitated for some reason, and staff were not able to contain him. The Student had stood on the windowsill leaning against the window, and was also “body slamming” into the radiator, and kicking staff. The SLC teacher stated that in her opinion, the SLC program was not the appropriate placement for the Student.
40. Also on October 8, 2015, the Parent emailed the SLC teacher, special services manager 1, and the District executive director of special services.<sup>2</sup> The Parent expressed that the situation with the Student’s placement was “absolutely ridiculous” and that she was not going to put the Student through another year of bouncing from one failed program to another, at different schools. The Parent stated that she did not believe the Student was being afforded a free and appropriate public education (FAPE). The Parent also expressed concern that the Student was academically behind, and that he was unable to form friendships with his peers because after only a short time in every program he was placed in, it was concluded that the program was not appropriate. In response, the executive director of special services stated that they would be meeting in regard to the Parent’s concerns and that someone would soon be in touch with the Parent.
41. Also October 8, 2015, the OT at elementary school 3 emailed the Student’s SLC teacher, stating that she had not received the Student’s occupational therapy file yet, but had reviewed his most recent evaluation and “found things that were working” for the Student. The OT later sent a second email proposing to provide the Student’s occupational therapy services in the SLC classroom on Thursdays. The SLC later agreed to the proposed schedule. The next day, the OT exchanged emails with the Student’s prior OT at elementary school 4.
42. On October 9, 2015, the Student’s current SLC teacher emailed special services manager 2, stating that in looking closely at the Student’s IEP, it provided for 335 minutes of additional adult support. In response, a meeting was arranged between the SLC teacher, special services manager 2, and the principal at elementary school 3.
43. On October 12, 2015, the SLP at elementary school 3 emailed the Student’s former SLP at elementary school 4, asking for the Student’s SLP file. In response, the SLP at elementary school 4 agreed to send it the next day.

---

<sup>2</sup> Based on the Parent’s email, it is possible that she also included additional District staff members on the email; however, the copy of the October 8, 2015 email provided to OSPI does not show all of the email recipients.

44. Also on October 12, 2015, the Student's SLC teacher emailed the Parent, and copied the school principal, special services manager 2, and the District executive director of special services. The SLC teacher stated that the Student had to use the resolution room five times that day for a total of 170 minutes. The SLC teacher also stated that the Student was becoming "extremely unsafe" as he was standing on top of his desk and jumping off, climbing on the windowsills, squeezing himself in between the windowsill and the resolution room, wrapping himself up in cords for the window blinds, and running from staff. The SLC teacher also stated that the school was waiting on a 1:1 paraeducator for the Student. Additionally, the SLC teacher forwarded the same information to her teachers' union representative. Later that day, the District approved hiring a 1:1 paraeducator to support the Student.
45. On October 13, 2015, the Student's SLC teacher emailed the Parent, stating that the Student had spent about 110 minutes in the resolution room that day. He was sent to the resolution room four different times for running on the windowsill, and throwing things.
46. On October 14, 2015, the Student's SLC teacher emailed special services manager 2, stating that one of the SLC program paraeducators was absent that day. The SLC teacher also stated that the Student had not arrived yet, and that she could not have him in the classroom until there was a substitute paraeducator. In response, special services manager 2 stated that she had approved using a certificated substitute to fill the position.
47. Also on October 14, 2015, the SLP at elementary school 3 emailed the SLC teacher, stating that she had reviewed the Student's IEP that day, and the IEP provided for 30 minutes per week of direct speech services and 30 minutes per week of consultation services to assist the SLC teacher. The SLP then provided a list of ways she could provide the consultation services. The SLP and the SLC teacher later exchanged additional emails and it was confirmed the Student would receive speech services on Tuesdays.
48. On October 16, 2015, the Student's SLC teacher emailed the school principal, special services manager 2, the District executive director of special services, and her union representative<sup>3</sup>, stating that the Student was present that day, but a substitute 1:1 paraeducator was not available. The SLC teacher asked for assistance in finding support for the Student.
49. Later on October 16, 2015, the Student was emergency expelled for "malicious mischief", disruptive conduct, failure to cooperate with personnel, spitting, hitting/kicking staff, swinging from the blinds, and running from staff. The

---

<sup>3</sup> In reply to this complaint, the Parent expressed concern that the SLC provided personally identifiable information regarding the Student to the SLC teacher's union representative. The District documentation shows that on October 16, 2015, special services manager 2 emailed the SLC teacher addressing the release of confidential information and reminded the SLC teacher that personally identifiable information of students cannot be released to third parties.

emergency expulsion was later converted to a six day suspension. The Student was suspended from October 16, 2015 through October 27, 2015.

50. Also on October 16, 2015, the District sent the Parent an invitation to an IEP meeting scheduled for October 23, 2015. The invitation stated that the purpose of the meeting was to review the Student's instructional needs and determine placement.
51. On October 23, 2015, the Student's IEP team met, and discussed changing the Student's placement and again amending the Student's February 2015 IEP. According to the documentation in this complaint, the meeting was attended by the Parent, the Student's father, the school principal, the school psychologist, and the SLC teacher. Special services manager 2 also attended the meeting by phone. According to a later email from the Parent, the SLC teacher was only present for five minutes, and special services manager 2 was only present by phone for approximately five minutes. According to another email from special services manager 2, the meeting was originally scheduled for an earlier time, but the Parent could not attend. The meeting was then rescheduled for a later time, but due to another previously scheduled meeting, special services manager 2 could only attend by phone for 30 minutes.
52. The District's documentation in this complaint includes an IEP amendment dated October 23, 2015. However, the District's other documentation indicates that the amendment was not completed until October 30, 2015 or later. The amended IEP stated that from October 23, 2015 through November 27, 2015, the Student would receive the following services in a special education setting:
- Math – 45 minutes/2 times weekly
  - Reading – 45 minutes/2 times weekly
  - Writing – 45 minutes/2 times weekly
  - Social/Emotional/Behavioral – 15 minutes/2 times weekly
  - Social/Emotional/Behavioral – 150 minutes/2 times weekly (concurrently)
  - Communication – 30 minutes per week

The amended IEP also stated that from November 28, 2015 through February 15, 2016, the Student would receive the following specially designed instruction and related services in a special education setting:

- Math – 45 minutes/2 times weekly
- Reading – 45 minutes/2 times weekly
- Writing – 45 minutes/2 times weekly
- Social/Emotional/Behavioral – 248 minutes/5 times weekly
- Occupational Therapy – 30 minutes per week
- Speech Language Pathology – 30 minutes per week

53. Also on October 23, 2015, the District completed two prior written notices. The first notice proposed to change the Student's educational placement to home tutoring. The notice stated that the reason for the changes was that the Student's "behavior had been unsafe to himself and others in the SLC classroom. He was recently expelled. This will end as of today and will begin tutoring starting Monday." The



notice also stated that during the home tutoring, the District would be looking into other programming options to collaborate with “this team to successfully put a program together” for the Student. The second prior written notice proposed to change the Student’s IEP and stated that the reason for the change was that the Student’s emergency expulsion had been discontinued and there were safety concerns. The notice also stated that the Student was being placed on home tutoring until appropriate programming could be coordinated.

54. Based on the attendance record, the Student began his home tutoring placement on October 26, 2015.

55. On October 27, 2015, the Parent emailed the executive director of special services and special services manager 2, and copied several other people on the email. The Parent stated that she needed to speak to someone about what was going on with the Student and would like to speak to someone who could actually help, because there had yet to be any kind of satisfactory solution. The Parent stated that since October 9, 2015, the Student had attended about a week of school and that when the Student did attend, the Parent was called to pick him up. Additionally, the District had recently suspended the Student due to his unsafe behavior. The Parent stated that although the Student was not physically hurting others, staff had “deemed” that his behavior could cause harm to the Student, and the SLC class did not have the staff or resources to accommodate or redirect the Student. The Parent also stated that a meeting had been arranged for October 23, 2015, which she believed would be to discuss providing the Student additional support. However, the meeting had instead been to discuss how elementary school 3 was not able to support or accommodate the Student due to a lack of a 1:1 paraeducator and other staff, and as result, the District was recommending the Student be moved to a private school in Portland, Oregon. The Parent expressed concern about the private school being so far from the family’s home, and did not believe the private school was the answer to the Student’s situation. The Parent stated the Student had already had too many IEPs which had been unsuccessful, and his placement had been moved too many times. The Parent also stated that the Student had recently had a private evaluation from a physician and been diagnosed with Autism, global developmental delay, attention deficit hyperactivity disorder (ADHD), and generalized anxiety disorder. The Student had been prescribed medication to help alleviate some of his behaviors, which were a manifestation of his disability. The Parent also stated that the private evaluator recommended the Student stay in his current placement in the SLC program for four to six weeks, as it would take at least that long to determine if the medication had a positive effect. However, the Parent had been informed at the October 23 meeting that the Student would not be allowed to return to school while an alternative placement was being developed. Instead, the Student would be provided tutoring for one hour per day. The Parent was concerned that the Student had “not had any kind of educational experience” or made progress on his IEP goals that school year, and did not believe providing the Student with one hour of tutoring each day would help. The Parent also stated that she had not yet heard from the tutor. Additionally, the Parent stated that the issues with the Student’s placement were causing difficulty with the Parents, and the

Student's father's employers. The Parent asked that the District consider placing the Student in another nearby school district prior to moving him to the private placement.

56. Also on October 27, 2015, special services manager 2 responded to the Parent's email, apologizing for any confusion about the October 23 IEP meeting. Special services manager 2 stated that the Student was a "complicated student" with a very difficult profile. Due to this difficulty, special services manager 2 wanted to be careful in selecting the next placement in order to minimize transitions for the Student, and had been checking into many placement options. Special services manager 2 also stated that she was sorry that the Student had been in so many different placements in the past which were disruptive to the Student and the Parent. As a result, she wanted to ensure the Student's next placement was "perfect" so the Student would not have to go through even more transitions. Special services manager 2 then stated that the day treatment program the Student had previously attended did not have a class that would meet his needs, and also stated that while a neighboring school district had an appropriate program, there was a waiting list to get into the program. Special services manager 2 agreed to look into other placement options at other neighboring school districts, and also stated that she had completed intake paperwork for the private school the District was proposing the Student attend. Special services manager 2 later emailed the Parent that another neighboring school district and another private school did not have programs that were appropriate for the Student.
57. On November 3, 2015, special services manager 2 emailed the Parent that the Student had been accepted into the program at the private school the District was proposing the Student attend. An intake meeting was later scheduled for November 12, 2015.
58. On November 3, 5, 13, 17, and 19, 2015, the Student received two hours of tutoring services. On November 10, 2015, the Student received 1.75 hours of tutoring services.
59. On November 19, 2015, the Parent emailed special services manager 2 to follow up on the Student's placement. The Parent stated that after visiting and learning more about the proposed private school, she did not want to go through with the placement. The Parent stated that there were several reasons she decided the placement was not appropriate, including the distance to the school from the family's home and the layout and design of the classroom. The Parent believed the classroom would be too distracting to the Student due to the size and the sensory equipment. The Parent also had concerns about the communication abilities of other students in the program and believed that the program would be similar to the SCC program at elementary school 4, which had not been appropriate for the Student. The Parent also stated that she believed the District could provide the Student with a similar program to the one at the private school, if he was provided a 1:1 paraeducator throughout his day. The Parent "strongly" believed that the missing factor in the Student's program in the District was a 1:1 paraeducator. The

Parent also stated that the Student was currently receiving tutoring two days a week for two hours at a local library and was doing “great”. He was excited to attend the tutoring sessions, was able to stay with the tutor without any major disturbances, and had formed a bond with the tutor. The Parent asked if the Student could receive more tutoring time, while a placement was determined. In response, special services manager 2 stated that an IEP meeting would be scheduled to discuss the Student’s placement.

60. On November 24, 2015, the SLC teacher emailed the OT at elementary school 3, asking if she could attend an IEP meeting on December 1, 2015 for the Student. The SLC teacher asked what the IEP team should do because the OT had not had any time with the Student that school year. The SLC teacher also stated that she was “mostly copying over info from his old IEP” because she had “no data on him and no learning.” In response, the OT stated that she could not attend a December 1, 2015 meeting and that last she had heard, the Student was attending a day program. The OT also stated that she had not seen the Student and would be copying over his old occupational therapy information into his IEP. In response, the SLC teacher stated that the upcoming IEP meeting was “to place [the Student] in a day program.”

61. The District’s documentation in this complaint includes a meeting invitation dated November 24, 2015. The invitation stated that the Parent was invited to attend an IEP meeting scheduled for December 3, 2015, and that the purpose of the meeting was to review the Student’s current IEP, review his instructional needs, and determine placement. The District’s contact log states that the Parent was contacted by phone on November 24, 2015, regarding the December 3, 2015 meeting and responded that she could attend.

62. The District was on break November 25-27, 2015.

63. The Student received two hours of tutoring services on December 1 and 4, 2015.

64. On December 3, 2015, the Student’s IEP team met to discuss the Student’s placement. The Parent and the Student’s father did not attend the meeting, despite the District attempting to contact them the day of the meeting. At the meeting, the District members of the Student’s IEP team agreed to change the Student’s placement to the proposed private school. The IEP team also developed a new IEP for the Student. The December 3, 2015 IEP included some updated information regarding the Student’s present levels of educational performance, but included much of the same information from the Student’s October 23, 2015 IEP amendment. The December 2015 IEP also contained the same sixteen IEP goals as the October 23, 2015 IEP. The December 2015 IEP stated that the Student’s placement was a “home tutor” until a “suitable placement” was found. The IEP also stated that from December 3, 2015 through January 29, 2016, the Student would receive the following specially designed instruction:

- Math – 45 minutes 2 times weekly
- Writing – 45 minutes 2 times weekly

- Reading – 45 minutes 2 times weekly
- Social/Emotional/Behavioral – 15 minutes 2 times weekly

Additionally, the December 2015 IEP also stated that from February 1, 2016 through December 2, 2016, the following specially designed instruction, related services, and supplementary aids and services would be provided:

- Math – 45 minutes 5 times weekly
- Writing – 45 minutes 5 times weekly
- Reading – 45 minutes 5 times weekly
- Social/Emotional/Behavioral – 203 minutes 5 times weekly
- Communication – 30 minutes per week
- Occupational Therapy – 30 minutes per week
- Occupational Therapy Consultation – 100 minutes annually

65. The District's documentation in this complaint includes a prior written notice dated December 1, 2015.<sup>4</sup> The notice proposed to change the Student's placement to a private day school, and stated that the reason for the change was that "no other options exist" in the District to meet the Student's needs. The notice also stated that the IEP team had considered the Student staying in the SLC program and "building a special program" for Student, but "these options would not meet [the Student's] needs because the staff and space that he requires are not available." The notice stated that the action would be initiated on January 4, 2016.

66. Also December 3, 2015, the SLP from elementary school 3 completed progress reporting regarding the Student's three communication goals. The progress reporting stated that the Student had not made progress toward his communication goals, and that he was not able to access speech and language services while at elementary school 3 and was now on a home tutor. Progress reporting was not completed for the Student's other thirteen goals.

67. On approximately December 7, 2015, special services manager 2 contacted the Parent to inform her of the decisions made at the December 3, 2015 IEP meeting. Based on the District's documentation in this complaint, special services manager 2 also informed the Parent that the Student would continue to receive home tutoring until the end of January, pending a mental health evaluation from the private school. The private school would begin the evaluation as soon as possible. The District would amend the Student's IEP to reflect the services he would receive at the private school as soon as a start date was determined.

68. The Student received two hours of tutoring services on December 8 and 10, 2015.

69. On December 15, 2015, the Student's private physician sent the District a letter, stating that the Student was a student with Autism, generalized anxiety, and ADHD. The Student's anxiety was associated with oppositional behavior, outbursts, and aggression in the past. The physician stated that she had been working with the

---

<sup>4</sup> The date of the prior written notice appears to be in error and should reflect a date of December 3, 2015 or later.

family to provide aggressive management of the Student's volatile and aggressive behavior, and the Student was taking medication for ADHD and mood regulation. The Student was also scheduled for intensive outpatient speech/language and occupational therapies. The physician stated that the Student had responded well to these interventions, and that his ADHD and mood were well controlled. The Student could tolerate two hours of tutoring without a break, had good focus, cooperation, and task persistence during tutoring. The Student's self-expression and advocacy had also improved, and his outbursts and aggression had nearly resolved. The physician stated that the Student "seemed ready" to reenter the classroom setting, and the physician strongly recommended that the Student return to school on a gradual basis, starting with half day sessions. The physician also recommended that the Student attend a highly supported classroom and if possible, attend a school he remembered positively such as the day treatment program.

70. The Student received two hours of tutoring services on December 16 and 17, 2015. On December 18, 2015, the SLC teacher emailed the Student's District tutor to check on the Student's progress and determine if the tutor needed additional materials.
71. Also on December 18, 2015, the Parent filed this citizen complaint.
72. The District was on break from December 21, 2015 through January 1, 2016.
73. On January 5 and 7, 2016, the Student received two hours of tutoring services.
74. On January 6, 2016, the SLC teacher emailed the Student's District tutor, asking how the tutoring sessions were going. In response, the tutor stated that the Student was "doing great" and that she would provide the SLC teacher with a report of the Student's progress.
75. On January 11, 2016, the Student's tutor provided the SLC teacher with a report of the Student's progress. The tutor stated that when she first met the Student, he was hesitant to follow any sort of instruction; however, when the Student became more comfortable with the tutor, he began to follow instructions with fewer objections. The tutor also stated that she had learned that the Student sought attention, and would do things to get a reaction from the tutor. It the tutor took "away the shock" that the Student wanted, the Student became more relaxed. Additionally, the Student did not do well with crowds or open spaces, and that isolating him in a closed area was ideal, and reduced the chance the Student had to distract himself. The tutor believed that working with an individual teacher in a structured learning class would benefit the Student, and that he would not pay attention in a bigger classroom with more to distract him. The tutor also stated that the Student loved watching "minecraft" videos on the internet, which had been a great tool to incentivize the Student. The tutor further stated that the Student enjoyed working alone, especially if it was work he was familiar with, that listening to classical music lowered the Student's hyperactivity, and that by ignoring the Student when he began to act out, the Student would begin to ask questions or ask for help. The tutor then provided

information about the Student's progress in math, reading, and writing. The SLC teacher forwarded the information to special services director 2.

76. As February 8, 2016, the Student's was still receiving home tutoring.

## CONCLUSIONS

### Issue 1: IEP Implementation –

**Additional Adult Support** – Although students with complex needs can be difficult to assimilate into existing program structures, **the District failed to provide the Student with the additional adult support provided for in his evaluation and IEPs.** The Student's February 2015 IEP and his September 2015 IEP amendment both provided for 1,675 minutes per week (335 minutes per day) of additional adult support, but the District's **documentation does not show that an adult was assigned to provide the Student additional support throughout his school day.** While the Student did receive some support from the SCC teacher, SLC teacher, the paraeducators assigned to the SCC and SLC programs, and the school principals, this was not the additional 1:1 adult support provided for in the IEP. **The term "additional" means in addition to the staff that are assigned to the Student's classroom.** The District's February 2014 evaluation report clearly recommended that the Student receive this additional support, and stated that the Student responded "best to explicit and discrete instruction in a one-on-one interaction" and that the Student "clearly needs 1:1 for instruction and task completion." The District's failure to provide the Student with the additional adult support stated in his IEP seriously impacted the Student's ability to access his education, and the failure to provide the Student with the additional adult support recommended in the District's evaluation and the Student's IEP, denied the Student a FAPE.

**Occupational Therapy** – The District also failed to provide the Student with occupational therapy services. The Student's February 2015 IEP and September 2015 IEP amendment provided for 30 minutes per week of occupational therapy services, but the District did not provide the Student with the services while he attended elementary school 4 or elementary school 3. The District then amended the Student's IEP in October 2015 to change his placement to home tutoring. The amended October IEP stated that the Student would not receive occupational therapy services for a period of approximately four weeks from October 23, 2105 through November 27, 2015. The District provided no documentation to explain why the Student could not receive occupational therapy while he received home tutoring. Further, on December 3, 2015, the District developed a new IEP for the Student which continued to state that the Student would not receive occupational therapy services between December 3, 2015 and January 29, 2016. Again, the District provided no documentation to explain why the Student could not receive the OT services. The failure to provide the Student with occupational therapy services is a material failure to implement the Student's IEPs. The District will provide the Student with 9.5 hours of occupational therapy services to address the nineteen weeks of services he missed from September 2015 through January 2016. The District will immediately amend the Student's IEP to reflect his 30 minutes per week of services and begin providing occupational therapy services.

**Communication Services** – Although the Student presented some behavioral challenges which may have been the result of an inappropriate placement, or the lack of sufficient adult support, the District failed to provide the Student with his required communication services. The Student's February 2015 IEP and September 2015 IEP amendment provided for 30 minutes per week of specially designed instruction in communication to be delivered by a speech language pathologist (SLP), but the District did not provide the Student with the services while he attended elementary school 3 or 4. The Student's October 23 IEP amendment also provided for 30 minutes per week of specially designed instruction in communication while the Student received home tutoring, but the District did not provide these services. The District then developed the Student's December 3, 2015 IEP and removed the Student's communication services for the time period between December 3, 2015 and January 2016. The failure to provide the Student services from September 2015 through January 2016 is a material failure to implement the Student's IEPs. The District will provide the Student with 9.5 hours of specially designed instruction in communication to address the nineteen weeks of services he missed from September 2015 through January 2016. The District will immediately amend the Student's IEP to reflect his 30 minutes per week of communication services and begin providing communication services.

**Assistive Technology and Assistive Technology Consultation** – The Student's February 2015 IEP provided for supplementary aides and services in the area of assistive technology and assistive technology consultation. It is not clear if the Student received any of these services during the first few days of the 2015-2016 school year. However, what is even less clear is why these services were removed from the Student's September 2015 IEP amendment without a reevaluation. Neither the notes from the September 10, 2015 IEP meeting, nor the prior written notice issued after the meeting, provide any information as to why these services were removed from the Student's IEP. The District will contract with a private evaluator to determine whether the Student is in need of assistive technology.

**Issue 2: Placement Procedures** – The District failed to follow procedures for determining the Student's placement during the 2015-2016 school year. A district may not make a significant change in a student's placement without a reevaluation. In September 2015, the District changed the Student's placement from an SCC program to an SLC program prior to conducting a reevaluation of the Student and determining the specific services and supports the Student needed. This is especially concerning given that the Student's behavior had become increasingly aggressive and apparently so unsafe that the Parent was consistently asked to pick up the Student from school. Clearly the Student's difficulties in the SCC placement showed that the program was not appropriate for the Student, and that another placement was warranted. However, simply deciding to move the Student to the SLC program, which had already proven to be an inappropriate setting, was not an effective way to address the Student's needs. Moving the Student to the SLC program not only failed to address the Student's educational and behavioral needs, it apparently exacerbated his behavior issues so that after only two weeks in the SLC program, the Student was expelled from school.

On October 23, 2015, the District changed the Student's placement to a home tutoring placement and significantly reduced the amount of specially designed instruction the Student would receive without conducting a reevaluation and without any documentation to support such a significant change in services. The District will provide compensatory services to address the services the Student was denied during the time period he received home tutoring. The Student's October 23, 2015 IEP amendment and his December 3, 2015 IEP provided for the following services:

- Math – 45 minutes/2 times weekly
- Reading – 45 minutes/2 times weekly
- Writing – 45 minutes/2 times weekly
- Social/Emotional/Behavioral – 15 minutes/2 times weekly
- Social/Emotional/Behavioral – 150 minutes/2 times weekly (concurrently)

This is 60 less minutes per week of services in each of the areas of math, reading, and writing, than what is stated in the Student's September 2015 IEP amendment. This also represents 1,010 less minutes per week of direct services in the area of social/emotional/behavioral than stated in the Student's September 2015 IEP amendment. From October 26, 2015 when the Student's home tutoring placement began through January 2016, the Student missed 720 minutes of reading services, 720 minutes of writing services, 720 minutes of math services, and 12,120 minutes of services in social/emotional/behavioral. Considering the more intensive services provided in a one-one-one setting, the District will provide the Student with one half of the amount of services he missed. The Student will receive the services in a 1:1 setting. The District will provide the Student with 6 hours (360 minutes) of reading services, 6 hours (360 minutes) of writing services, 6 hours (360 minutes) of math services, and 101 hours (6,060 minutes) of services in the area of social/emotional/behavioral. The failure to provide communication services and occupational services has already been addressed above.

The District will immediately take steps to contract with a private evaluator(s) to conduct a comprehensive reevaluation of the Student. During the time period for the reevaluation, the District will either return the Student to elementary school 3 or place the Student at the elementary school closest to the Student's home. The Student will attend school for half of the school day consistent with the recommendation of the Student's physician. The District will amend the Student's IEP to reflect the services the Student will receive while he attends a partial school day. If the Student demonstrates that he is able to attend school for longer periods, the District will lengthen the Student's school day and provide additional services as needed. While the Student is in the temporary placement, the District will provide the Student with 1:1 tutoring support in his own classroom (or office space) consistent with the recommendation of the Student's tutor. The Student will have opportunities to spend time with peers as appropriate. Preferably, the Student's tutor will be able to provide the Student tutoring at the elementary school. If the Student's tutor cannot provide the services, the District will immediately hire a paraeducator or a certificated teacher to provide the tutoring, or contract with an outside agency to provide the Student's one-on-one support from a behavior specialist.



It is also noted that the District's documentation indicates that the Student was suspended for six school days and also effectively suspended on several others days when he was sent home due to his behavior. When a student is suspended for more than ten school days in a one school year for a pattern of behavior, the District is required to follow special education disciplinary procedures, which include conducting a manifestation determination to determine if a student's behavior was either caused by or had a direct and a substantial relationship to his disability, or if the student's behavior was a direct result of the District's failure to implement an IEP. If the Student was required to leave school due to his behavior on more than four school days, then the Student has been suspended for more than 10 school days during the 2015-2016 school year for the same pattern of behavior, and the District is required to conduct a manifestation determination.

**Issue 3: Development of Behavioral Implementation Plan (BIP)** – The District's documentation in this complaint shows that the District appropriately took steps to amend the Student's February 2015 BIP to address the Student's changing behaviors. However, as discussed above, the lack of additional adult support for the Student and a placement that was appropriate to meet the Student's education needs made it nearly impossible for the District to implement the BIP, as the Student was not at school long enough to attempt to work on teaching him the replacement skills stated in his IEP.

The District will contract with a private evaluator who specializes in behavior to conduct assessments of the Student and assist the Student's IEP team in developing an IEP and BIP that meet the Student's needs.

### **CORRECTIVE ACTIONS**

On **February 29, 2016, March 11, 2016, April 15, 2016, May 6, 2016, June 30, 2016, September 7, 2016, December 16, 2016, and February 13, 2017**, the District will provide documentation to OSPI that the following corrective actions have been completed.

#### **STUDENT SPECIFIC:**

1. By **February 29, 2016**, the District will provide OSPI with a copy of the Student's amended December 2015 IEP, which will clearly states that the Student will receive 30 minutes per week of occupational therapy services and 30 minutes per week of communication services. The amended IEP will also reflect the amount of services the Student will receive in the areas of math, reading, writing, and social/emotional/behavioral while he attends school on a partial day. The District will also provide documentation that the District has begun providing the Student all of the services at elementary school 3 or the elementary school closest to the Student's home.
2. The District will contract with an independent evaluator(s), who is not employed by the District, to ensure the Student receives a comprehensive evaluation, including a functional behavioral assessment (FBA) and other behavior assessments, and an assistive technology evaluation, within the timelines specified in this complaint. At a

minimum, the evaluation will include a review of records, including the Student's prior reevaluation(s), IEPs, information provided by the Student's last three teachers and the Parent, and any other assessments determined to be needed by the independent evaluator.

- By **March 11, 2016**, the District will provide OSPI with the name of the independent evaluator(s) who will conduct the IEE and a copy of the contract for the IEE.
  - By **May 2, 2016**, the District will hold an IEP meeting to review the results of the Student's IEE. The District will ensure the independent evaluator(s) participates in the meeting in person or by phone. The IEP team will then develop a new IEP for the Student and develop a BIP for the Student. The IEP team will also review the Student's class schedule to ensure the class schedule aligns with the services stated in the Student's IEP. By **May 6, 2016**, the District will submit 1) a copy of any meeting invitations; 2) a copy of the evaluation report(s); 3) a copy of the FBA; 4) a copy of the new IEP; 5) a copy of the BIP and any related documents; and, 6) a copy of any related prior written notices.
3. By **March 4, 2016**, the District will meet with the Parent to develop a schedule for 9.5 hours of occupational therapy sessions and 9.5 hours of specially designed instruction in the area of communication. The occupational therapy services will be provided by an occupational therapist and the communication services will be provided by a speech language pathologist. If the Student needs additional adult support to access these services, the District will pay for a paraeducator to accompany the Student during the sessions. The sessions must be scheduled outside of the Student's school day. If the District providers are unable to attend a scheduled session, the session must be rescheduled. If the Student is absent or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule.

Services must be completed no later than **August 31, 2016**. The District will provide OSPI with documentation of the schedule no later than **March 11, 2016**. The District must provide OSPI with documentation on **May 6, 2016** and **June 30, 2016**, of the compensatory services provided to the Student. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student. No later than **September 7, 2016**, the District shall provide OSPI with documentation that the compensatory services have been completed.

The District must either provide transportation necessary for the Student to access these services or must 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 by **September 7, 2016** that the Parent has been reimbursed for any transportation costs.

4. By **April 8, 2016**, the District will meet with the Parent to develop a schedule for the Student to receive 18 hours of compensatory services (6 hours of reading services, 6 hours of writing services, and 6 hours of math services). The services will be provided by a certificated special education teacher or a paraeducator who is supervised by a certificated special education teacher. If the Student needs additional adult support to access these services, the District will pay for a paraeducator to accompany the Student during the sessions. The sessions must be scheduled outside of the Student's school day and may be provided over the summer. If the District providers are unable to attend a scheduled session, the session must be rescheduled. If the Student is absent or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule.

Services must be completed no later than **December 9, 2016**. The District will provide OSPI with documentation of the schedule no later than **April 15, 2016**. *Once OSPI receives the schedule, OSPI will provide the District with dates to submit documentation that the services have been provided.* No later than **December 16, 2016**, the District shall provide OSPI with documentation that the compensatory services have been completed.

The District must either provide transportation necessary for the Student to access these services or must 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 by **December 16, 2016**, that the Parent has been reimbursed for any transportation costs.

5. By **February 10, 2017**, the District will provide the Student with 101 hours of compensatory services in the area of social/emotional/behavior or will pay for the Student to participate in community based programs designed to help students improve social and behavioral skills for 101 hours in an amount not to exceed \$10,100 (\$100 per hour). The services in a community based program must be provided by a licensed mental health professional, licensed behavioral specialist, or a certificated special education teacher.

- If the District elects to provide the Student with 101 hours of compensatory services, the District will meet with the Parent by April 8, 2016 to develop a schedule for the compensatory service sessions. The services will be provided by a certificated special education teacher or a paraeducator who is supervised by a certificated special education teacher. If the Student needs additional adult support to access these services, the District will pay for a paraeducator to accompany the Student during the sessions. The sessions must be scheduled outside of the Student's school day and may be provided over the summer. If the District providers are unable to attend a scheduled session, the session must be rescheduled. If the Student is absent or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule.

Services must be completed no later than **February 10, 2017**. The District will provide OSPI with documentation of the schedule no later than **April 15, 2016**. *Once OSPI receives the schedule, OSPI will provide the District with dates to submit documentation that the services have been provided.* No later than **February 13, 2017**, the District shall provide OSPI with documentation that the compensatory services have been completed.

The District must either provide transportation necessary for the Student to access these services or must 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 by **February 13, 2017**, that the Parent has been reimbursed for any transportation costs.

- If the District elects to contract with a private provider(s) that operates community based programs designed to help students improve social and behavioral skills, the District will work with the Parent to register the Student for any programs available from April 2016 through February 10, 2017 and the District will pay for the programs. The services must be provided by a licensed mental health professional, licensed behavioral specialist, or a certificated special education teacher. If the Student needs additional adult support to access these services, the District will pay for a paraeducator to accompany the Student during the sessions. The District will notify OSPI no later than **April 15, 2016** if it has elected this option. *Once OSPI receives the notification, OSPI will provide the District with dates to submit additional documentation regarding the provision of services.* No later than **February 13, 2017**, the District shall provide OSPI with documentation that the compensatory services have been completed.

The District must either provide transportation necessary for the Student to access these services or must 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 by **February 13, 2017** that the Parent has been reimbursed for any transportation costs.

#### **DISTRICT SPECIFIC:**

In special education citizen complaint 15-73, the District was required to develop written guidance to be provided to all District certificated special education staff, including educational staff associates (ESAs), principals, and District special education administration staff by March 18, 2016. The guidance is required to address the procedures for responding to parents' request to revise IEPs and the procedures for changing a student's placement, which include the requirements for prior written notice. The ordered guidance addresses similar issues identified in this complaint; therefore, no additional District specific corrective actions are required.

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.

*NOTE: The district may request an electronic version of the matrix by e-mailing [Thinh Le](mailto:Thinh.Le@k12.wa.us) at [Thinh.Le@k12.wa.us](mailto:Thinh.Le@k12.wa.us).*

Dated this \_\_\_\_ day of February, 2016

Douglas H. Gill, Ed. D.  
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.)