

# Due Process & Legal Updates

SEAC Meeting

May 23, 2023



Washington Office of Superintendent of  
**PUBLIC INSTRUCTION**



# Quarterly Due Process Decisions

## 2022-SE-0154 (Battle Ground)

- Filed by District; Parent pro se (no attorney).
- Issue(s): Whether the evaluations were appropriate and whether the Parent is entitled to an independent educational evaluation (IEE).
- Decision Date: April 26, 2023.
- Findings: The evaluations were appropriate. The Parent is not entitled to an IEE.

## 2023-SE-0023X & 0034X (Kalama)

- Parents' Attorney filed 0023X; District filed 0034X.
- Parents' Issues: Parent participation (safety plan development); Placement in a more restrictive environment; Prior written notice; Misuse of the threat assessment process.
- District's Issues: Placement change to interim alternative educational setting (IAES); February 28, 2023, IEP an appropriate IAES.
- Decision Date: March 27, 2023.

## Findings:

- Student's placement was changed via discipline and District failed to conduct a manifestation determination.
- Safety plan was unilaterally developed and resulted in a change of placement to a more restrictive setting without parent participation.
- IAES—proposed on February 6, 2023—was not appropriate as it was not developed through the IEP team, afforded Parents the opportunity to participate, or include the requisite BIP review.
- During the due process, District proved need for IAES for remainder of the 45 school days to support transition back to prior placement. IAES appropriate through April 14, 2023.
- February 28, 2023, IEP is appropriate through the IAES.

Remedy: Upon completion of the IAES period, Student must be returned to his placement on April 17, 2023.

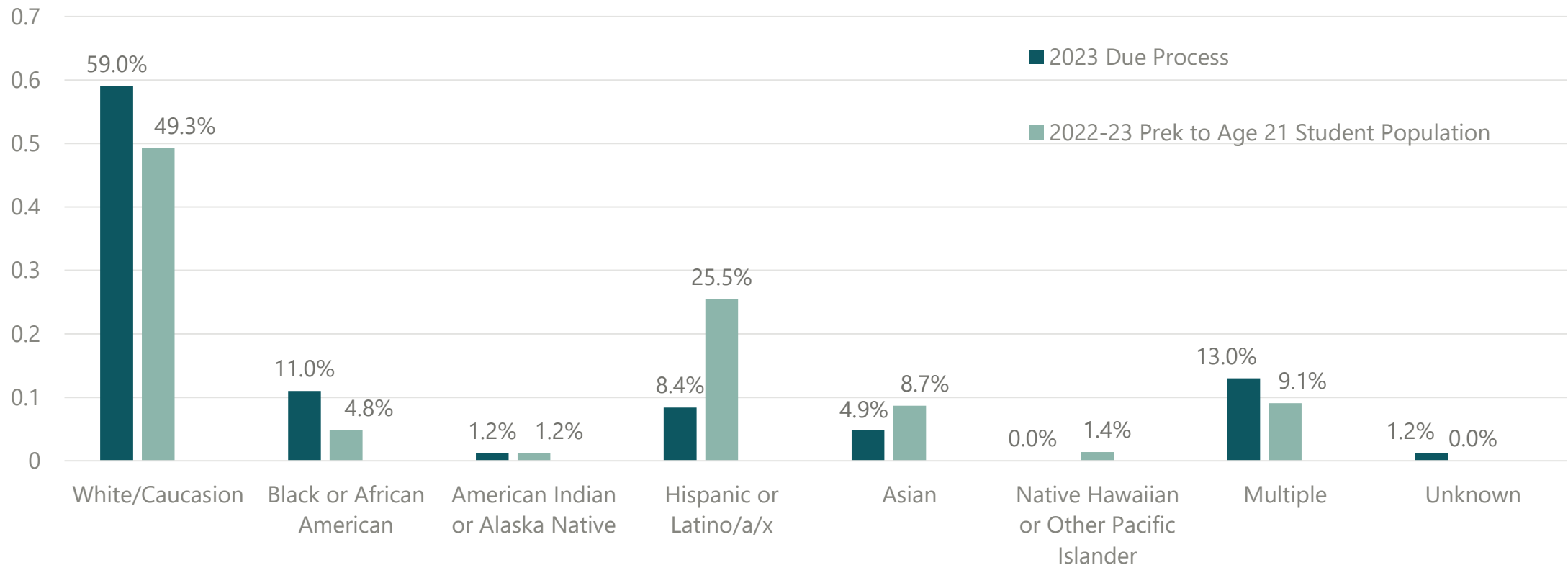
*Note: Parents also filed a special education community complaint that was put on hold during the due process. However, the due process did not address the restraint and isolation allegations also filed in the complaint. Thus, the complaint investigation was restarted, and restraint and isolation investigated. OSPI found several violations.*



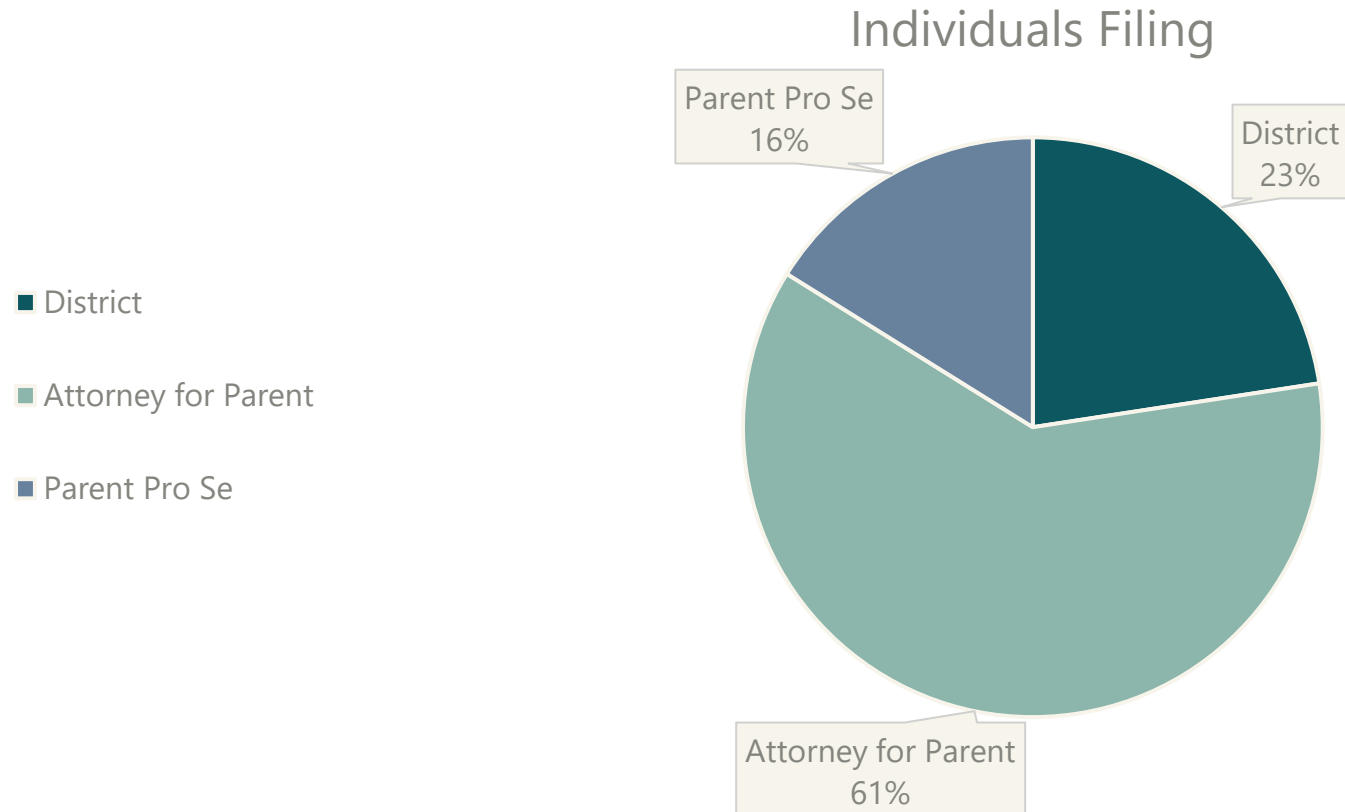


# Demographics & Access

# 2023 Due Process Filing by Race/Ethnicity



# 2023 Due Process Filing by Individual Filing







# *Perez v. Sturgis Public Schools*

# *Perez v. Sturgis Public Schools*

- March 21, 2023: U.S. Supreme Court 9-0 decision.
- Miguel Perez is a deaf student. Enrolled in Sturgis Public Schools at age 9.
- Underlying allegations:
  - School provided an aide that did not know ASL.
  - Aides would leave to do other duties, leaving the Student unable to communicate.
  - Misrepresented the aide's qualifications.
  - Just before graduation, found out the Student would not graduate with a regular diploma but would instead receive a certificate of completion.



# *Perez v. Sturgis Public Schools*

Prior to the case making its way to the Supreme Court:

- The family settled IDEA related claims with the district. In the settlement, the district agreed to pay for the student to attend the Michigan School for the Deaf. The family then sued the district for disability discrimination under the ADA, seeking monetary damages.
- The U.S. district court dismissed the case because the family had failed to exhaust the administrative remedies under the IDEA, which includes a hearing before an administrative law judge.
- The 6th Circuit upheld the district court dismissal.



# *Perez v. Sturgis Public Schools*: Holdings

- Issue for the Supreme Court to address related to whether the family was required to exhaust all administrative procedures outlined in the IDEA (i.e., go to due process)
- Holdings:
  - Exhaustion of the IDEA due process hearing procedures is not required when seeking only compensatory (monetary) damages under the ADA.
  - Monetary damages is not an available remedy under the IDEA.
  - Exhaustion only applies for a denial of FAPE when seeking relief that is available under the IDEA.



# *Perez v. Sturgis Public Schools*: Potential Impact

- The lawsuit “holds consequences not just for Mr. Perez but for a great many children with disabilities and their parents.” (Justice Gorsuch)
- Impacts?:
  - Increased litigation under the ADA and Section 504?
  - Decrease in due process and increase in mediation and written state complaints?
  - Highlights the need for Parents, Districts, and IEP teams to pay attention to provider qualifications, have open communication, and address concerns early!

For more detail see [April 2023 Monthly Update](#)