

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-22**

### **PROCEDURAL HISTORY**

On February 16, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from an individual<sup>1</sup> (Complainant) regarding students attending the South Kitsap School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding students eligible for special education services.

On February 17, 2023, 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 February 24, 2023, the District provided OSPI a list of students eligible for education services and OSPI selected a random sampling of students to review as part of the investigation.

On February 24, 2023, OSPI received additional information from the Complainant and forwarded that information to the District on February 27, 2023.

On March 17, 2023, OSPI received the District's response to the complaint and forwarded a redacted version of the response, omitting any student personally identifiable information, to the Complainant the same day. OSPI invited the Complainant to reply.

On March 20, 2023, OSPI received additional information from the District. OSPI did not forward the additional information to the Complainant as the document consisted of student personally identifiable information.

On March 29, 2023, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on March 30, 2023.

On April 3, 2023, OSPI requested that the District provide additional information, and the District provided the requested information on April 4, 2023. OSPI forwarded a redacted copy the information to the Complainant on April 4, 2023.

On April 5, 2023, OSPI requested that the District provide additional information, and the District provided the requested information on April 11, 2023. OSPI forwarded a redacted copy of the information to the Complainant the same day.

On April 11, 2023, OSPI received additional information from the Complainant and forwarded that information to the District on April 12, 2023.

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<sup>1</sup> The Complainant is a member of the District's community and is not the parent of any of the students reviewed in this investigation. The Complainant did not provide releases of information signed by any parents of students eligible for special education in the District.

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

### **SCOPE OF INVESTIGATION**

OSPI notes that in the complaint, the Complainant made several general statements about concerns around special education funding, the reorganization/consolidation of special education programs in the District, and general statements that the District does not fully resolve parent concerns. A request for a community complaint investigation must describe circumstances that show a possible violation of Part B of the Individuals with Disabilities Education Act (IDEA), or the regulations implementing the IDEA. These additional circumstances the Complainant described do not show a possible violation of the IDEA. It is not a potential violation of the IDEA for the District to consolidate programs nor is it a potential violation that some concerns are in the process of being resolved with families. OSPI encourages the District to continue working with and engaging families to address any concerns.

### **BACKGROUND & COMPLAINT**

1. On February 16, 2023, the Complainant filed a systemic complaint against the District, alleging that the District was not in compliance with the IDEA.
2. The Complainant alleged generally that the District did not timely resolve parent concerns when raised by parents and generally failed to communicate with parents regarding the special education services in the District and recent efforts to consolidate services at schools. In addition, the Complainant made several specific allegations supported by examples from two families in the District, as detailed below.
3. OSPI requested a list of students eligible for special education in the District, which the District provided. The District has approximately 1,570 students eligible for special education. Of those students, approximately 966 students receive physical therapy (PT), occupational therapy (OT), and/or speech language therapy, as direct services of one or more of the three therapies. Around 40 of those 966 students receive consultation only services physical, occupational, or speech therapy.
4. The District's 2022–2023 school year began on September 7, 2022 for grades first through twelfth and September 12, 2022 for kindergarten. The District's winter and spring breaks were December 22, 2022 through January 4, 2023 and April 3–7, 2023, respectively. The District's 2022–2023 school year is scheduled to end June 22, 2023.

### **ISSUE ONE**

Issue One: Whether the District has provided Students' related services in occupational, physical, and speech therapy during the 2022–2023 school year?

## **ISSUE ONE: 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. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

"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 [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

## **ISSUE ONE: FINDINGS OF FACT**

5. The Complainant alleged that Students were not provided related services due to challenges finding staff, including speech language pathologists and occupational therapists. The Complainant implied that offering compensatory education was an inappropriate response on the part of the District, as it is "misguided" to expect Students to "make up the time." In his reply to the District's response, the Complainant also stated that the District's proposed solution was "impractical" and that there is no special education law that allows districts to "defer services- ever (or to the summer)."

The Complainant included emails in the complaint between himself and a parent in the District (parent 1) from October 2022. In these emails, the Complainant stated he was "aware that the district sent out a note to all parents regarding SPED services (or lack thereof) in the district due to a shortage of [occupational therapists], [physical therapist], [speech language pathologists], etc. personnel." The Complainant wrote, "Please know this is not legal. The district does not have the option to say 'sorry, we can't do this.'"

Parent 1 responded that information had not been provided to parents and that parents were likely unaware the "district isn't providing services." The Complainant responded that he was told the "letter is on hold."

The Complainant also emailed the District's superintendent regarding the "note" he referenced in the emails with parent 1.

6. For issue one, OSPI randomly selected and reviewed the following Student files (including IEPs and provider logs and notes), which provided information about the amounts of OT, PT, and speech language pathology (SLP) services the Students have received during the 2022–2023 school year. The District acknowledged that there were Students who had not received all the

related services they were entitled to and therefore noted that compensatory education was warranted.

Student	Grade	Related Service Minutes (PT, OT, SLP)	Minutes Provided or Short	Compensatory Education
1		OT: ██████ OT Consult: ██████ PT: ██████	Minutes Provided	N/A
2		SLP: ██████	Minutes Provided	N/A
3		SLP: ██████	SLP: ██████ provided; ██████ short	Compensatory services in progress
4		OT: ██████ PT: ██████ SLP: ██████ SLP Consult: ██████	OT: ██████ provided; ██████ short PT: ██████ provided; ██████ short SLP: Provided	Team in process recommending compensatory education
5		OT: ██████ PT: ██████ SLP: ██████	OT: ██████ minutes provided; ██████ short SLP: Provided	Owed compensatory education time
6		SLP: ██████	SLP: Provided	N/A
7		OT: ██████	OT: ██████ provided; ██████ short	Team in process recommending compensatory education
8		SLP: ██████	Minutes Provided	N/A
9		OT: ██████ SLP: ██████	OT: ██████ provided; ██████ short SLP: Provided	Team in process recommending compensatory education
10		OT: ██████ PT: ██████	OT: ██████ provided; ██████ short	Team in process recommending compensatory education

7. As an example, for at least one student, Student 10, the Student's IEP noted, "...District is currently experiencing a staffing shortage, once we are fully staffed, the Occupational Therapy provider will review the goal(s) and assess progress. They will determine if a new goal(s) is/are appropriate as well as determine if (and how much) compensatory services are warranted."
8. The District, in its response, stated and provided documentation supporting that for certain students, those students are owed compensatory services primarily in OT; although at least one Student did not receive all of their PT minutes either. The District stated that it experienced staffing shortages and has not had an occupational therapist to provide OT services; however, the District stated it just hired an occupational therapist and the therapist will be providing compensatory time during the summer. The District noted in its response that it was still in the process of determining how to provide the compensatory time.

9. The District provided the occupational therapist's contract, which included part of the contract outlining that the therapist would work during the summer of 2023.

### **ISSUE ONE: CONCLUSIONS**

The Complainant alleged that Students were not provided related services due to challenges finding staff. A school 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 student with a disability and those required by the IEP.

Here, the District acknowledged that due to staffing shortages, there were students who did not receive all the related services in their IEPs. Upon a review of files, OSPI finds this is accurate. While speech minutes seem to have been materially provided, many of the Students reviewed did not receive all the occupational or physical therapy (OT or PT) minutes they were entitled to. OSPI finds that given it only reviewed a sampling of students, the staff shortage likely impacted most students with OT and PT as related services; and thus, this represents a material failure to implement IEPs. OSPI finds a violation.

The District acknowledged it owed Students compensatory services and stated it recently hired an occupational therapist who was contracted to provide compensatory services during the summer of 2023. The Complainant, in his complaint and reply, objected to this proposed solution, maintaining that districts cannot "defer services" and that it is "impractical" to expect students to make up services later. While OSPI agrees it is not ideal, compensatory education is the appropriate remedy here (and generally is often the appropriate remedy in situations where there has been a past failure to implement IEPs), and OSPI appreciates the fact that the District has already started identifying students in need of compensatory time for related services. The District will be required to continue planning for compensatory services and will provide compensatory services as outlined in the corrective action plan below.

### **ISSUE TWO**

Issue Two: Whether the District has developed annual IEPs on time during the 2022–2023 school year?

### **ISSUE TWO: LEGAL STANDARDS**

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324; WAC 392-172A-03110. Part of the information the IEP team considers when reviewing and revising a student's IEP is the result of the most recent evaluation. 34 CFR §300.303; WAC 392-172A-03015.

## ISSUE TWO: FINDINGS OF FACT

10. The Complainant alleged that IEPs were “out of compliance”. This was based on parent reports regarding the status of IEPs. The Complainant also stated he then made a public record request to the District for this information. The Complainant stated that the “District did not know how many items were out of compliance.” Further, in his reply to the District’s response, the Complainant stated that it appeared the District had “no policies and procedures in place for the district to self-regulate themselves.”
11. The District’s special education procedures are contained in “Procedure No. 2161P Special Education and Related Services for Eligible Students.”<sup>2</sup> This procedure, among other items, addresses referral, child find, evaluations and reevaluations, and IEP development.
12. For issue two, the District stated it has developed all annual IEPs on time during the 2022–2023 school year. OSPI randomly selected and reviewed the following Student IEPs, which showed the following regarding annual IEP timelines:

Student	Grade	2021–2022 IEP	2022–2023 IEP	Timely	Comments
11	[REDACTED]	[REDACTED]	[REDACTED]	Yes	
12	[REDACTED]	[REDACTED]	[REDACTED]	Yes	Transfer Student
13	[REDACTED]	N/A	[REDACTED]	Yes	Transfer Student, started [REDACTED]
14	[REDACTED]	[REDACTED]	[REDACTED]	Yes	
15	[REDACTED]	[REDACTED]	[REDACTED]	Yes	
16	[REDACTED]	[REDACTED]	[REDACTED]	Yes	
17	[REDACTED]	[REDACTED]	[REDACTED]	Yes	
18	[REDACTED]	[REDACTED]	[REDACTED]	Yes	
19	[REDACTED]	[REDACTED]	[REDACTED]	Yes	
20	[REDACTED]	[REDACTED]	[REDACTED]	Yes	

<sup>2</sup> The District’s policies and procedures are available on its website, see <https://www.skschools.org/about-us/policies-procedures>.

13. The District provided information about how it monitors and tracks timelines for annual IEPs. The District noted it uses IEP online<sup>3</sup> to track these timelines. The District stated, "This program will send out automatic reminders" and provided examples of emails where the IEP was "97% complete...signature page just needs uploading", and where the IEP was overdue and the case manager responded she would be holding the IEP meeting the following week per an agreement with the parent as she had been "[REDACTED]".

Additionally, the District stated it "has an internal system where clerical support monitors dates for the Team and will provide reminders to the Team." The District provided an example of the monthly report created by IEP online, which is sent to case managers the first week of each month.<sup>4</sup> The report indicated that IEPs were being completed in a timely manner, prior to or by the due date.

The District also provided an example of the District-wide tracking spreadsheet, which the District explained contained all special education deadlines (e.g., annual IEP, evaluation) for each month of school. The report indicated that the majority of IEPs were being completed prior to or by the date the IEP was due. There were a few IEPs past due, which the District explained, and the report indicated that "the District has attempted to complete these IEPs various times. The District was unable to do so because these students have been ill, and unable to attend IEP meetings. Similarly, the other two students who are past due have also been contacted."

14. In additional information provided by the Complainant, the Complainant asserted that there "are actually no reasons for an overdue IEP or evaluation" and that the law "allows for the IEP meeting to be held without the parent if necessary as it is the deadline." The Complainant stated that, "The IEP team is a team for that reason. It is their job as they are the experts, not the parents, to ensure the requirements of the law are met for the student." The Complainant also stated that it would be on the District to not allow enough time for "contingencies", and that when he was a special education teacher, he would "hold IEP meetings without parent attendance at times. In several cases, I had to hold the same meeting a week later when the parent became available."

## **ISSUE TWO: CONCLUSIONS**

The Complainant alleged that IEPs were "out of compliance," in part because parents had reported this to the Complainant. Additionally, the Complainant stated he made a public record request regarding the status of IEPs and the "District did not know how many items were out of

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<sup>3</sup> IEP Online is an online platform that many districts in Washington use to create special education documents, including notices, evaluation reports, IEPs, etc.

<sup>4</sup> The District noted it had moved toward monthly reports because "the IEPO system was over-sending incorrect reminders that were becoming disruptive to the managers, so the District has opted to provide the monthly report as well as the individual reminder emails instead of the automatic reminders."

compliance.” In his reply to the District’s response, the Complainant stated that it appeared the District had “no policies and procedures in place for the district to self-regulate themselves.”

Based on the information in the complaint, OSPI determined that the appropriate issue for investigation was whether the District has developed annual IEPs on time during the 2022–2023 school year. A student’s IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student’s anticipated needs; or any other matters.

Here, after reviewing Student records with respect to annual IEP timelines, OSPI finds that of the IEPs reviewed, no IEPs were developed late. All annual IEPs and IEPs developed for transfer Students were developed within the appropriate timelines. The District has a board policy and procedure—2161P—that addresses procedures for special education. The District also provided information about and examples of how the District monitors and tracks timelines, including through its online IEP system, which sends out automatic reminders, and through the District’s clerical staff, “the District has an internal system where clerical support monitors dates for the Team and will provide reminders to the Team.” Nearly all the IEPs represented on the tracking document were developed before or by the annual IEP deadline.

While the District’s tracking and notification emails indicated there were a small number of IEPs overdue, the documentation indicated there were agreements with the parents or reasonable explanations for why the IEP was late—for example, the District was working to ensure the parent or student could attend—coupled with diligent District efforts to schedule IEP meetings. The Complainant asserted that there was never a reason to have an overdue IEP, that this represented a failure of the District to plan for contingencies, and that IEP teams should have met without parents to meet deadlines. OSPI notes that IEP teams *can* meet without parents in instances where a parent refuses to meet or fails to respond to numerous efforts by a district to schedule a meeting. However, importantly, OSPI notes that the IDEA and case law supports the importance of parent participation as a central element of the special education process and that when a district is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA—in this case, parental participation and timely annual review of the IEP—the Supreme Court and the 9th Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit.<sup>5</sup> In this case, the examples the District provided met this requirement to ensure and prioritize parent and student participation, such as in the case of a parent requesting the IEP meeting occur after she had recovered from [REDACTED], or efforts to ensure a secondary student who had been ill attend the IEP meeting. Thus, these few examples of late IEPs combine with reasonable explanations and efforts to schedule IEP meetings do not indicate a systemic failure on the District’s part to develop timely annual IEPs. Although, OSPI recommends the District continue to

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<sup>5</sup> See, e.g., *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013).



make diligent efforts to hold overdue IEP meetings. OSPI finds that the District does have a system in place for tracking timelines and that there is no evidence of a failure to not meet annual IEP timelines. OSPI finds no violation.

### **ISSUE THREE**

Issue Three: Whether the District has followed referral and initial evaluation timelines during the 2022–2023 school year?

#### **ISSUE THREE: LEGAL STANDARDS**

Referral: Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. When a student suspected of having a disability is brought to the attention of school personnel, the district must document that referral. It must provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with parental input, will determine whether there is sufficient data to suspect a disability. It must review the referral, and it must collect and examine existing school, medical, and other records. The district must determine within 25 school days after receipt of the referral whether it will evaluate the student. The district must provide the parent with written notice of its decision. 34 CFR §300.301; WAC 392-172A-03005.

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all of the student’s special education and related services needs, whether or not they are commonly linked to the disability category in which the student has been classified. 34 CFR §300.304; WAC 392-172A-03020.

The district must obtain the parents’ consent to conduct the reevaluation and complete the evaluation 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-03005.

#### **ISSUE THREE: FINDINGS OF FACT**

15. The Complainant alleged, based off a parent’s experience, that the District was “not correctly identifying her sons’ disabilities, despite [the parent (parent 2)] paying for outside evaluations to document their disabilities;” and that the District had not completed an evaluation of one of the Students.
16. For issue three, OSPI randomly selected and reviewed the following Student files with respect to referral and initial evaluations:

Student	Referral Date	Date Agreed	Referral Timeline Met	Consent Date	Date of Eligibility	Evaluation Timeline Met
21			No		<sup>6</sup>	Yes
22			Yes			Yes
23			Yes			Yes
24			Yes			Yes
25			Yes			Yes
26			Yes			Yes
27			Yes			Yes
28			Yes			Yes
29			Yes			Yes
30			Yes			Yes

17. The District stated in its response that for nine of the ten Students selected for review, the referral and evaluation timelines were followed. The District acknowledged that for one Student (Student 21), the District went beyond the 25-school day requirement to make a determination regarding the evaluation. For Student 21, the District stated:

This Student was referred on [REDACTED]...The District agreed to evaluate the Student on [REDACTED]...However, the school psychologist who was working on this student's case quit working for the District without notice, and failed to timely send the prior written notice to this Student's Parent. Due to this staffing shortage, the Parent did not receive the prior written notice and consent form until [REDACTED], which was beyond the 25-school day timeline...The District received consent to evaluate on [REDACTED].

The 35-school day timeline to evaluate the Student had not run at the time the District prepared the response to this OSPI complaint, 23-22...The Student's evaluation was originally set for [REDACTED]...However, the District was able to hold the evaluation meeting on [REDACTED]. Due to the time of OSPI's request, the finalized copy of the evaluation was not available to be produced to OSPI. If, upon receipt of this response, OSPI would like the evaluation from [REDACTED], please send notice.

18. In additional information, the District explained that for many referrals, including some of the referrals reviewed during this investigation, the referral is either made by the student's teacher or the group considering the referral already has information about the student that shows a need for a special education evaluation. In contrast, for some students, the District needs to collect information about the students before determining whether an evaluation is needed and thus uses some or all of the 25 school-day referral timeline to gather and review information. For example, with Student 21, the District explained the referral process as follows:

The reason Student 21 did not receive an evaluation determination the same day as the referral is because the District needed the time to gather information about the student. [REDACTED]

<sup>6</sup> OSPI notes that this is the date the District held the evaluation meeting. Based on the District's calendar, [REDACTED] is 19 school days after the District received the Parent's consent. 35 school days from the receipt of consent would have been [REDACTED], accounting for days off and spring break.

[REDACTED], so the Team needed to gather information to make a determination.

Because Student 21's referral came from their parent and the District did not have the necessary data on-hand, the Team needed more time to make the evaluation determination.

19. Emails provided in the complaint partially document the experience of Student 21, summarized as follows:

- On February 10, 2023, a District school psychologist emailed parent 2 following a discussion and noted that she had asked the SLP and OT to consult on whether the Student 21 would need to be evaluated in speech or occupational therapy. The psychologist stated she planned to send parent 2 the consent form on February 13, 2023. The psychologist also provided information about next steps, the evaluation timeline, and provided a copy of the procedural safeguards.
- Parent 2 responded, documenting her concern that she had requested an evaluation of the Student on December 12, 2022, and that the District was not following the correct timelines because 25 school days from the referral was January 31, 2023.
- On February 13, 2023, the school psychologist emailed parent 2 the consent form for the evaluation.
- On February 13, 2023, parent 2 signed the consent form and returned it to the District, although a February 17, 2023 email indicates she attached the wrong form to the previous email and thus resent the signed consent form.
- On February 24, 2023, parent 2 emailed the District and asked, "where we are in the process of doing the evaluation for [Student 21] as well as getting him on an IEP, I have not heard from anyone since...last week."

20. The District provided information about how it monitors and tracks timelines for referrals, initial evaluations, and reevaluations. As discussed in issue 2, the District noted it uses IEP online to track these timelines. The District stated, "This program will send out automatic reminders" and "Additionally, the District has an internal system where clerical support monitors dates for the Team and will provide reminders to the Team."

21. Regarding the school psychologist who left the District abruptly, the District shared that there was one other student impacted by this staff departure and stated that it had been "working to make sure that student is being served and is doing further investigation to determine exactly how that student was impacted by the psychologist leaving."

The District stated it was working to fill the open school psychologist position, including working with contracted agencies to identify applicants. In the meantime, to mitigate the impact on students, the District stated:

The steps the District has taken to support these two impacted students as well as the other students on the psychologist's caseload was first to reassign the three other school psychologists [assigned at different schools] to split the caseload of the psychologist who left. The three other psychologists have successfully covered the caseload.

### ISSUE THREE: CONCLUSIONS

The Complainant alleged, primarily based off one parent's experience, that the District "not correctly identifying [the parent's] sons' disabilities" and that the District had not completed an evaluation of one of the Students. Based on the information provided in the complaint, this specific parent's experience was that the District failed to follow the referral timeline upon her referring the Student for a special education evaluation and thus not timely initiating an initial evaluation. Thus, OSPI determined the appropriate issue for investigation was whether the District had followed referral and initial evaluation timelines during the 2022–2023 school year?

Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. The district must review the referral, collect and examine existing school, medical, and other records, and the district must determine within 25 school days after receipt of the referral whether it will evaluate the student. If a district determines an initial evaluation is warranted, the district must obtain the parents' consent to conduct the reevaluation and complete the evaluation 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.

Here, as discussed above, there was one Student reviewed for whom timelines were a concern. The other Student files reviewed indicated the District received a referral, determined an evaluation was warranted no later than 25 school days after the referral, timely obtained consent from parents, and completed initial evaluations within 35 school days. As discussed in more detail in issue 2, the District provided information about and examples of how the District monitors and tracks these timelines, including through its online IEP system, which sends out automatic reminders, and through the District's clerical staff, "the District has an internal system where clerical support monitors dates for the Team and will provide reminders to the Team." The District also explained how the referral period is used for different students depending on who refers the student, how much information the District has at the time of the referral, and what information is still needed to make a decision about evaluating for special education. The District's explanation indicates that the District understands and appropriately uses the referral timeline in most situations.

However, for one Student, the District went beyond the 25-school day timeline, explaining:

This Student was referred on [REDACTED]...The District agreed to evaluate the Student on [REDACTED]...However, the school psychologist who was working on this student's case quit working for the District without notice, and failed to timely send the prior written notice to this Student's Parent. Due to this staffing shortage, the Parent did not receive the prior written notice and consent form until [REDACTED], which was beyond the 25-school day timeline...The District received consent to evaluate on [REDACTED].

Once the District received the Parent's consent, it completed the evaluation 19 school days after receiving consent. OSPI thus, for this Student, finds a violation related to the failure to meet the referral timeline. However, OSPI notes that the negative impact on the Student was minimized by

the fact that the District completed the initial evaluation almost a month before it was due—35 school days from the receipt of consent would have been [REDACTED], given spring break.

Regarding the impact of the school psychologist that left the District abruptly, the District shared that there was one other student impacted by this staff departure and stated that it had been “working to make sure that student is being served and is doing further investigation to determine exactly how that student was impacted by the psychologist leaving.” The District stated it was working to fill the open school psychologist position, including working with contracted agencies to identify applicants. And, in the meantime, to mitigate the impact on other students, the District stated it had reassigned the school psychologist’s caseload among the other District psychologists.

OSPI finds that there is no indication of a systemic failure to meet referral and evaluation timelines. While there was one Student impacted by a school psychologist leaving the District with no notice, this situation has been remedied by the District, and the District mitigated the impact of the psychologists leaving on other Students. The District also has systems in place to track and monitor timelines. Overall, OSPI finds no violation.

### **CORRECTIVE ACTIONS**

By or before **April 28, 2023** and **May 5, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Compensatory Occupational & Physical Therapy**

By or before **April 28, 2023**, the District will provide OSPI with an updated list of students who missed occupational and physical therapy services due to staffing shortages. These students are entitled to compensatory hours in occupational and physical therapy, and the list will include the number of compensatory hours owed.

By or before **May 5, 2023**, the District will draft a letter to be sent out to all families with students owed compensatory education. The letter will include an acknowledgement that compensatory hours are owed, identify the specific number of hours the student is entitled to—based on the student’s IEP and the amount of services missed—outline how the compensatory hours will be provided, and provide information about how families can opt into the compensatory hours with a reasonable opt-in deadline, including the option to request an IEP meeting if the family would like to discuss the compensatory OT and/or PT with the IEP team. The District will provide OSPI with a draft of the letter by **May 5, 2023**.

By May 12, 2023, OSPI will review the letter and provide feedback as needed prior to the District sending the letter to families. By May 12, 2023, OSPI will also set additional monitoring deadlines for monitoring the provision of the compensatory education, to be set depending on the opt-in deadline and the number of students entitled to receive compensatory hours.

**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.

Dated this 12th day of April, 2023

Dr. Tania May  
Assistant Superintendent of 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.)