

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-65**

### **PROCEDURAL HISTORY**

On September 9, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the grandparent and legal guardian (Complainant) of a student (Student) attending the Federal Way School District (District). The Complainant alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On September 10, 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 September 30, 2019, the District requested an extension of time for the submission of its response regarding SECC 19-65. OSPI requested the District submit its response no later than October 9, 2019.

On October 9, 2019, OSPI received the District's response to the complaint and forwarded it to the Complainant on October 11, 2019. OSPI invited the Complainant to reply with any information she had that was inconsistent with the District's information.

On October 21, 2019, the Complainant requested an extension of time for the submission of her reply regarding SECC 19-65. OSPI granted the Complainant's request. The Complainant was asked to submit her reply no later than October 30, 2019.

On October 31, 2019, OSPI received the Complainant's reply. OSPI forwarded that reply to the District the same day.

On November 1, 4, and 5, 2019, the OSPI complaint investigator conducted phone interviews with District staff.

On November 5, 2019, the OSPI complaint investigator interviewed the Complainant by phone.

OSPI considered all of the information provided by the Complainant and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during interviews.

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on September 10, 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 developing and implementing the Student's individualized education program (IEP) from September 10, 2018 through September 9, 2019?
2. Did the District follow procedures to respond to the Student's behaviors related to his disability from September 10, 2018 through September 9, 2019, including developing and implementing a functional behavioral assessment (FBA) and behavioral intervention plan (BIP) that includes use of positive behavioral interventions and supports, and the Parent's request for paraeducator support?
3. Did the Student experience bullying that resulted in a denial of a free appropriate public education (FAPE), and if so, did the District appropriately respond to the bullying from September 10, 2018 through September 9, 2019?
4. Did the District follow procedures to respond to the Parent's request for a re-evaluation on September 25, 2018?

## LEGAL STANDARDS

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

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).

An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015. *Questions and Answers on Discipline*

*Procedures* (OSERS June 2009) (Question E-4). Once the need for a reevaluation is identified, a district must act “without undue delay and within a reasonable period of time;” and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008). The IDEA does not specify who is qualified to conduct an FBA, for example there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

Positive Behavioral Interventions: Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior. WAC 392-172A-01142.

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

Disability-Based Harassment: Harassment occurring due to a student's status of having a disability that adversely affects that student's education may result in a denial of a free appropriate public education (FAPE). A denial of a FAPE occurs when, taking into consideration the student's unique characteristics, it may be fairly said that a school district did not provide the student an opportunity to obtain some progress from the program it has offered. *Ojai Unified School District v. Jackson*, 4 F.3d 1467 (9<sup>th</sup> Cir. 1993), *cert. denied*, 115 S. Ct. 90 (1994). Harassment and bullying of a student eligible for special education that prevents the student from receiving meaningful educational benefit constitutes a denial of a FAPE that districts must remedy. As part of its response, the district should convene an IEP team meeting to determine whether additional or different services are necessary and must revise the student's IEP accordingly. The IEP team should be careful when considering a change of placement for a student eligible for special education who was the target of bullying or harassment. A more restrictive placement may constitute a denial of a FAPE in the LRE. A fundamental step in preventing disability-based harassment is developing and disseminating a policy that prohibits such harassment. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP Aug. 20, 2013).

Each school district shall adopt a policy and procedure that prohibits the harassment, intimidation, or bullying of any student. RCW 28A.300.2851. Bullying is defined as aggression used within a

relationship where the aggressor has more or real perceived power than the target, and the aggression is repeated or has the potential to be repeated. In addition, under the IDEA, school districts have an obligation to ensure that students who are the targets of bullying continue to receive a FAPE in accordance with the student's IEP. As part of an appropriate response to bullying under the IDEA, districts should consider convening an IEP team meeting to determine whether the effects of bullying have caused the student's needs to change such that his/her IEP is no longer providing educational benefit. *Dear Colleague Letter*, 61 IDELR 263(OSERS/OSEP Aug. 20, 2013). If a teacher is deliberately indifferent to teasing of a disabled child and the abuse is so severe that the child can derive no benefit from the services that he or she is offered by the school district, the child has been denied a FAPE. *In the Matter of Federal Way School*, OSPI Cause No. 2011-SE-0013 citing *M.L. v Federal Way Sch. Dist.*, 394 F3d 634, 105 LRP 13966 (9<sup>th</sup> Cir. 2005).

Assistive Technology Device: The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, and/or improve the functional capabilities of a student eligible for special education. The term does not include a medical device that is surgically implanted, or the replacement of such device. 34 CFR §300.5; WAC 392-172A-01025.

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303(b); WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

Reevaluation – Review of Existing Data: As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. If the student's IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be eligible for special education services, and/or to determine the student's educational needs, the school district must notify the parents of that determination, the

reasons for the determination, and the parents' right to request an assessment to determine whether the student continues to be eligible for special education and/or determine the student's educational needs. 34 CFR §300.305(d); WAC 392-172A-03025. The evaluation group's review does not need to be conducted through a meeting but if a meeting is held, parents must be provided with notice and afforded an opportunity to participate. 34 CFR §§300.305(b) and 300.501(b); WACs 392-172A-03025(3) and 392-172A-05000(2). The school district must provide a copy of the evaluation report and documentation of determination of eligibility to the parent, and at no cost to the parent. 34 CFR §300.306; WAC 392-172A-03040(1)(b).

Evaluation/Reevaluation Standards: In completing an evaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. No single test or measure may be used as the sole criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student. School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. Additionally, districts must ensure that the assessments and evaluation materials they use are selected and administered so as not to be discriminatory on a racial or cultural basis. Assessments must be provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so. 34 CFR §300.304; WAC 392-172A-03020.

Districts must also ensure that assessments and other evaluations are used for the purposes for which they are valid and reliable, and are administered by trained and knowledgeable personnel and in accordance with any instructions provided by the producer of the assessment. Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need, and must best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment accurately reflects the student's aptitude or achievement level rather than reflecting the student's impairment. If necessary, as a part of a complete assessment, a district may obtain at its expense a medical statement or assessment indicating any additional factors that affect the student's educational performance. Students should be comprehensively assessed in all areas of suspected disability, and districts must use assessment tools and strategies that provide information that directly assists those determining the student's educational needs. Finally, districts must ensure that evaluations of students who transfer from one district to another within the state during a school year are coordinated with the student's prior and subsequent district as necessary and as expeditiously as possible, to ensure prompt completion of the full evaluation. 34 CFR §300.304; WAC 392-172A-03020(3).

Evaluation/Reevaluation Report: An evaluation report must be sufficient in scope to develop the student's IEP, and at a minimum should include: a statement of whether the student has a disability that meets the eligibility criteria under IDEA; a discussion of the assessments and review of data that supports the evaluation group's conclusions regarding eligibility, including any additional information required under WAC 392-172A-03080 for students with specific learning disabilities; how the student's disability affects his or her involvement and progress in the general education curriculum, or for preschool children, in appropriate activities; the recommended special education and related services needed by the student; other information needed to develop the IEP; and, the date and signature of each professional member certifying that the report reflects his or her conclusion, or, a statement representing the professional member's conclusion if he or she disagrees with the report's conclusions. 34 CFR §300.305; WAC 392-172A-03035.

An evaluation report interprets evaluation data to determine if a student is eligible for special education services, and if so, the student's needs. 34 CFR §300.305; WAC 392-172A-03035. The report must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, the student's physical condition, the student's social and cultural background, and adaptive behavior. 34 CFR §300.306; WAC 392-172A-03040(3). The evaluation report must include documentation of the individual assessments of each professional member of the group who contributed to the report that indicates: the procedures and instruments that were used and the results obtained; any conclusions from observations of the student; and a statement of the apparent significance of the findings as related to the student's suspected disabilities and instructional program. 34 CFR §300.305; WAC 392-172A-03035. If the evaluation results in a determination that the student is eligible for special education and appropriate related services, the district must then conduct an IEP meeting to develop an appropriate IEP. A district must provide a copy of the evaluation report and documentation of determination of eligibility to the parents, and at no cost to the parents. 34 CFR §300.306; WAC 392-172A-03040.

## **FINDINGS OF FACT**

### **2017-2018 School Year**

1. On December 13, 2017, the District completed an initial special education evaluation for the Student. The evaluation determined the Student was eligible for special education under the category other health impairment and recommended the Student receive specially designed instruction in written expression. The evaluation additionally recommended several accommodations and assistive technology, including use of a word processor. The initial evaluation included a functional behavioral assessment (FBA) for the target behaviors of interrupting in class, off task fidgeting behaviors, and talking with neighbors.
2. On January 12, 2018, the Student's individualized education program (IEP) team met to review the results of the initial evaluation and develop an initial IEP for the Student. The IEP included goals in the area of written language and provided the Student with 30 minutes of specially

designed instruction in written language, to be provided by the special education teacher in the special education setting. The IEP stated the Student would spend 91.8 percent of his time in the general education setting, with pull-out special education services. The IEP indicated the Student had behaviors that impeded his learning. The IEP did not include a behavior intervention plan (BIP) per se but explained the Student “needs the reassurance of teachers when given challenging work, consistent daily schedules and warning of deviations from expected schedules,” as well as “seating near/away from the teacher with consistent redirection to task.” The Student’s IEP further directed staff to “define appropriate behavior while giving immediate, sincere praise” and to “selectively ignore inappropriate behavior.” It additionally noted “[w]hen tasks are difficult redirection and assistance may need to increase.”

### **2018-2019 School Year**

3. The 2018-2019 school year began on September 4, 2018.
4. The timeline for this complaint began on September 10, 2018.
5. During the 2018-2019 school year, the Student was a fifth grade student in the District. The Student was eligible for special education services under the category other health impairment. At the commencement of the school year, the Student’s diagnoses included Attention Deficit Hyperactivity Disorder (ADHD), and Obsessive Compulsive Disorder (ODD).
6. On September 25, 2018, the Complainant requested a reevaluation due to the Student’s new diagnosis of Tourette Syndrome (TS).<sup>1</sup>
7. On October 1, 2018, the Complainant emailed the special education teacher—who also served as the Student’s case manager—to “check to see what would work to meet in regards to the IEP?” The same day, the special education teacher responded saying she would need to check with the school psychologist in order to schedule a meeting. She additionally told the Complainant, “We are not conducting an IEP meeting. This meeting is a next steps meeting.”
8. On October 10, 2018, the special education teacher and school psychologist met with the Complainant to discuss next steps for the reevaluation.
9. On October 11, 2018, the school psychologist emailed the Complainant stating she would need to consult with school occupational therapist (OT) to gather consent to do an OT screening. In her email, the school psychologist wrote, “once we get consent, we have 35 school days to complete the evaluation and hold the results meeting. Sometimes it takes the entire time and sometimes we get done a bit sooner. As soon as I send consent I coordinate a meeting date and time with the entire team including you. Following the evaluation the IEP team will meet and review the IEP.”

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<sup>1</sup> Student has complex vocal and motor tics that includes, but is not limited to, disinhibition, impulsivity, coprolalia, echolalia, and palilalia.

10. On October 18, 2018, the Complainant provided written consent for the Student to be reevaluated. The reevaluation included the following areas: educational evaluation, observation of learning environment, psychoeducational assessment, social/emotional assessment, and OT (fine motor) assessment.
11. On October 29, 2018, the general education teacher forwarded the Complainant an email from the school administrative assistant saying the Student was "making Donald duck noises, throwing crayons or pencils, turning the light on and off..."
12. On October 30, 2018, the school psychologist emailed the principal, special education teacher, general education teacher, and program specialist to request an IEP team meeting be held in the next two weeks to discuss current concerns about the Student's behavior.
13. On November 19, 2018, the District sent a meeting invitation to the Complainant to schedule a meeting to discuss the data in the reevaluation for special education services.
14. On December 5, 2018, the District completed its reevaluation of the Student. The reevaluation concluded the Student continued to qualify for special education services under the disability category of other health impairment and that the Student's disability was causing an adverse impact on his learning. The evaluation team recommended the Student receive specially designed instruction in written language and social/emotional skills. The reevaluation was signed by the Complainant, general education teacher, program specialist, school psychologist, and special education teacher.
15. As part of the reevaluation completed on December 5, 2018, the general education teacher was interviewed regarding the Student's social/emotional behaviors. The general education teacher stated: "[Student] keeps trying. He talks out of turn 25-30 times daily, touches other children on the head and back, even after being asked to stop. Places non-food items in his mouth. He uses his 'conditions' as an excuse. I do believe there are times he is not consciously doing things but many times he knows what he is doing." The Complainant reported concerns regarding the Student's "self-esteem and anxiety in relation to [Student's] academic progress. "[Complainant] worries about his catastrophizing issues, avoiding work, being unhappy, overactive, impulsive and having a short attention span [ . . . ]."
16. On December 5, 2018, the District sent the Complainant prior written notice (PWN) of the evaluation results. The PWN stated the multidisciplinary team completed a comprehensive reevaluation, which included a "review of referral information, available medical records and past records, input from [Student], teacher(s), and parent(s), assessment in areas of suspected disability, consideration of needed accommodations and adaptations to [Student's] learning environment and consideration of need for Specially Designed Instruction in Special Education," and found "[Student] continues to have an educational disability that significantly impacts his ability to function in general education [and] continues to require Specially Designed Instruction in Special Education."



17. On December 5, 2018, the Complainant signed consent for the District to conduct a functional behavioral assessment and develop a behavioral intervention plan (BIP) for the Student.
18. On December 14, 2018, the District sent a letter home with the Student and emailed the Complainant to confirm that an IEP meeting had been scheduled to discuss adding social emotional behavioral support to the Student's IEP.
19. On December 19, 2018, the Student's IEP team met to amend the Student's IEP to add social emotional behavioral support to the Student's IEP. The Student's IEP was amended to provide the Student with 30 minutes three times weekly of social emotional/behavioral support, to be provided by a special education teacher in the special education setting.
20. On January 2, 2019, the Complainant emailed the special education teacher that she had finished reviewing the draft IEP, had made some changes to the main part of it, and wanted to know what suggestions the general education teacher had. She additionally noted she had "questions on the Social piece as well," and asked "Was this part of the FBA? I know I signed that paper for an FBA to take place. Did this happen?"
21. On January 7, 2019, the special education teacher responded: "Hello, I will add [general education teacher's] successes and I don't think I understand your question about the social. [Student] qualified for [specially designed instruction] in social emotional/behavioral, the FBA has not been done yet. We will have another meeting for that hopefully next week. The meeting before the break was just to add social goals to the amended IEP. The next meeting will be an annual meeting with the FBA included."
22. Also January 7, 2019, the District sent the Complainant an IEP meeting invitation via email to develop the Student's IEP, including transition planning, for January 11, 2019. On January 8, 2019, the Complainant confirmed the meeting date and time by phone.
23. On January 8, 2019, the Complainant emailed the special education teacher, regarding questions about the December IEP meeting:

Ok, let me step this back a little. When coming in on the 20<sup>th</sup> of Dec. we reviewed the changes (under the impression this would consist of what was discussed in the evaluation meeting). Those changes only consisted of the [specially designed instruction]. I suggested a few things that needed to be included, I clarified for you that I needed the time to review those changes as well as the body of the IEP itself for any additional changes/deletions. You indicated this was a draft, which to me is then not completed/implemented until we have finished and agreed. I am a little confused to what then belongs to the re-evaluation versus the annual review of the IEP and then amendment.

The Complainant went on her email to further list several concerns she had with the draft IEP, including the language it used to discuss the Student's behaviors and the Student's goals.

24. Also on January 8, 2019, the special education teacher responded to the Complainant that the Student:

had an out of cycle reevaluation done in the area of social behavior, which determined the Student qualified for specially designed instruction in "social emotional/behavior." [ . . . ] "Due to legal time constraints, his IEP had to be amended which would reflect his SDI in social. This part directly reflects the new area of SDI from his reeval. As for annual review, this is done every year [Student] is in Special Education, at the least. IEPs are written for an academic year and then revisited to check the progress of the goals previously established. The meeting we had was to amend [Student's] IEP to reflect the new area of service. Now we will meet on Friday, the 11<sup>th</sup> to discuss his goals that were previously written in the area of writing and the progress made on those. New and updated goals in writing will be reviewed then. Also, his new proposed goals in the new area of social emotional, BIP and any and all reasonable changes will be added to his new IEP.

25. On January 9, 2019,<sup>2</sup> the District sent the Complainant PWN that the "IEP team has determined that [Student] requires the services listed on the attached IEP. A follow up meeting will be scheduled to amend the current IEP to reflect a [behavior intervention plan (BIP)]."- The PWN indicated it would be implemented January 14, 2019.

26. On January 9, 2019, the special education teacher emailed the Complainant regarding the Student's behaviors in resource support for writing. She wrote:

Today [Student] came to Resource Support (RS) for writing [ . . . ] I informed him that his name was on the board that means I needed to see him. He went over to the board and erased his name then laughed. One of his classmates left for the day and that's when he decided to make loud noises and loudly say, 'I gotta go to the bathroom, I gotta go I gotta go.' [sic]. He tore up paper and threw it on the floor and then took a stress ball and threw it and hit one of the other scholars in the back. When the scholar asked, who threw that he laughed. When I asked him to pick it up he waited, went and pick it up and then threw it across my desk. When he finally sat with me (7 mins gone by) he wrote two words, then jumped up and said he had to go to the bathroom. I let him go and this time he did not return. He waited till the session was over and then knocked on the door to hang up the bathroom pass.

27. On January 11, 2019, the Student's IEP team met to develop the Student's IEP. The Complainant, District representative, general education teacher, and special education teacher were present. The Student's IEP included three measurable annual goals in the area of written language and two measurable annual goals in social/emotional/behavioral. The IEP indicated the Student would spend 90.1% of his time in the general education setting and provided the Student with the following amounts of specially designed instruction, to be provided in the resource room (special education setting), by a special education teacher:

- Written language, 30 minutes, 5 times weekly,
- Social/emotional/behavioral, 30 minutes, 1 time weekly

The Student's IEP included several accommodations and behavioral cues, including that one should "ignore tics and don't draw attention to him," "provide calming manipulatives and

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<sup>2</sup> The PWN is dated before the IEP meeting. OSPI assumes this is a typo, as prior written notice cannot be sent prior to a meeting occurring.

remove nuisance items," "allow for 'escape valve' outlets (e.g. errand to office or library/hallway exercise, clean the classroom)," and "when addressing a behavior be very literal in language, i.e., say yelled not shouted or if [Student] taps a desk with something say tapped and not banged on desk." The Student's IEP also provided the Student with "speech to text/word processor" and a quiet setting free from all students during all state-wide assessments. It was noted in the IEP, due to the Student's disabilities, the Student at times was a target for bullying.

28. On January 24, 2019, the Complainant emailed the principal, a school administrator, special education teacher and general education teacher concerns about the Student's tics. She stressed the importance of ignoring the Student's tics, and emphasized the amount of energy she believed the Student was expending trying to suppress them.
29. On January 29, 2019, the District sent the Complainant an IEP meeting request to develop an IEP, including transition planning, for February 11, 2019. On February 4, 2019, the Complainant confirmed the meeting date and time.
30. Also, on January 29, 2019, the general education teacher emailed the Complainant an update on the Student's behavior. He told the Complainant they had created an "outburst tree" for the Student at the side of the building where the Student could go to "vent out of earshot of other students," which the Student used three times that day. He additionally told the Complainant the Student had 151 events that day which ranged from "talk outs, to blurts to mimics, to bird-calls, to profanities." The general education teacher explained how other students had trouble concentrating with the Student in the classroom due to the volume of the Student's events, that the Student would go to the hallway to read when the general education teacher tested other students because of his events, and that some of the outburst involved vulgarities. The general education teacher further explained to the Complainant he had conversations with the Student about his outbursts and the Student had told him he sometimes did not know he had used vulgar words and would apologize while other times he would say he had "faked an event." The general education teacher said when he asked the Student how many he had faked, the Student reported "5." The teacher wrote the Student's tics had been "prolific," "literally dozens and dozens," but noted, "There was however no throwing of objects." He also noted the Student had told him he had kept most (of the tics) in."
31. On February 5, 2019, the special education teacher emailed the Complainant, principal, and general education teacher that a meeting had been scheduled on February 14, 2019 to discuss the Student's FBA and BIP.
32. Also on February 5, 2019, the Complainant emailed the principal, special education teacher, and general education teacher to request a paraeducator be added to the Student's IEP for use in the general education setting.
33. On February 19, 2019, the special education teacher emailed the Complainant with concerns about the Student's use of pencils during class that day. He stated the Student had been

"Pushing his finger onto the sharpened end of his pencil – to the point of one breaking off and sticking a little into his finger," and "Pushing a sharpened pencil into his cheek (close to his eye) – hard enough to produce indentations," and "Stabbing his planner to the point of breaking the graphite." In response to his concerns, the general education teacher also proposed solutions, including alternative writing utensils with thicker graphite. The general education teacher noted several other behaviors the Student exhibited during the day, including talking to himself sixty or more times, yelling out thirty or more times "to the point of startling others," and being asked to see the principal "for about 45 min."

34. Also on February 19, 2019, the Complainant emailed the special education teacher, program specialist, general education teacher and school administrator with issues she would like to discuss, including "ongoing name calling and comments, bullying and harassment from [another student (student A)]." She explained,

[Student] needs a safe place and needs the support so that we can bring down undo stress he is experiencing. At this point, the educational environment is unsafe emotionally and physically for him and he needs more support and protection immediately. We ask that [Student] be provided an appropriately trained aide to support him. He also needs a safe place and person to go to when he under duress/stress. I have requested this many times with no support provided. Moreover, under no circumstances should he be disciplined in any way for actions or behaviors that are manifestations of his disabilities.

35. On February 21, 2019, the District sent the Complainant PWN that the IEP team had agreed to add "a 1:1 to help support [Student] during the day," and "on-going training [. . .] for all involved in order to adequately support [Student], who has attention-deficit/hyperactivity disorder, (ADHD), Anxiety, and Tourette syndrome (TS) diagnoses." The PWN further noted the District had contracted with an outside psychologist to consult on best practices and strategies in order to support [Student] at school."

36. On February 22, 2019, the District developed an FBA for the Student to address the Student's task avoidance during academic activities, touching/hitting other students, and blurting out. It was noted on the FBA that task avoidance behaviors occurred during independent work daily, touching/hitting other students occurred 1-3 times daily between September 2018 and February 2019, and blurting out occurred 25-30 times daily. The FBA identified "attention from peers and adults" as a consequence of the behavior but also noted the Student was unable to control his symptoms due to his disability. The FBA was signed by the special education teacher.

37. Also on February 22, 2019, the District developed a BIP for the Student based on the FBA. The BIP provided the following alternative replacement behaviors:

- Blurting out – "[Student] will tap his leg with his hand or raise his hand (**teacher should not call on him every time his hand goes up**) this is to help decrease the blurting."
- Touching/hitting other students – "[Student] will wrap his arms around himself, or press his hands together."

- Off task by not engaging in academic activities – “[Student] will work on assignment for 3 minutes continuously. Take a break for 2-minutes at his seat or outside the classroom door, then return to work for another 3-minutes.”

The BIP included multiple antecedent, teaching, consequence, and implementation strategies. One of the antecedent and teaching strategies included developing and teaching the Student to use non-contingent breaks of no more than 5 minutes where the Student was permitted to do physical activities or release his symptoms outside the classroom, and positive acknowledgement for using replacement behaviors (thumbs-up, high 5 or short verbal phrase). The BIP was signed by the special education teacher but not by the Complainant.

38. On February 22, 2019, an IEP meeting was held to “discuss an FBA/BPIP” and amend the Student’s IEP to add 1:1 paraeducator support in the general education setting for 360 minutes daily. The amended IEP stated:

[a]t the team’s request, it is important that the Para is appropriately trained and understands [Student’s] needs. Upon being hired and prior to working with [Student], the team will provide information/training on Tourette Syndrome, ADHD, Anxiety and OCD. They will also train the para on how to implement the plan and collect data. The team will reconvene on March 11<sup>th</sup> to discuss changes to the BIP and FBA and any corrections needed to the IEP.

39. On February 26, 2019, the Complainant did not send the Student to school. In an email to the District, she said she “kept [Student] home due to the stress levels from an incident that happened on [February 21, 2019] with [student A]. This on going situation has created undo stress and [Student] was so distraught that he ended up with a headache and neckache we needed to attend to.”

40. On February 27, 2019, the Complainant emailed the principal to say the Student had brought to her attention several things student A had said to him at school, and that while he had told the principal student A was bothering him, he did not tell the principal “all the words that were said as he felt much more comfortable and safe” telling her (than telling him [the principal]). The Complainant wrote in her email what words were said and that the words were said during physical education. The words were not specific to the Student’s disability, but the Complainant stated the situation was very stressful to the Student.

41. On February 28, 2019, the general education teacher emailed the Complainant to say the Student had a “decent day except for the manifestations of vulgarities.” He explained the Student “caught himself numerous times and went to the tree but some still came out. His outbursts were primarily racial and the ‘f word.’” The general education teacher told the Complainant the situation was distressing to the Student, which frustrated the Student and caused more tics and outbursts.

42. On March 1, 2019, the Complainant emailed the principal, school administrator, special education teacher and general education teacher regarding concerns about an incident she was made aware of by the Student involving student A which occurred during gym class. The

Complainant additionally noted the Student was having freezing tics and expressed the importance of ignoring tics:

Again we can ease stress levels when dealing with tics, and should ignore them and not bring any undue attention to them. If you are unsure if something is a tic just ask him if he is fine he will certainly tell you it was a tic. At home we ignore the tics this helps him not to worry or think about what will happen to him if a tic comes out. Continuing to empower [Student] to not worry about his tics and support him as he continues to learn to take the time he needs stepping outside and allowing the tics to be released. When trying to understand TS and being able to error on the side of it is TS/tics/disinhibition will head everyone into the right direction of helping reduce the tics by reducing the stress levels. If the tics are under the microscope and questioned every time as to really was that a tic or was that a behavioral problem and constantly pointed out to [Student] this will never help him from feeling like he is in trouble or not heard which leads to undue stress. The focus needs to be around the symptoms/manifestations of the disability to put the support that is needed in place.

43. On March 10, 2019, the Complainant emailed the principal and school administrator a list of concerns. In her email, she wrote:

Harassment bullying: This continues to be a high concern and relating stressor for [Student]

Video review: [Principal] thank you for taking time to review with both [Student] and I. Based on that review I believe we are at some disagreement as to if something took place, as at the moment [Student] indicated something did transpire.

3/8/2019: [Student] did tell me that in the Gym during [physical education] today that [student A] flipped him off, he did say that he brought this to your attention as well and mentioned you were there. [Student] also told me he didn't feel safe in telling the rest of what was said from [student A]. [Student] did say he not only called him names as well as what was said was a physical threat. This needs to be checked into as this has [Student] very worried.

In her email, the Complainant additionally discussed her desire to bring in outside providers to help train staff on TS.

44. Also on March 10, 2019, the principal emailed the Complainant saying, "We did our presentation for the staff on Wednesday. Please let [Student] know we will work to keep him safe. We will check in with him tomorrow. After reviewing the tape with you and [Student] I do agree that contact was made. We are following up to keep [Student] safe."

45. Around March 21, 2019, the Student's advocate, who was also a doctor, came to the school to present on TS to staff.

46. On March 29, 2019, the Student was involved with an altercation with another student during recess, which resulted in the Student getting injured and having to be brought into the school building by wheelchair. The incident was captured on video and watched by the Complainant and principal.

47. In April 2019, the District contracted with an educational consultant to conduct a new FBA.<sup>3</sup> The updated assessment included a records review, interviews with the Complainant and school team, and observation of the Student in the education setting.

The FBA identified work/task avoidance and seeking peer attention as the behaviors which most significantly impacted the Student's learning. The FBA included the following functional hypothesis: "When task demand is presented that [Student] finds too challenging, too lengthy, or non-preferred, when he is redirected, or when he it is [sic] quiet independent work time, [Student] will engage in challenging behaviors (touch students, wander around the classroom or ask to leave) primarily in order to escape." The FBA additionally noted "that [Student's] previous FBA (dated February 2019) indicates a secondary function of attention from peers and adults," and that "some of the low-level challenging behaviors observed for this assessment indicate that attention may also be a maintaining consequence."

The FBA provided potential setting events and triggers, as well as strategies for collecting data. Regarding data collection, the FBA noted the following:

Given the data that indicates that task avoidance seems to be the primary function of the behavior with peer attention being the secondary function, the behavior plan should be reviewed and redesigned to support these behaviors. Regular systems to provide feedback multiple times a day about [Student] staying in his assigned area and completing assignments should be a focus. His escape motivated behaviors often lead to more issues outside of the classroom. Finding ways for [Student] to take breaks within the classroom so not to miss instruction, having a limit to breaks outside of the classroom, find alternative activities with the classroom if the task is too hard, collaborative grouping during assignments to support peer attention, and alternative methods/agreements for how he will communicate his needs such as taking a break (e.g. a hand signal, a break card). [sic]

48. On April 5, 2019, the District developed a BIP for the Student. The overview of behavior supports included the following preventative, teaching, and consequence strategies:

- Preventative (setting)
  - i. School-home communication system
  - ii. Provide positive adult and peer attention throughout Student's day, especially first thing in the mornings and later in the afternoon
  - iii. Have Student begin each day in a check in/Check Out system to ease the transition into and out of school
- Preventative (antecedent)
  - i. Individual schedule for Student that depicts activities occurring throughout his day so he can anticipate the activities and the length of each
  - ii. Premack Schedule (if/then opportunities)

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<sup>3</sup> During an interview with the Complainant on November 5, 2019, the Complainant told the OSPI investigator she continued to have concerns with the FBA conducted in April 2019 because it was not completed by someone with expertise in TS because it was developed with the assumption the Student could control most of his behaviors and not with the understanding that the Student's behaviors related to the TS were neurological. She explained she would like a new FBA completed by someone with expertise in TS and the Student's comorbidities.

- iii. Preferential Seating – Student would do best if he was seated where he could get attention, close to the teacher and with a table group
  - iv. Provide opportunities for Student to work with peers in an academic setting
- Teaching
  - i. Emotion regulation strategies (around anxiety and frustration tolerance) paired with clear break plan (i.e. how to appropriately escape tasks)
  - ii. Interaction strategies with peers around personal space
- Specific Consequence (for appropriate behaviors)
  - i. Daily point sheet and token economy system
  - ii. Immediate behavior specific praise by adults
- Specific Consequence (for alternative behaviors)
  - i. Access to escape from non-preferred activities following appropriate requests/refusals (i.e., breaks)

49. On April 10, 2019, the special education teacher emailed the point sheet she created to the educational consultant for input.

50. On April 11, 2019, the educational consultant provided feedback on the point sheet developed for the Student.

51. On April 18, 2019, the Complainant emailed to follow up on a call from the previous day regarding the calls the Student had been making to her from school and to follow up on a doctor's appointment the Student had that day. The Complainant explained that the calls to her began the previous year as a coping strategy in response to "extreme amount of bullying from other students" when the Student did not feel heard or listened to.

52. On April 19, 2019, the special education teacher emailed the Complainant and school staff to give an update on the Student's progress at school. She wrote:

Student had 5 great days, he has exceeded his projected point earnings by individual time block. He has stayed in class everyday with the exception of going to the bathroom and quickly returning. He has shown great growth in apologizing when he releases a tic that can be offensive to others. I am so very proud of the growth he has made thus far. [. . .]

However, with his great improvement over these past 5 days, we still have some major concerns about some of the things he will openly say. [Student] has become more sexually explicit in his vocal tics. [. . .] Although we understand the complexity of [Student's] symptoms, I just wanted you to be aware of somethings [sic] that appear to be accelerating here at school.

53. On May 22, 2019, the District spoke with the Complainant and confirmed an IEP meeting was scheduled for June 5, 2019.

54. On May 31, 2019, the District sent an IEP meeting request to the Complainant to develop the IEP on June 5, 2019.



55. On June 5, 2019, the Student's IEP team met to develop the Student's IEP. The Complainant, two school administrators, a District representative, the general education teacher, special education teacher, and the Student's uncle were present. In the IEP, under "Effect of the Disability on Student Functioning in the General Education Environment," the IEP stated, in part:

A point sheet was designed to help [Student] regulate his behavior, however, the interest in the point sheet has faded but he is proving to be able to stay in the classroom with use of fidgets. E.g. magnetic putty, desk bouncy band for his feet, and small breaks where he gets to listen to music for 5 [minutes] in the back of the classroom. He also has the individual support of a 1:1. The goals under Writing and Social/emotional were developed in January 2019 and are still highly valid goals that [Student] needs to work on to mastery. He has not shown enough progress that would justify removing them at this time.

The June 2019 IEP contained three writing goals and three social/behavioral/emotional goals and provided for the following specially designed instruction, to be provided in the special education setting by a special education teacher:

- Written language, 30 minutes, 5 times weekly,
- Social emotional/ behavioral, 30 minutes, 1 time weekly

The June 2019 provided the Student with 1:1 paraeducator support for 360 minutes daily in the general education setting as a related service. The IEP indicated the Student would take standard statewide assessments with accommodations, including tests in a quiet 1:1 setting, speech to text if used during the school year, shortened test directions, and a scribe (para must be trained to proctor and scribe).

56. On June 6, 2019, the District sent the Complainant PWN that the Student qualified for specially designed instruction in written language and social emotional/behavioral skills. The PWN stated the "decision was made to keep the same matrix minutes of service because of the uncertainty of [Student's] middle school schedule at the time of this meeting," and because "increasing minutes could skew [the Student's] least restrictive environment." The PWN documented discussion surrounding obtaining a trained paraprofessional to support the Student in middle school, and on the importance of that person being trained on the Student's disabilities. According to the PWN, "It was determined that the paraeducator obtained to be [Student's] 1:1 would receive training to implement the provisions of the IEP, and that [Student's] current team could be utilized to support [Student's] transition and help train [Student's] assigned paraeducator."

57. June 19, 2019 was the last day of the 2018-2019 school year.

## **2019-2020 School Year**

58. September 3, 2019 was the first day of the District's 2019-2020 school year. The Student began sixth grade at a middle school in the District and continued to be eligible for special education under the category other health impairment. The Student's June 2019 IEP remained in place.
59. On September 3, 2019, the Student reported to the Complainant that he had a complex tic at school, and that when he tried to tell his new paraeducator it was a tic she argued with him and said, "No, that was not a tic."
60. On September 4, 2019, the Student reported to the Complainant he overheard his paraeducator and teachers discussing the incident from the previous day and how they believed his behaviors were purposeful and so he "stormed off." The Student told the Complainant his paraeducator said she was going to call the assistant principal. The Student asked the paraeducator if she was threatening him and the paraeducator threatened to call security. The Student then began exhibiting symptoms of echolalia (echoing what the paraeducator was saying).
61. On September 5, 2019, the Complainant filed a citizen complaint with OSPI. In her complaint, the Complainant expressed concern that the school year had just commenced, and the Student was already "worried about getting in trouble for his disability." She stated she was worried about a "lack of training and preparation," by the school, which she described as an ongoing problem in the District.
62. On November 1, 2019, an OSPI complaint investigator interviewed the special education teacher by phone. The special education teacher shared the following information:
- The special education teacher said that during the 2018-2019 school year, she never saw the Student being "bullied" by another student, nor did the Student ever report to her he was being bullied. However, the special education teacher acknowledged students would often react with "laughter," or say, "*That is funny,*" if the Student's blurt was "amusing," or react with shock if the Student's blurt was "explicit" or "vulgar." Over time, she stated she felt students often became used to the Student's behaviors.
  - The special education teacher denied ever giving candy to students who would "shush" the Student—an allegation made by the Complainant in the complaint and in the Complainant's reply to the District's response. The special education teacher recalled "hearing something about [student A]" but stated student A and the Student did not hangout or play together and the two sat on opposite sides of the room. The special education teacher acknowledged the District has a process for filing harassment, intimidation, and bullying (HIB) complaints, but did not recall anyone describing or mentioning the process to the Complainant at IEP meetings or otherwise during the 2018-2019 school year.
  - When the Student would begin yelling out or having explicit or vulgar blurts, the special education teacher said she would respond by saying, "*You're alright, you're okay, we can step out, tell me what you want to do,*" and that the Student would say, "*I know I know I know you don't have to tell me that.*"

- The special education teacher described scenarios where she felt sometimes the Student would recognize he “went too far,” especially if he made a racial or sexually explicit statement, and then would not say the same statement if he was corrected. She explained how she would explain the potential social consequences to him of what transpired and then ask him to apologize (“*I would tell him, ‘I understand you have a disability and nobody is trying to tell you that you don’t have a disability; but when those things happen you are not conscious of it, but the people around you could have a problem. I would ask him, ‘Did you mean to say that?’ He would say, ‘I’m sorry about that.’ I would explain, people don’t or won’t always know he has a disability.*”) The special education teacher explained that after awhile the Student began apologizing to other students but explained the Complainant “*had a problem with the Student apologizing because she felt it was him apologizing for his disability.*” The special education teacher explained she was thinking about what she could do to keep the Student safe—that she believed teaching the Student to apologize to others was necessary to prevent altercations. She also noted she felt after the Student was called out, he sometimes did not do things again, which made her and others wonder “can you turn it [the TS] on and off?” She also explained other people felt the Student was “picking and choosing” when to have blurts, but said the Student was still treated as if he could not control his behaviors.
- The special education teacher explained she offered students a token economy where they could earn items from a prize box—which she described to be like a kitchen (snacks, cookies, cakes, jimmy dean sandwiches, etc.) where students were able to earn points for positive behaviors. If students meet their goal on the point sheet, they got something. The special education teacher explained she made the Student a fortnight shirt when he met a goal. No points were taken away when goals were not met.
- Regarding assistive technology, the special education teacher said different technology was trialed with the Student for writing (mostly to assist with poor handwriting due to dysgraphia), but the Student would get frustrated if the technology did not do what he wanted it to do—especially speech to text. She stated a word processor and keyboard were also tried, but the Student got frustrated because “he was not fast at typing.” For these reasons, the special education teacher said she ended up as the Student’s scribe. She also described modifications to assignments provided to the Student for writing—for example, requiring the Student turn in one paragraph instead of five.
- Regarding IEP implementation and use of a paraeducator, the special education teacher said she spoke with the general education teacher on a daily basis about the Student and stated the general education teacher would seek her out to discuss and go through the Student’s accommodations. By the end of the 2018-2019 school year, the special education teacher said she became the Student’s 1:1 paraeducator.
- The special education teacher stated the following manipulatives were utilized by the Student: fidgets while in the resource room, magnetic play dough, water games, music, squish ball, desk band, foot band.
- The special education teacher stated the Student would get three break passes where he was allowed to leave the general education classroom and come to the resource room for 5 minutes (15 minutes total), and an unlimited amount of in the classroom breaks where he could go to the back of the room or stand outside the classroom door. She explained the Student would

use fewer breaks when she worked with him 1:1. She added that when the break system was first put into place, the Student would “use all of his breaks quickly” and try to find loopholes to miss full class periods. She noted the Student would leave class and take off and “wander the halls or run around.” (*“He would go visit the girl he liked; he knew the passing periods and would leave to visit the girl during passing period. Or, if he just wanted to go – he would run and hide or walk around. Then the break pass system was put in place and that was adjusted. Then he started using them more appropriately. He always used all three [break passes]”*). When asked by the complaint investigator how the use of breaks were documented, the special education teacher responded the Student only used fifteen minutes of breaks per day by the end of the year.

- The special education teacher told the complaint investigator she left “copious notes” for all her substitute teachers about all of her students with all information they needed to know.
- The special education teacher recalled partnering with the Student’s advocate to provide training to school staff on the Student’s disability (*“I partnered with the [Complainant] and [Student’s advocate]. I worked with the doctor to have him come in and present to staff and have a discussion with staff. He came in and did a presentation to lunchroom, staff, and paraeducators, [the school psychologist], specialist teachers, administrators, general education teachers, and myself. I think the training was in March.”*)

63. On November 4, 2019, the complaint investigator interviewed the general education teacher by phone. The general education teacher shared the following information:

- In response to the Complainant’s allegations about bullying, the general education teacher noted there were multiple instances of “back and forth” interactions between the Student and multiple other students in his class, but also times where the students were “friendly.” The general education teacher explained that he did not consider the interactions bullying, did not find the instances that did occur to be related to the Student’s disability, and noted the instances were not regular occurrences (“did not occur daily or weekly”). The general education teacher stated his typical response was to address the behavior, give the students involved “think time,” if necessary, or say “hey guys, knock it off.” Generally, the general education teacher noted the students involved would stop after he spoke with them.
- The general education teacher recalls the Complainant raising concerns about bullying at IEP meetings and during conversations with him—both in person and via email. He further recalled the principal reviewing several videotapes with the Complainant of incidents involving the Student and other students “on the playground and elsewhere.” However, the general education teacher said he “tried to separate the things that happened in [his] classroom” from the things that occurred on the playground and elsewhere. The general education teacher did not recall if the Complainant was told specifically about the process of filing a HIB complaint, but he stated he had encouraged her to document all of her concerns and discussed what steps she could take if she had further concerns about bullying.
- The general education teacher stated he used praise and candy as a reward for positive behavior for all students as an overall reward system but denied giving candy to individual students for “shushing” the Student—an allegation raised by the Complainant. He explained that they did, as a class discuss the Student’s tics and blurts: (*“[Student] had no problem telling people about his [Tourette Syndrome]. It was never a gotcha thing. Often he did not know he was*

doing it. So as a class we worked on strategies and talked about what things we could do. Other students in the class would make [Student] aware if he was disturbing them. But they were never rewarded for telling him to be quiet—never said 'shut up' or 'shushed' him."). The general education teacher stated the Student was "pretty good at responding when other kids were bothered," and noted some days the Student had 100-200 blurts or disruptive episodes a day. He explained that sometimes the other students in the class would get frustrated and "he had to work hard so other kids wouldn't lose it," (*"It was the most remarkable show of empathy I've ever had in my years of teaching [from other students]"*). The general education teacher also clarified that manifestations of the Student's disability did not "allow for it to be private," and that sometimes other students could "erupt in anger" out of frustration (*"Sometimes other students would gently place a finger on their lips to ask [the Student] to be less disruptive, but there were times when students just could not learn. A couple times other students would erupt in anger and so the finger on the lips was a replacement behavior we tried to use"*). The general education teacher noted on a "good day," the Student would have 70 or less "significant interruptions"—significant defined having to stop instructions to address the Student.

- Regarding breaks, the general education teacher noted he would try to keep track of the Student's breaks informally using a "tick mark" system to document the Student's permitted three out-of-classroom classroom and unlimited in-classroom breaks. He also stated he sometimes would reward the Student when he felt the Student removed himself from the classroom appropriately. The general education teacher stated the breaks were "helpful at first" but later on became "detrimental." He explained the Student frequently lost his three break cards, which were supposed to be used by the Student in exchange for an out-of-classroom break. Instead of using the cards, the general education teacher explained the Student would signal to him or he would ask the Student if he needed a break, and then together they would decide if the Student could take a break. The general education teacher recalled the Student taking fewer breaks in the beginning of implementing the break system and found the breaks increased as the year went on (*"A couple months in, [Student] was taking breaks all the time and then we worked on lessening the time he was leaving the classroom. This is from memory, but at the end of the year [the Student was taking] 8-9 breaks a day [outside the classroom]. He'd go see [special education teacher] or be in the hallway"*).
- The general education teacher stated significant paraeducator support was utilized in his classroom. He added that several paraeducators were also asked not to return and some quit. By the end of the 2018-2019 school year, the general education teacher explained the special education teacher was in the classroom "a lot" serving as the Student's 1:1 support.
- When asked what manipulatives were provided, the general education teacher responded: *"[Student] was given items to squeeze, tap, spin, wiggle seat, [permitted] to move around the classroom, stand and sit to learn. I would think he wasn't paying attention and he would then regurgitate a fact I didn't think he understood. He had a lot going on in his brain, but he was very smart. He had a foot band he would use, [I used] a variety of techniques [. . .] oral substitutes (candy, 'chew toys,' non-food items). He definitely used everything."*
- The general education teacher stated he removed all nuisance items from the Student's learning environment if they became a distraction—which often occurred with pencils. He also the Student probably broke more than 125 pencils during the year "sometimes in anger and sometimes accidental." The general education teacher stated he gave recommendations

regarding other writing tools, such as triangle pencils that would be more difficult to roll around and break.

- The general education teacher noted the Student struggled with penmanship and writing. He explained that a computer and keyboard were made available to the Student, as well as other technology, but noted the Student would often use and like one type of assistive technology for a while and be "proud to use it," but then lose interest in it.
- When asked about what steps were taken to make sure the Student's IEP was implemented when substitutes were used, the general education teacher acknowledged that "there may have been some confusion in the beginning of the year when things were being felt out, before the diagnosis was finalized." After the Student had a diagnosis, the general education teacher stated he wrote a "letter of introduction" for substitutes explaining the Student's diagnosis and provided substitutes with information about the Student's disability and plans for how to implement the Student's IEP. He stated he discussed the letter with the Complainant and had her permission to use it with substitutes.
- The general education teacher told the OSPI complaint investigator he learned a lot about the Student's disabilities throughout the school year—that the Complainant sent him a lot of information about TS during the year, which he read, that he did his own research, and that he spent time discussing the Student's disability with the Student. He told the complaint investigator the Student told him he would "mess with people," sometimes, which he believed the Student would do about "10%-15% of the time," but that often he felt the Student was not "faking." (*"I can tell you I had discussions with [Student] [about his tics]. This was mostly early on when I was ignorant and didn't understand what was going on. I worked to educate myself. But, for example, there were times when [Student] would have a tic and launch a pencil across the room and it was clearly uncontrolled. There were other times he was looking right at someone and throw something. I would ask him, 'Was that a tic or something else?' Sometimes he'd say, 'Something else.' [Student] was a smart kid and he figured out he could play people if he wanted. He told me sometimes he was playing people. We had several discussions about needing to be able to trust and being able to trust each other."*)

64. On November 5, 2019, an OSPI complaint investigator interviewed the principal by phone. The principal shared the following information:

- The principal told the OSPI complaint investigator the Student reported being bullied, but he felt it did not meet the standard for bullying, and the Complainant was made aware of the process for filing an HIB investigation and never did. The principal did acknowledge there were incidents with other students. Regarding some of the Student's altercations with other students, including student A, the principal stated he would respond to the behaviors and altercations by speaking with the Complainant, reviewing the videotapes, following up, and investigating when appropriate to determine if there was a problem. When appropriate, the principal noted he would "write it up and contact the parents," of the students involved and then "there would be some sort of consequence" (restorative, missed recess, etc.)." The principal explained that often the altercations or incidents were instigated by the Student, but noted with the Complainant's permission and help, the school did a lot to try and "educate other students and help other students know how to react" or respond to the Student.

- The principal noted there were specific safety concerns in physical education (PE) because of the Student's disability, and that the PE teacher had requested additional assistance during PE (*"I would go to PE a lot with [Student]. The PE teacher asked for support and help. There was a concern about keeping [Student] safe in PE. He is a very gifted athlete. When he concentrates he does a great job, but there were concerns about him being safe. So I provided extra support in PE."*)
- The principal noted the staff worked really hard to keep the Student in the general education classroom but acknowledged it was challenging for other students to learn. He recalled a couple 1:1 paraeducators being used but that they did not last (*"One [paraeducator] lasted two days, one lasted a few weeks—they just could not handle it, the frustration, because we had to give [Student] free reign, in the sense that his tics just came out. The paraeducators just did not understand that."*)
- The principal stated staff sometimes debated "what's a tic and what's not," and that the response was to call the Complainant, who would help them figure it out. The principal acknowledged sometimes early on staff would debate directly with the Student whether something was a tic, but clarified that "was before we understood what was going on," (*"We did have to grapple with and accept that it is so hard for him not to blurt out. We learned a lot this year."*)
- The principal recalled the Student's advocate coming to school to provide training to staff. He described it as "great, enlightening, [and] very worthwhile" to be able to receive training from a doctor, and expert in TS and the Student's other disabilities. He explained the Student's advocate told them during the presentation to think about "trying not to blink, and that's what it's like to have TS." He noted it was the only formal training on TS the staff had during the 2018-2019 school year and that all staff who worked directly with the Student were required to attend. Although it was the only formal training provided to staff, he said he tried to work with staff to remind them of the information he had learned about the Student's disabilities and of the additional information he was provided by the Complainant. He acknowledged it took a while to figure out "what was going on" but stated they were very open to whatever the Complainant wanted to do. He noted staff were concerned "about the hand off to middle school," but said "we did have a meeting with the middle school teacher and with [the Complainant] to discuss this."

65. On November 5, 2019, the OSPI complaint investigator interviewed the Complainant by phone. The following information was obtained during the interview:

- The Complainant said she first started asking about the Student receiving an FBA and a BIP in October 2018 when she met with the school psychologist to discuss the Student's reevaluation. Although the Student had an FBA completed the 2017-2018 school year, she explained it was no longer appropriate in light of the Student's TS diagnosis because it did not take into consideration the fact that the Student's behaviors had a neurological basis. She said she was told they would take care of the FBA after the 2018 reevaluation had started and there was no need to check the FBA box at that time. She acknowledged she agreed to let the reevaluation process begin said she was led to believe the FBA would commence as soon as the reevaluation process was underway. She explained it was not until January when she was asked to sign a consent form for the FBA that she realized a new FBA had not yet started.

- The Complainant believes the FBA and BIP in place continue to be inadequate and inappropriate because they operate with the assumption the Student can control his behaviors related to his TS.
- The Complainant acknowledged the positive impact of the training in terms of the attitude staff had toward the Student by the end of the 2018-2019 school year but expressed frustration that it took until March 2019 for District to agree to arrange for someone come in to provide training. She explained that she had been offering via email and in person to have an advocate with expertise in TS come and speak to and train staff since the Student received his diagnosis in the fall of 2018, and that during the months the staff had not been trained, she felt the Student was not receiving a free appropriate public education (FAPE) because of how much time she believed staff spent "arguing with the Student" over "what was a tic or what wasn't a tic," and the significant stress this placed on the Student, which she argued impacted his ability to attend to his education. She expressed concerns regarding the Student spending significant time unsupervised outside of the classroom due to his taking of breaks to release tics caused by the stress, as well as concern over the Student's FBA and BIP.
- The Complainant stated at the start of the 2019-2020 school year the Student immediately began having similar issues because his IEP is not appropriate, does not provide clear guidance on how to address the Student's behaviors, and because the accommodations that are in place are not being implemented. She noted teachers and staff began "arguing with the Student" on the first day over what was and was not a tic and that the Student's stress level is "extremely high" because he "cannot trust his teachers." The Complainant added that there was supposed to be a meeting prior to the commencement of the 2019-2020 school year for the Student's new teachers and staff working with the Student to meet the Student and receive training on his IEP and FBA/BIP. The Complainant stated the meeting never occurred, staff have not received training of the Student's disabilities, and due to behavior issues an emergency IEP meeting has been scheduled to discuss a change in placement. The Complainant acknowledged the timeline for this complaint ends on September 9, 2019 (first day of the 2019-2019 school year was September 3, 2019), but believes the Student continues to be denied a FAPE due to a failure to properly develop and implement an IEP that appropriately addressed the Student's behaviors during the 2018-2019 school year.

## CONCLUSIONS

**Issue One: IEP Development and Implementation** – The Complainant alleged the District failed to follow procedures for developing and implementing the Student's individualized education program (IEP) from September 10, 2018 through September 9, 2019. At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. It must also ensure it provides all services, including accommodations, 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.



Upon review of the documents and interviews, many of the IEP development and implementation issues alleged by the Complainant were related to the general issue of whether the District developed an IEP that appropriately addressed the Student's needs related to behavior following his diagnosis of TS, including conducting an FBA and developing a BIP. Accordingly, IEP development and implementation issues related to the general issue of behavior and the development of an FBA/BIP are discussed in "Issue Two" below. However, the Complainant also raised specific issues related to IEP implementation—the provision of assistive technology devices (speech to text and keyboard), the provision of manipulatives and removal of nuisance objects from learning environment, breaks, and ignoring tics. These issues are addressed below.

#### Assistive Technology:

The Complainant alleged the District was not implementing the Student's IEP because it was not providing the Student with the option of using a computer or keyboard instead of speech-to-text, even though the Student had both options in his IEP. Interviews with staff revealed the Student had been provided—and at one point utilized—both a keyboard and speech-to-text software but used both inconsistently. By the end of the 2018-2019 school year, the Student's special education teacher had been serving as the Student's scribe, which is reflected in the Student's June 2019 IEP. OSPI finds no violation. However, it is noted that while OSPI finds the Student's IEP was implemented regarding assistive technology, the Student continued to struggle with the assistive technology offered to him and his use of the paraeducator as a scribe. The IEP team is encouraged to revisit the Student's assistive technology needs and use of the paraeducator as a scribe for writing at its next IEP meeting.

#### Provision of manipulatives and removal of nuisance items:

The Complainant alleged the District failed to implement the Student's IEP regarding the provision of manipulatives and removal of nuisance items, which were included on the Student's IEP as accommodations and environmental modifications. Interviews with staff and review of email communications showed staff regularly provided the Student with manipulatives (fidget items, foot band for desk, wiggle seats, non-food items to chew on, etc.). Staff were also able to provide several examples of how they tried to keep the Student's environment free of items which could become nuisance items. Although there were reports of the Student regularly breaking pencils in response to tics or safety concerns were noted, the pencils were removed. OSPI finds no violation.

#### Breaks:

The Complainant alleged the District failed to implement the Student's IEP regarding breaks. Specifically, the Complainant alleged the District did not document or track when the Student was taking breaks, and permitted the Student to "roam the halls" or leave the building (to visit the "outburst tree") for periods of time—during which time the Student was out of sight, and during which time the District failed to provide the Student access to the general education curriculum. The inclusion of a break on the Student's IEP was an accommodation designed to help the Student access his general education environment. Prior to development of a behavior plan, the Student's

IEP did not specify how often the Student could take a break. Although the District provided the Student with breaks during this time, and therefore implemented the Student's IEP, the breaks began interfering with their intended purpose (assisting the Student with accessing the general education environment). The documentation and interviews provided show the Student began spending long periods of time out of the classroom where he was not receiving instruction, was spending an increasing amount of time out of the general education (often times visiting the resource room), and sometimes was not accounted for or not receiving supervision—which is a safety concern.

Once breaks were incorporated into the Student's BIP as a behavior intervention, some staff stated they implemented them as provided in the BIP while others acknowledged they continued to provide them when the Student requested (Student often "lost" break cards, breaks were given when Student requested, etc.). The documentation supports a conclusion that breaks continued to be provided inconsistently. Accordingly, the District did not implement breaks as part of the Student's IEP once they were incorporated into the Student's BIP.

OSPI finds the District in violation—first, of the accommodation of breaks and then because once breaks were included on the BIP, District staff did not implement them as provided. The District will be required to hold an IEP meeting and discuss how breaks will be utilized—including the frequency, duration, and documentation of breaks.

Furthermore, it is recommended that if the use of breaks are not effective, or if the Student is continuing to become overwhelmed in class or continuing to have behaviors that interfere with his learning or the learning of others which require removal from class, that the District and Complainant consider whether the Student's current placement and setting is appropriate.

#### Ignoring tics:

The Complainant alleged the District failed to implement the Student's IEP regarding its requirement that staff ignore the Student's tics. From the start of the 2018-2019 school year until December 19, 2019, the Student's IEP provided that staff should "selectively ignore the Student's behaviors." In January 11, 2019, the Student's IEP was amended to state, "Ignore tics, don't draw attention to him." Although it is acknowledged that throughout the 2018-2019 school year, staff showed progress on understanding the Student's behavior related to the TS and recognizing that it was complex due to his other disabilities, the documentation provided to OSPI and interviews showed staff inconsistently ignored the Student's behaviors related to his TS. For example during the 2018-2019 school year, staff engaged in debates with the Student regarding whether he "was faking" having a tic, which continued into the 2019-2020 school year. The Student also received points as part of a token system for days during which he did not have "vulgar" tics and would receive praise for days where he did not blurt, or have to leave the classroom for a break to release a blurt, etc. District staff expressed to the OSPI complaint investigator that they disagreed with the Complainant regarding the issue of whether the Student should have to apologize following an "offensive" or "vulgar" tic or blurt. Regardless of the disagreement, the Student's IEP indicated the Student's tics should be ignored and that attention should not be drawn to them. By debating

with the Student whether something “was or was not a tic,” by requiring the Student to apologize, and by praising the Student in the absence of tics, District staff were not ignoring the Student’s tics. OSPI finds that the District failed to implement this element of the IEP and finds the District to be in violation.

District staff working with the Student for the 2019-2020 school year will be required to complete training by an individual with expertise in TS. The IEP team will also be required to meet to discuss the issue of how tics should be addressed.

**Issue Two: Behavior and Paraeducator Support**—The Complainant alleged the District failed to follow procedures to respond to the Student’s behaviors related to his disability from September 10, 2018 through September 9, 2019, including developing and implementing a functional behavioral assessment (FBA) and behavioral intervention plan (BIP) that includes use of positive behavioral interventions and supports, and the Parent’s request for paraeducator support.

#### Behavior:

When considering special factors unique to a student, the 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 other. 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 student-specific factors (e.g., social, affective, environmental). The FBA process is frequently used to determine the nature and extent of the special education and related services a student needs, including the need for a BIP. However, an FBA is not the only type of assessment or evaluation a District may use when considering what behavior supports to use and it is not required prior to developing a BIP. Positive behavioral interventions, including a BIP, must be considered if it is determined a student has behaviors which interfere with a student’s learning or the learning of others. Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior.

Although the Student had an FBA in place at the start of the 2018-2019 school year, the FBA was developed during the previous year under the presumption the Student could control all of his behaviors, which made it ineffective and inappropriate following the Student’s diagnosis of TS—which revealed many of the “behaviors” were actually neurological tics. OSPI finds the District to be in violation because it did not develop a new FBA for the Student until February 2019 despite having knowledge of the Student’s new diagnosis of TS in October 2018. Further, the District did not develop a BIP for the Student until January despite documentation showing the Student’s behaviors were causing interruptions in class anywhere from 100 to 200 times a day, resulting in the Student spending significant time outside of the classroom on breaks, and generating reactions from classmates and staff which sometimes and resulted in physical altercations with

peers. The Student's behaviors interfered with his learning and the learning with others and the District therefore should have developed a BIP much earlier on in the school year and included it in the Student's IEP. By not doing so, OSPI finds the District to be in violation.

The District had knowledge of the Student's diagnosis at the beginning of the 2018-2019 school year and did not follow procedures to timely and appropriately address the behaviors. All staff acknowledged they understood the Student's disability better once they received training from the Student's advocate, but the training did not occur until March 2019. Further, District staff acknowledged during interviews that during months in which the Student did not have a BIP and staff had not received training, staff engaged in debates with the Student about whether he was "faking," or not, something which the staff came to understand is not only upsetting to the Student and may worsen blurts or tics, but is also a violation of the Student's IEP.

In response to the above violations, the District will be required to hold a meeting with staff who worked with the Student during the 2018-2019 school year, including the general education teacher, the special education teacher, and the principal, and the staff working with the Student during the 2019-2020 school year. Additionally, the staff working with the Student for the 2019-2020 school year will be required to receive training by someone who has expertise in TS.

#### 1:1 Paraeducator Support:

The Complainant alleged the District failed to implement the Student's IEP regarding paraeducator support. In particular, the Complainant alleged when paraeducators were provided, they did not receive proper training regarding the Student's disabilities and were unable to implement the Student's IEP regarding behavior support. On February 22, 2019, the Student's IEP was amended to add 1:1 paraeducator support. Interviews with staff acknowledged the Student's IEP was not implemented consistently, especially initially regarding this support because the District was unable to find trained and qualified staff for the position (the principal stated one paraeducator lasted two days and one lasted less than two weeks). While the end of the 2018-2019 school year the special education teacher was serving as the Student's 1:1, the Complainant's allegation was substantiated and OSPI finds the District to be in violation. **The District will be required to hold an IEP meeting with the Complainant to address 1:1 paraeducator support, including what training the paraeducator requires. The District will also be required to document the training required of paraeducators in the Student's IEP.**

**Issue Three: Bullying**— The Complainant alleged the Student was bullied and that the District failed to address the alleged bullying.<sup>4</sup> Bullying is aggression used within a relationship where the aggressor has more real or perceived power than the target, and the aggression is repeated or has the potential to be repeated. Whether or not the bullying relates to a student's disability

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<sup>4</sup> The Complainant's allegations included concerns of bullying and abuse related to the behavior of specific staff members. OSPI advised the Parent in its opening letter, and reminds the Complainant now, that she may address concerns regarding the behavior of specific staff members through the professional practice complaint process.

or status as receiving special education services, if the bullying prevents the student from receiving meaningful education benefit, it may result in a denial of a FAPE under the IDEA. However, confrontations between students that are not characterized by a power imbalance generally do not constitute bullying. As part of an appropriate response to allegations of bullying, a district should convene the IEP team to determine whether the effects of the bullying have caused the student's needs to change such that the student's IEP is no longer providing educational benefit. The bullying of a student with a disability, or a student with a disability who engages in bullying behavior, may trigger the need for a reevaluation to determine if additional supports and services are needed.

The documentation in this complaint indicates the Student had altercations and conflicts with other students. The Student's IEP noted the Complainant felt the Student was at risk for bullying and harassment, and the Complainant reported bullying and harassment in emails and phone calls to the District. In some instances, the Student was targeted and provoked by other students, and in other incidents, the Student was reported to have instigated the conflict. There is not a clear indication that the conflicts between the Student and other students meets the definition of bullying, where the aggressor has more real or perceived power and where the aggression is repeated. Regardless, based on the documentation provided, the District responded to all of the reported incidents. In multiple incidents, the principal and parent watched videos of the incidents together and discussed how to respond to the incident. The District stated it disciplined the Student and other students, met with involved students, attended physical education with the Student, and provided the Student with a 1:1 paraprofessional. Additionally, in December 2019, the District added social/emotional/behavioral specially designed instruction to the Student's IEP one time a week for thirty minutes. The Student's teachers additionally noted the incidents they witnessed sometimes involved matters involving another female student they believed the Student was fond of and "defending," and were not related to the Student's disability. The Student's teachers and staff additionally noted that while some days the Student engaged in conflict with other students, the students could also be friendly with each other on other days. It was noted that the Student's disabilities created additional challenges that required education of students, who could become frustrated with the Student when his blurts or tics made it so other students were unable to concentrate or learn in class, but the Student's teachers denied that bullying had occurred.

While the Student may not have experienced bullying that meets the definition above and that necessitated an additional IEP meeting to address how potential bullying impacted the Student's access to educational benefit, the Student expressed to the Complainant and principal feeling bullied. The District had a duty to and did respond when the Complainant raised allegations or concerns. Further, the Student's allegations of bullying do not appear to have impacted Student's ability to receive the services on his IEP. The District has substantiated that it responded to essentially all of the instances of alleged bullying or conflict between the Student and other students. OSPI finds no violation.

**Issue Four: Re-Evaluation**—The Complainant alleged the District failed to follow procedures to respond to her request for the September 25, 2018 reevaluation. In particular, review of the

documentation included with the Complainant's reply and an interview with the Complainant revealed the Complainant's concern was the District did not include the FBA with the reevaluation she requested on September 25, 2018 after notifying the District of the Student's new TS diagnosis.

A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related service needs, or if the parent or teacher requests a reevaluation. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services.

The reevaluation was not sufficiently comprehensive to identify all of the student's special education needs because it did not include an FBA even though the Complainant had requested one in light of the Student's new diagnosis of TS. By waiting several months to complete a new FBA/BIP, the District perpetuated misunderstanding and ignorance by staff and students toward the Student's TS diagnosis and ignored the complexity of the Student's comorbidities. OSPI finds the District to be in violation. The District will be required to provide a new FBA for the Student at District expense, to be provided by a provider of the Complainant's choice, within the District's requirements for an independent educational evaluation. The FBA has to comply with and address the recommendations of the Tourette Association of America (TAA) regarding developing an FBA and a positive BIP for a student with Tourette Syndrome. Please see <https://tourette.org/resource/functional-behavioral-assessment/>.

### **CORRECTIVE ACTIONS**

By or before **November 22, 2019, November 25, 2019, December 6, 2019, December 9, December 16, 2019, and December 30, 2019, February 3, 2020, and February 28, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions:

#### **STUDENT SPECIFIC:**

**IEP Meeting:** By or before **November 29, 2019**, the District will convene an IEP team meeting—consisting of the Student's current IEP team—to review the Student's IEP and discuss the following issues:

1. The use of breaks, including frequency of breaks, duration, and how breaks will be documented;
2. How tics should be addressed—by staff to the Student, by staff when discussing the tics to the Complainant, and by staff when addressing the tics to other students; and,
3. Whether regular staff training, including training for the paraeducator, is necessary for the Student to receive FAPE, and if so, what training is required, who should be trained, and how should it be documented in the Student's IEP?

By **December 6, 2019**, the District will submit: 1) a copy of the meeting invitation; 2) a copy of the agenda; 3) a copy of any amended IEP; 4) a copy of any related prior written notices; and, 5) meeting notes on the topics discussed at the meeting.

**Transition Meeting:** By or before **December 13, 2019**, the principal, special education teacher, general education teacher, and paraeducator for the 2019-2020 school year will be required to meet with the principal, special education teacher, general education teacher, and paraeducator for the 2018-2019 school year, and the Complainant to discuss what staff learned during the 2018-2019 school year.

By **December 16, 2019** the District will provide documentation to OSPI of an agenda for the staffing meeting, and a sign-in sheet documenting who was present at the meeting. Members to the meeting may participate by phone.

If agreed upon and feasible, the District and Complainant may opt to have the required members for the transition meeting join the November 29, 2019 IEP meeting and do both meetings at the same time. If the District chooses to do this, the District may provide documentation that it completed the requirement for the transition meeting with the documentation for the November 29, 2019 IEP meeting.

**Training:** By **December 20, 2019**, the District will be required to provide training to all current staff who regularly interact with the Student on Tourette Syndrome (TS) and the Student's comorbid disabilities of ADHD and OCD.

By **November 25, 2019**, the District will work with the Complainant to provide OSPI with the name of the trainer and a list of staff who require training. At a minimum, the list of staff should include the principal, student's assigned general education and special education teachers, school psychologist, and anyone else who regularly interacts with the Student.

By **December 9, 2019**, the District will provide OSPI with a draft of the training materials. OSPI will review the training materials and respond to the District with any comments, if necessary, by **December 13, 2019**.

By **December 30, 2019**, the District will submit documentation that required staff have 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.

**Functional Behavioral Assessment:** The District will ensure the Student receives a functional behavioral assessment from an independent evaluator of the Complainant's choice, and must meet the District's requirements for an Independent Educational Evaluation. By **November 18, 2019**, the District will work with the Complainant, to select a qualified evaluator of the Complainant's choice, with expertise in Tourette Syndrome, and the Student's comorbid diagnoses of ADHD and OCD, to conduct a Functional Behavioral Assessment of the Student. The assessment will, at a minimum, include a review of records from the last three school years, a

review of any behavior programs or interventions previously tried with the Student, including the Student's current FBA/BIP, information provided by the Student's current teachers and the Complainant, direct observation in the Student's general education and special education classrooms, and any other assessments determined to be needed by the independent evaluator.

By **November 22, 2019**, the District will submit the name of the selected evaluator along with the qualifications of the evaluator to OSPI.

The FBA should be completed no later than **January 30, 2020**, unless otherwise agreed upon by both the Complainant and the District. The District shall send a copy of the completed FBA to OSPI by **February 3, 2020**.

By **February 14, 2020**, the District must hold an IEP team meeting, which includes the Complainant, to review the results of the FBA and to develop a BIP and make any other necessary changes to the Student's IEP. The individual who completed the FBA should be invited to participate in the FBA and to provide input on developing the BIP.

By **February 28, 2020**, the District will submit: 1) a copy of the meeting invitation; 2) a copy of the agenda; 3) a copy of any BIP developed or revised at the meeting, 4) the amended IEP, 5) a copy of any related prior written notices; and, 6) meeting notes on the topics discussed at the meeting.

**DISTRICT SPECIFIC:**

None.

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

**RECOMMENDATION:**

**HIB Complaint:** The District is encouraged to consider whether the Student's and Complainant's allegations of bullying warrant opening a HIB investigation per District policy.

Dated this \_\_\_\_ day of November, 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.)