

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-52**

### **PROCEDURAL HISTORY**

On May 5, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On May 6, 2022, 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 May 9, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District the same day.

On May 13, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on May 19, 2022.

On May 19, 2022, the District requested an extension of time to respond to the complaint. OSPI granted the extension in part, requesting the District submit its response on May 23 and 31, 2022.

On May 23, 2022, OSPI received the District's response, part 1 to the complaint and forwarded it to the Parent on May 24, 2022.

On May 31, 2022, OSPI received the District's response, part 2 to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply.

On June 7, 2022, the Parent provided additional information related to the complaint via phone.

On June 13, 2022, OSPI requested clarifying information from the Parent. OSPI received the clarifying information on June 13, 2022 and the Parent's reply on June 14, 2022. OSPI forwarded the additional information and reply to the District on June 14, 2022.

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

### **ISSUE**

1. Did the District implement the Student's individualized education program (IEP) with respect to the situation(s) caused by a peer with behavior challenges in March through May 2022?

### **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 served through

enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

### FINDINGS OF FACT

1. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of deafness, was in the second grade, and attended a District elementary school. The Student's June 25, 2021 individualized education program (IEP) was in effect.
2. The District's 2021–2022 school year began on September 1, 2021.
3. In January 2022, the Student's IEP team met and developed his annual IEP. The IEP noted the Student is deaf and uses American Sign Language (ASL) to communicate. The IEP included goals in written language (writing skills), social/behavior (self-calming/regulation, discuss emotions with trusted adult), reading (comprehension, foundational skills), and communication (class discussions–speaking and listening). The IEP provided the Student with the specially designed instruction in communication, reading, social/behavior, and written language.

The IEP included 160 minutes per week of communication/deaf and hard-of-hearing services as a related service provided by a TOD and 120 minutes per year of audiology as a supplementary aid and service. The IEP indicated the Student would spend 33.3% of his time in the general education setting.

4. On March 21, 2022, a student (student B) in the Student's class had a behavior incident.

According to the Parent's complaint, student B:

Became very upset and started throwing things (hitting some peers and possibly staff) and destroyed the classroom. All the other students had to evacuate for their safety. My son was very upset and crying after school and the whole ride home. He was traumatized by the violent outburst. It was apparent that [student B]...was in mental health crisis.

According to the District and as documented in emails:

At approximately 3:00 pm, while in TOD's...class, [student B] was playing independently with dominoes. He began to throw dominoes at others and did hit one student in the head with the tin...He then attempted to hit another student but was stopped before he could make contact.

When the situation escalated, the other students in the classroom were evacuated. The students went to the commons area where they continued to work on their math [specially designed instruction] with the instructional assistants (IAs). The students then went home when school ended at 3:25pm.

Emails documenting the incident indicated that at least one student in the class, the next day, "showed up crying...and didn't want to go into the classroom."

5. On March 21, 2022, according to the Student's schedule, at 3 pm, the Student would have been working on math and school was over at 3:25 pm.
6. Another parent of a student in the same classroom provided information for review in this complaint. The parent noted that her student was the one who got hit in the head when a "hard box was thrown at him." The parent stated her student "had been more emotional or easily upset for a few days after that" and that the "school counselor managed to get to the core of it and yes, he was worried and scared." The parent noted that the student "he has been in his gen ed class at the last few incidences so he hasn't been emotionally affected personally, but he is aware that we need to be careful around a certain student in the classroom." The parent noted, at least for her student, that the minutes impacted are related to recovery services—tutoring on Tuesdays and Thursdays—and that he had a tutoring session canceled.
7. On March 23, 2022, according to the Parent's complaint, student B had "multiple violent outbursts" and "additional students and staff were hurt." The Parent stated her Student was upset and the class had to be evacuated for safety.
8. The District's response and documentation provided the following recounting of the incidents on March 23, 2022:

During silent reading in [TOD's class], [student b] hit another student in the head and attempted to kick other students. He also hit another student. [Student b] then attempted to kick [Student], but [Student] moved out of the way...The other members of the class were evacuated to the commons, where [TOD] checked on them to ensure they were okay. She also collected materials and continued working on their [specially designed instruction] in the commons until they were able to return to the classroom...

That same day, on the way to the busses after school, [student b] tried to hit a teacher several times. The teacher moved him away from the other students and back to the classroom...It is likely that [Student] was also present and witnessed this incident while he was walking to his transportation.



9. Also on March 23, 2022, the assistant principal contacted a District program specialist regarding staff getting de-escalation training and the assistant principal stated she wanted her team to attend. The program specialist stated that training was available on Saturdays and provided the link to register for the training.

10. On March 24, 2022, the principal emailed parents in the Student's class and shared information about the incident on March 23, 2022, noting that student B was "physically aggressive" and the "classroom was evacuated at approximately noon." The principal noted a second incident occurred at the end of the day. The principal stated they had rearranged student and staff schedules to ensure staff coverage of the classroom, and shared "we were able to secure additional interpreters so students who were able did and will remain in their general education classes until [TOD] returns."
11. The Parent stated in her complaint that she expressed concern and agreed to have her Student go to "general education classes briefly because they were dealing with a student in crisis. [Student] had to spend time in general education due to staffing issues for the next few days which he missed out on his IEP minutes."
12. Following the incidents, the District stated that the Student spoke to the school counselor with an interpreter and two other students about the incidents and his feelings.
13. On March 25, 2022, the TOD emailed the Student's private mental health therapist to let her know about the incidents and the potential impact on the Student.
14. Also, on March 25, 2022, the Parent emailed District staff regarding her concerns and the impact on the Student. The Parent stated it was "the worst acting out that I have ever seen in this child" and shared that she felt the deaf/hard-of-hearing (DHH) classroom was not a "good learning environment for all the kids" and that more support was needed. The Parent stated that "NONE of the kids are learning if they are not feeling safe" and the "kids are missing out on their IEP minutes when they have to evacuate the classroom." (Emphasis in original).
15. [REDACTED]
16. [REDACTED]

The Parent stated that student B "walked away from his space and suddenly slammed another (female) peer's head against the wall violently. My son and his peers had to evacuate the classroom immediately. The injured female was 'crying very hard' per my son."

17. Also, on May 3, 2022, the Parent emailed District staff members regarding her concerns and stated that she did not believe the school had "the resources and training needed for [student B] who desperately needs specialized services." The Parent asked what the plan was to keep the Student and his peers safe. Another parent of a student in the classroom also responded to the Parent's email, echoing the same concerns.

The associate superintendent responded, stating, “we have processes in place to support all student [sic] involved” and that the principal was working with the director to determine next steps.

18. In her complaint, the Parent alleged that the Student (and other students in the class) were not being provided a free appropriate public education (FAPE) as their IEPs were not being implemented due to “unsafe and non-conductive [sic] learning environment due to violent outburst by a peer...causing multiple class evacuations for safety.” The Parent stated her Student was anxious and “has a hard time learning when he is anxious.”
19. On May 4, 2022, the assistant principal notified families about the incident via email. The principal shared the following information, noting she could not share more specific details:
  - “There was a large team of professionals supporting the [student B] in various areas of needs.”
  - “The team was working closely to create services that meet [student B's] needs. [School] staff was working with staff from the District's Special Education Department, as well as professionals outside the District.”
  - “Staff have proactive strategies and plans in place, including adults who are always [student B].”
  - “There was a safety plan in place for when unsafe behavior occurs. This included plans, location changes, and adult support to keep all students safe. This plan was followed today when the students not involved in the incident went to work in the library with several DHH staff members.”

The assistant principal noted that:

Behavior is communication, and we are working hard to both support the needs that this student is communicating to us, and ensure that the classroom is a physically and emotionally safe place for other students. When an incident like this occurs, the classroom staff...and myself debrief and adjust our plans going forward. We also have other individuals supporting the team. I agree that we want to address situations proactively rather than reacting, but yesterday we did need to fall back on our reactive strategies.

Thank you to those of you who have shared your concerns, and we agree that all students need to be in a safe, positive learning environment. Please let me know if you have other specific questions, and I will address them as much as I am able. If there is something that would help your specific students feel safe or more comfortable, please also let me know and we can work as a team to help make this happen.

20. The Parent kept the Student home between May 4 and 11, 2022 because she did not feel it was safe to send him to school. The Student’s attendance record for the 2021–2022 school year noted the Student was absent March 8, April 8, and May 4 and 5, 2022.<sup>1</sup>
21. On May 5, 2022, the Parent emailed District staff, expressing her frustration over what she stated was an unsafe learning environment for the Student. The Parent stated:

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<sup>1</sup> The attendance report submitted with the District’s response was prepared on May 6, 2022 and thus did not include dates after May 6, 2022.

How long will this 'plan' be in motion while my son and the other peers have to take the back seat to learning so the adults can try to manage one student's behavior? How many more kids and/or staff need to be hurt (physically and emotionally) along with more classroom evacuations and/or damaged property before someone decides that [school] is not the right place for [student B] right now?

The Parent stated her understanding of the plan was that there was "less focus/support/priority for my son and the other peers who attend school for their education."

The assistant principal responded, reiterating that she could not share details regarding student B.

22. On May 6, 2022, the Parent emailed a special education supervisor and the TOD to state she did not want the Student to "be in the classroom with [student B] for safety purposes."
23. On May 8, 2022, the assistant principal emailed the Parent and asked if there were "specific things we can do, or specific questions [Parent] might have that would help [Student] and [Parents] feel safer and more confident about [Student] attending school." The assistant principal stated she "would like to hear what your and [Student's] needs might be so we can work to find a solution that allows you to feel comfortable sending [Student] to school while also meeting the needs to other students."
24. On May 10, 2022, the special education supervisor and TOD met with the Parent and they agreed to have the Student move to a different special education classroom, where the Student would continue to receive his specially designed instruction provided by a TOD.
25. The Parent stated the District gave her four options for the Student: attend class in his DHH classroom; go to a different DHH classroom; attend class at the middle school DHH classroom; or attend class in the general education classroom. The Parent noted that when she kept the Student home, his absences were not excused, while other students' absences were excused.
26. On May 11, 2022, the Parent emailed the TOD and special education supervisor, stating the Student "has some crummy options and I know there is less than 6 weeks of school left." The Parent's email outlined the options: the Student going to a different teacher's class if he had an interpreter or going to a different TOD's class. The Parent stated, from what she understood, the TOD or one of the instructional assistants would "go upstairs to work with [Student]. This is a temporary fix to the situation we have at [school]" and the Parent asked when this would be set up.

The TOD responded that the school was "ready to serve [Student] in another part of the building when you are ready for him to come back to school. His materials are all available to him in any classroom setting."

27. On May 12, 2022, the Student attended school.

28. In her reply to the District's response, the Parent stated she felt the District did not consider the impact caused by the trauma and disruption on the Student and his peers. The Parent also stated she felt the IEP minutes were impacted because after each incident, "it takes a while for the adrenaline to fade out so each person can re-focus...For some of them if not all - the stress stays on all day." The Parent stated, "It is also hard to focus when you are walking on eggshells and hoping you are not the next person to get hit/kicked."

The Parent also stated that her observation was that there was not a "large number" of professionals in the classroom to manage student B, stating she only saw one new staff person assisting. The Parent stated she did see "staff and students on high alert when [student B] was around."

29. In its response, the District stated that it understands the Parent's concerns; however, the District stated it has an obligation to serve all students and the District stated it could not and would not unilaterally change student B's placement. The District stated it "instead continued to work on supporting *all* students at [the school]." (Emphasis in original).

The District also acknowledged that student B's behaviors disrupted the class. However, the District stated that even when the class was evacuated, the teacher had materials ready to go and students relocated to a different area to continue receiving instruction. The District stated that destroyed materials were immediately replaced, and there were "extensive plans in place to support the other student and reduce his behaviors while also ensuring the remaining students had access to all of their IEP instruction and support." The District stated that to the extent any services were disrupted, those impacts were not material.

30. [REDACTED]



[REDACTED]

31. [REDACTED]

## CONCLUSIONS

**Issue: Individualized Education Program (IEP) Implementation** – The Parent alleged the Student and other students' IEPs were not implemented due to the impact of situations caused by another peer with behavior challenges in March and May 2022.

A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child student with a disability and those required by the IEP.

There is no dispute that a student in the classroom was struggling with escalated behaviors that resulted in disruptions to the classroom on March 21, March 23 (two incidents), and May 3, 2022. The incidents resulted in students and staff being hit, some injuries, classroom materials being destroyed, and the classroom being evacuated/cleared. Following the classroom clear on March 21, 2022, students went to a commons area where they continued to work on math and receive specially designed instruction with instructional assistants. On March 23, 2022, the class was cleared again, and students went to a commons area and again continued to receive instruction after the teacher collected the instructional materials; the second incident occurred on the way to the bus and thus did not interrupt instructional time. Finally, on May 3, 2022, the class was relocated to the library where students continued to receive specially designed instruction after the other student had another physically aggressive behavior incident.

When a district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. In this case, while the incidents disrupted instruction—there were two incidents that impacted instructional time, where the classroom was evacuated—the impact of the classroom clear was minimized as the class instruction continued in another location, decreasing the time the students' IEPs were not implemented. The Parent noted that when her Student and other students went to the general education classes instead of their regular classroom due to these incidents, they missed out on specially designed instruction. However, overall, the amount of special education services missed or disrupted was minimal and does not constitute a material failure to implement IEPs.

There were emotional impacts of what was going on in the classroom. Documentation indicated that students were upset, a student came to school "crying...and didn't want to go into the



classroom,” and the Student and peers spoke with the school counselor in March 2022. The Parent and other parents indicated that their students felt unsafe, worried, scared, and anxious, and that this impacted their ability to learn immediately following the incidents and on days that the other student was in the classroom. OSPI acknowledges these impacts and the Parent’s legitimate safety concerns. However, even with these impacts, OSPI does not find a material failure to implement the students’ special education services. OSPI does recommend the District continue to assess the mental health needs of students in this class and provide counseling and additional social emotional support as needed.

The District demonstrated it responded appropriately to the situation. Staff in the classroom were provided de-escalation training. The principal and assistant principal, while necessarily respecting the privacy of the student involved in the incidents, shared information with parents, including the Parent, about the incidents and the steps being taken—including rearranging staff to ensure coverage and having students temporarily attending their general education classes. The District shared that the student with the behavior concerns was being supported by a “large team of professionals,” that the team was working to address the student’s needs, and that staff have proactive strategies and plans, but that unfortunately, there were still times they need to act reactively. The District stated that it could not and would not unilaterally change this student’s placement. The District acknowledged that the other student’s behaviors disrupted class, but noted that that even when the class was evacuated, the teacher had materials ready to go and students relocated to a different area to continue receiving instruction. The District stated that destroyed materials were immediately replaced, and there were “extensive plans in place to support the other student and reduce his behaviors while also ensuring the remaining students had access to all of their IEP instruction and support.” The District stated it worked to support all students at the school. The District also noted that the student causing the behavior disruptions was not in attendance at school between March 24 and May 1, 2022, and was no longer enrolled in the District.

The Parent stated her Student was traumatized and that the classroom was no longer a safe learning environment. The Parent disagreed with the District’s response to the situation in the classroom, stating she did not think the school had the resources and training to address the student’s needs and keep the Student and his peers safe. The Parent also expressed frustration that the plan to support the other student deprioritized the Student and his peers. The Parent kept the Student home from school between May 2 and 11, 2022 because she did not feel it was safe to send him to school. With respect to the Parent and Student, the District communicated as much information as it could with the Parent while also respecting the privacy of the other student and attempted to work with the Parent to address her concerns so that the Parent could feel safe returning the Student to school. The District met with the Parent and gave the Student several options to return to school: attend class in his DHH classroom; go to a different DHH classroom; attend class at the middle school DHH classroom; or attend class in the general education classroom. The Parent felt the options were not ideal, but ultimately, the Student returned to school on May 12, 2022. While OSPI understands the Parent’s concerns and does not doubt she wanted to keep her Student safe, OSPI finds the District responded appropriately to the situation and attempted to work with the Parent to ensure the Student felt safe.

Overall, OSPI finds that the behavior incidents were disruptive, but did not result in a material failure to implement IEPs and that the District responded appropriately to address the situation for all students in the classroom. OSPI finds no violation.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

### **RECOMMENDATION**

OSPI recommend the District continue to assess the mental health needs of students in this class and provide counseling and additional social emotional support as needed.

Dated this \_\_\_\_ day of June, 2022

Dr. Tania May  
Assistant Superintendent of Special Education  
PO BOX 47200  
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#### **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.)