

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-25

PROCEDURAL HISTORY

On March 3, 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 Tacoma School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On March 7, 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 March 24, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on March 25, 2022. OSPI invited the Parent to reply.

On April 4, 2022, the Parent requested an extension of time for the submission of her reply. OSPI granted this request and asked the Parent to submit her reply by April 11, 2022.

On April 11, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

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

ISSUES

1. During the 2021–2022 school year, did the District follow proper special education discipline procedures?
2. During the 2021–2022 school year, did the District follow proper individualized education program (IEP) development procedures—specifically—did the Student's individualized education program (IEP) team properly respond to any change in needs resulting from the Student's disability as it related to social-emotional and/or behavioral needs?

LEGAL STANDARDS

Disciplinary Removals – No Change of Placement: School districts may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155. 34 CFR §300.530; WAC 392-172A-05145.

Provision of Services During Disciplinary Removal (No Change of Placement): A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or fewer in that school year, if it provides services to a student without disabilities who is similarly removed. 34 CFR §300.530(d)(3); WAC 392-172A-05145(2)(b). For all students, including students with disabilities, general discipline regulations require the following: during the suspension, expulsion, or emergency expulsion of a student, a school district must provide the student the opportunity to receive educational services. A school district may not suspend the provision of educational services to a student in response to behavioral violations. The educational services must enable the student to: (i) Continue to participate in the general education curriculum; (ii) Meet the educational standards established within the district; and (iii) Complete subject, grade-level, and graduation requirements. WAC 392-400-610.

Specifically, as soon as reasonably possible after administering a suspension or expulsion, a school district must provide written notice to the student and parents about the educational services the district will provide. For exclusions of up to five days, the District must provide coursework, assigned homework and course work, including any assigned homework, from all of the student's regular subjects or classes and access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes. For students subject to suspension or emergency expulsion for six to ten consecutive school days, a school district must provide at least course work, including any assigned homework, from all of the student's regular subjects or classes, access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes. WAC 392-400-610.

Disciplinary Removal that Results in a Change of Educational Placement: A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days; or, when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. 34 CFR §300.536; WAC 392-172A-05155.

Services for Students Eligible for Special Education Services (Change of Placement): After a student eligible for special education services has been removed from his or her current placement for ten school days in the same school year, and the removal is a change of placement under WAC 392-172A-05155, during any subsequent days of removal the student must continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The student's IEP team determines appropriate services. The services may be provided in an interim alternative educational setting. WAC 392-172A-05145(3).

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the

IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or behavior intervention plan. 34 CFR §300.530(e); WAC 392-172A-05146.

If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct a functional behavioral assessment (FBA), unless the district had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan (BIP) for the student; or, if a BIP already has been developed, review the BIP, and modify it, as necessary, to address the behavior; and, except for special circumstances, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the BIP. 34 CFR §300.530(f); WAC 392-172A-05147.

Parental Notice and Procedural Safeguards: No later than the date on which the district makes the decision to remove a student, creating a change of placement through discipline for more than ten school days, it must notify the parents of that decision. 34 CFR §300.530(h); WAC 392-172A-05150. A copy of the parents' procedural safeguards under the IDEA must accompany this notification. 34 CFR §300.504; WAC 392-172A-05015(1); WAC 392-172A-05150.

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).

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.

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should

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

IEP 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. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student's learning. 34 CFR §300.324; WAC 392-172A-03110. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits. The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. The school district must give the parent a copy of the student's IEP at no cost to the parent. 34 CFR §300.322; WAC 392-172A-03100.

Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting the rights of students with disabilities and providing each student with a FAPE. The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the

IEP process. Most importantly, a meeting may only be conducted without a parent if, “the public agency is unable to convince the parents they should attend.” When a public agency 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. *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013); *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072, 1078 (9th Cir. 2003); *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001).

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 other health impairment, was in the 6th grade, attended a District middle school, and the Student’s February 3, 2021 individualized education program (IEP) was in effect.
2. The Student’s most recent reevaluation was completed in February 2021 and identified the Student’s educational needs, which included specially designed instruction to support the development of the Student’s social-emotional, behavioral, and written expression skills. The Student’s eligibility under the category of other health impairment was partially predicated upon his physician’s January 2021 written diagnoses of autism and attention deficit hyperactivity disorder (ADHD). The evaluation summary indicated, in part, that the Student scored in the average range of general intellectual ability. Behavioral assessments completed by his Parent and teachers indicated that the Student demonstrated clinically significant levels of aggression. The Student’s evaluation summary indicated that:

Aggression is considered one of the student's most significant behavioral and emotional problems. It is characterized by hostile or destructive behaviors that can be both physical and verbal. Children who exhibit aggressive behaviors may have inadequacies with problem solving and deficiencies in the specific areas of identifying alternatives, considering consequences, and determining causality, and they may also engage in means-ends thinking and have difficulty with seeing other perspectives.
3. The Student’s February 2021 IEP indicated that:

[The Student] exhibits disruptive behaviors in the form of inappropriate comments or actions towards peers and sometimes adults. Student participates in strategies to delay work or on task behavior. Strategies that have been helpful are staff buddy to work through issues with. Goal setting around a preferred activity such as cooking or Pokemon. Staff provide positive feedback for progress on goals, provide opportunities for student to vent frustrations, concerns, or other issues. Staff prompt student to make appropriate choices. Currently student has all worksheets printed and asked to do one page at a time until complete. He is using a paper schedule and a goal tracking page.

The February 2021 IEP directed that the Student receive the following special education services to improve his written expression skills and specific social emotional/behavioral skills. Annual goals of the Student’s IEP targeted:

- Improvement of the initiation of academic tasks
- Identification others' perspectives within a hypothetical social situation
- Improvement of work completion and on task behavior

The Student was to receive 285 minutes weekly of special education services to assist the Student to develop his social emotional/behavior skills:

- 30 minutes, twice weekly from a special education teacher, and,
- 15 minutes, five times weekly from special education staff.

4. Email correspondence between IEP team members and the Parent in late September of 2021 indicated the team was planning to meet. On September 29, 2021, the principal confirmed that the Parent had requested an IEP team meeting. On September 30, 2021, the Parent emailed the Student's IEP team, including the principal, requesting an emergency IEP team meeting regarding concerns with the Student's behavior and being removed from classes.

Although there is email correspondence indicating a meeting was to occur, the District documentation of IEP meeting notices, prior written notices, and IEP documents indicated that the IEP team did not formally meet in response to the Parent's request for an IEP meeting.

5. The District's response reflected that the Student was given a short-term suspension of three school days on October 1, 2021. The Student's attendance records indicated that the Student was in suspension status on October 4, 5, and 6, 2021. The District's response did not include an email or written notice of this suspension being provided to the Parent.
6. According to the District's response, the Student's IEP team was scheduled to meet on October 7, 2021. The Parent confirmed with the assistant principal that she would be there. However, there is no prior written notice or other documentation that confirms an IEP meeting occurred.
7. An email on October 25, 2021 documented that the previous Friday (October 22, 2021), the Student "had assaulted another [another] student after he began a verbal altercation with him." Email correspondence regarding this incident also documented that the principal called and requested that the Parent pick up the Student from school instead of having him ride the bus, stating, "we are both in agreement it wasn't the best idea to put [Student] on his bus after being as escalated as he was."

In a subsequent email, also dated October 25, 2021, the principal informed the Parent that the Student was to have a five-day suspension, explaining that his investigation concluded the Student "had approached the [other] student and made a remark that could be considered racial, then proceeded to tell the [other] student he had flies all around him because he stunk" and thereafter, the Student kicked the other student twice and punched him in the face. The principal stated that "parents of this [other] student are very concerned with his safety due to [Student's] constant harassment of him." The principal indicated that "we will need to meet to identify additional supports for [Student], i.e., lunch in the office, etc." and that the Student's case manager would reach out this week to schedule a meeting.

8. On October 28, 2021, the Student completed his eighth day of suspension.

9. Also, on October 28, 2021, the Parent and principal emailed and emails document that the Parent requested multiple changes to the Student's IEP, including a revision of his service minutes, requested "ABA 1:1 para support" and addition of "ESY" (extended school year), as well as a prior written notice regarding the team decisions. The principal responded and indicated that the Parent and IEP team members—the principal, assistant principal, and the school counselor—met that day "to problem solve" and that "[Student]'s schedule would stay the same." The District's response stated they also agreed that the Student would receive support from a behavior technician on a trial basis as a behavior intervention.
10. Email correspondence between the Parent and principal on November 2, 2021 document that the Parent requested and had not received prior written notice regarding the suspensions, and the principal responded with a copy of a "Short Term Suspension" form, dated October 22, 2021, that documents suspension of five days for "fighting without major injury." A copy of the "Short Term Suspension Appeal Procedures" was included with the "Short Term Suspension" form.
11. On November 4, 2021, the Student's counselor emailed the Parent, requesting written consent to conduct a functional behavioral assessment (FBA).
12. On November 29, 2021, the principal emailed the Parent, acknowledging her "official request for an IEP team meeting...to discuss the data collected for the 4-6 week intervention of ABA therapy."
13. On December 7, 2021, the Parent was mailed a notice of meeting by the Student's special education teacher to attend a meeting on December 13, 2021, for the purpose of completing an FBA.
14. On December 13, 2021, the Student's IEP team met and reviewed the FBA completed for the Student, determining, as noted in the December 13, 2021 prior written notice, that the Student's target behaviors of inappropriate peer interactions and elopement "are maintained by peer attention and escape and that when behaviors occur, he is emotionally dysregulated." The team agreed to schedule an IEP meeting on January 5, 2022, to develop a behavioral intervention plan (BIP) for the Student.
15. Also, on December 13, 2021, the Parent emailed the Student's IEP team, summarizing a meeting that day to develop an FBA for the Student, stating details regarding the Student's placement to conclude that "he is not succeeding in this environment...that District staff indicated they do not have a self-contained offering at [school]...and it was requested to think outside the box a little for how we come up with something that would be acceptable to the District and provide for [Student's] educational and social emotional needs." The December 13, 2021 prior written notice also documented the Parent's request for a self-contained setting, stating that the "IEP team acknowledged her requests and set up a date to discuss these at a meeting to review the BIP and IEP on January 5, 2022."

16. The District was on break from December 20–31, 2021, and students returned to school from break on January 3, 2022.
17. On January 3, 2022, the Parent was mailed a notice of meeting by the Student’s special education teacher to attend a meeting on January 5, 2022, for the purpose of completing a BIP.
18. According to the District’s response, the IEP team met January 5, 2022 to develop a BIP.
19. District attendance records indicate that the Student was suspended on January 7 and 10, 2022. January 7 and 10, 2022 were the Student’s ninth and tenth day of suspension during the 2021–2022 school year.
20. On January 10, 2022, District documents indicated that the IEP team issued a prior written notice, dated for January 10, 2022, which included documentation for a meeting that, according to the notice, had yet to occur.¹ The District’s response indicated the team was scheduled to meet on January 10, but that the Parent requested more time to prepare and thus the team reconvened on January 14, 2022. The notice indicated:
 - The team had met on January 10 and 14, 2022 to determine if a behavior incident that resulted in disciplinary actions was a manifestation of the Student’s disability.
 - The team met on January 14, 2022 to complete a “follow-up MDR” at Parent request.
 - The “Other Factors” section of the notice indicated that the Student was to return to school on January 11, 2022, and that his IEP and BIP meeting were to be held in “coming days to update a specific plan to support [Student] and his challenges in the school setting.”
 - The notice also indicated that the Parent attended the January 10, 2022 meeting but was not in attendance for the January 14, 2022 meeting. The notice did not provide a reason for proceeding without the Parent in attendance.
 - The notice also indicated that the Parent has been provided a notice of procedural safeguards.
 - In its conclusion, the notice indicated that the “action will be implemented on January 14, 2022.”
21. On January 14, 2022, the Parent was emailed a notice of meeting for January 19, 2022 meeting, to review Student’s IEP and complete the BIP.
22. On January 24, 2022, and at several subsequent meetings in early February 2022, the IEP team completed an annual review of the Student’s IEP, and this meeting was attended by the Parent, a general education teacher, school counselor, and a special education teacher. The IEP provided for 251 minutes weekly of specially designed instruction in written expression and 371 minutes weekly in social emotional/behavioral instruction. All special education services were to be provided in a special education setting by a special education teacher. These

¹ OSPI notes the date on the prior written notice was likely an error based on the District’s IEP software. However, OSPI notes that the accuracy of prior written notices is very important and having incorrect dates can make it confusing for a parent to understand what decisions were made and when. OSPI recommends the District ensure that prior written notices are dated accurately and that is clear when documents have been updated based on a second meeting.

services were to be provided from January 25 through March 6, 2022.² Additional services were to be provided by a behavior specialist, totaling 680 weekly minutes of services in a special education setting, and 1,330 minutes of additional adult support were to be provided weekly in the general education setting from a special education teacher.

23. A prior written notice was issued by the District on January 19, 2022. The notice indicated:

- The team had met on February 7 and March 4, 2022, to discuss the Student's placement and need for additional special education services.
- The notice indicated that the February 7, 2022 team meeting included the Parent, general education teacher, special education teacher, and District representatives. They determined the IEP services minutes "would increase to full time special education services with a fade plan." The team also changed the setting of social emotional minutes from general education to special education. The notice indicated the team considered and reviewed the Parent's request for a tutor for the Student, but the notice does not indicate whether the request was approved or declined.
- The notice also indicated that the March 4, 2022 team meeting changed the Student's placement to a self-contained program, revised and completed his BIP, and indicated that the District would "contract with an outside agency to provide 1:1 teaching supporting to [Student] for approximately 2 hours per day", to shorten the Student's day to a five-period day, to provide a 1:1 behavior technician for the entire school week, and initiate private transportation for Student. Email correspondence and this notice indicated the Parent requested the meeting occur without her presence.
- Further, the notice indicated that the Parent agreed on March 9, 2022 to try the self-contained placement with the Student "accessing structured social emotional support through a blending learn format".
- In its conclusion, the notice indicated that the "action will be implemented on January 25, 2022."

24. Email correspondence on January 24, 2022 indicated that the Parent requested the IEP meeting be rescheduled after his teacher commented that "she wonders if my son will pull a gun out of his backpack".

25. On January 27, 2022, the principal emailed the Parent and the Student's IEP team, stating:

[t]he negative interactions are continuing & increasing from my observation this week. Also, [Student] is no longer complying with requests from most teachers, security and administration. This is starting to become a safety issue as he runs through our hallways interacting negatively with any he comes in contact with...When is the team set to meet again? I know [Parent] has canceled several meetings and walked out of the last one but has anyone reached out to her to reschedule? As far as I know, I have been the only one that has reached out so far.

The Parent responded later that evening that "[t]he meetings you guys scheduled without asking me were on days I work and could not attend".

² The IEP had two service matrices; the first is documented here in relevant part. The second matrix was for a planned change of placement for the Student.

26. On January 28, 2022, the assistant principal provided the Parent with a copy of the January 7, 2022 "Short Term Suspension" form for "bullying/harassment and intimidation" and a January 27, 2022 "Emergency Expulsion Notice through a tenth school day" for "violence without major injury" and "sexually inappropriate content." The Student's January 27, 2022 emergency expulsion resulted in an additional five days of suspension.
27. Also, on January 28, 2022, the Parent wrote to the Student's IEP team, requesting an emergency meeting to address the current emergency expulsion, offering dates and times she was available to meet with the team.
28. Email correspondence dated January 31, 2022 document that the Student's assistant principal provided directions to locate assignments in the District "Schoology" system.
29. On February 3, 2022, the District issued a prior written notice regarding a manifestation determination meeting in which the team determined the Student's conduct was a manifestation of his disability and that he could return to school. The notice also indicated that the team planned to review the Student's BIP on February 7, 2022.
30. The Student's attendance records indicated that he returned to school on February 7, 2022 and that he was suspended that day. On February 8, 2022, the Student's assistant principal emailed the Parent an "Emergency Expulsion" form for up to ten school days for "violence without major injury".
31. The District issued one progress report regarding the Student's progress on his IEP goals during the 2021–2022 school year. The February 6, 2022 progress report from the District indicated that he made "insufficient progress" on his social emotional/behavioral goals. The report did not include explanation of the "insufficient progress" or a written description of his progress.
32. On February 9, 2022, the Parent emailed the Student's IEP team and requested an emergency meeting to review the issues surrounding the most recent emergency expulsion.
33. On February 15, 2022, the assistant principal emailed the Parent with lessons and assignments for the Student during his suspension.
34. On February 23 and 24, 2022, the Parent's attorney emailed with the District's attorney regarding an agreed upon placement for the Student.
35. On February 25, 2022, the Parent emailed the Student's IEP team to request that "while the details get worked out and a school visit occurs with [school]," the team proceed with the manifestation meeting and email the results to her attorney. On this same date, the District issued a prior written notice, indicating that at the Parent's request, the IEP team had considered her request for an IEP revision through email. The notice indicated that the team determined the Student's behavior "resulting in exclusionary discipline is substantially and directly related to [Student's] disability...[and] that the behavior was not a result of a failure to

implement the IEP.” The Student’s attendance records indicated he was in suspended status until February 25, 2022, and as of that date, the Student had been suspended for 30 days total during the 2021–2022 school year.

36. On March 1, 2022, the Parent was provided an “Emergency Expulsion” form for up to 10 school days for making “threats and inappropriate sexual comments towards other students and staff.” This notice did not include a prior written notice or a copy of the notice of procedural safeguards.
37. On March 3, 2022, the Parent filed this complaint.
38. The Student’s attendance records indicated he was not able to attend school due to a suspension or emergency expulsion for 33 days during the relevant period of this investigation—from the start of the school year until the complaint was filed.
39. District records and email correspondence indicated the Parent was offered access to the Student’s classwork and homework assignments.

CONCLUSIONS

Issue 1: Discipline Procedures – The Parent alleged the Student was improperly disciplined and that given the Student’s disability, discipline should not have been implemented for behaviors that were a clear manifestation of his disability. The Parent alleged that the District failed to follow discipline procedures and failed to conduct timely functional behavioral assessments (FBAs) or timely updated the Student’s behavioral intervention plan (BIP). Finally, the Parent also alleged that the Student was denied special education services and access to general education during his suspensions and periods of emergency expulsion. The District asserts that the team followed all appropriate special education discipline procedures.

A district may discipline a student eligible for special education for violations of the student code of conduct, and a district may remove a student from his or her current placement to an appropriate alternative education or other setting (including suspension) for not more than ten school days (consecutive or a series of removals that constitute a pattern of removals based on substantially similar behaviors). A change in placement occurs when a student is removed from his or her placement because of discipline for more than ten days. The district must also hold a manifestation determination to determine whether the behavior that led to the disciplinary action was a manifestation of the student’s disability or the result of the school’s failure to properly implement the student’s IEP or BIP. If the behavior is a manifestation of the student’s disability or resulted from a failure to implement the IEP, the district must conduct an FBA (unless already conducted), implement or review the BIP, and return the student to his placement.

A review of the documents and assertions provided indicate that the District did hold manifestation determinations when required for several of the Student’s suspension and emergency expulsions. Additionally, after the first suspension, the District requested the Parent consent and initiated an FBA and developed a BIP for the Student. The team also revised the Student’s BIP in February of 2022.

However, the District did not follow all relevant Washington special education discipline regulations with regard to the Student's conduct.

The District did not provide a notice or copy of notice of procedural safeguards to the Parent when the Student was suspended or expelled on January 27, February 8, and March 1, 2022, as these disciplinary exclusions represented changes in placement. And, when prior written notices were provided, they did not clearly indicate the Student's placement had been changed through discipline. Special education regulations require that, no later than the date on which the district makes the decision to remove a student, creating a change of placement through discipline for more than ten school days, it must notify the parents of that decision. A copy of the parents' procedural safeguards under the IDEA must accompany this notification.

Importantly, the Student was not provided appropriate services while he was excluded due to discipline. A school district may not suspend the provision of educational services to a student in response to behavioral violations and the educational services must enable the student to: (i) continue to participate in the general education curriculum; (ii) meet the educational standards established within the district; and (iii) complete subject, grade-level, and graduation requirements. After a student has been removed from his or her placement, the district must provide services to enable the student to continue participating in the general education curriculum, although in another setting, and to progress toward meeting the goals set out the IEP.

Although the Student's assistant principal provided the Parent information regarding the Student's missing assignments via email on January 31 and February 13, 2022, there is no indication that the Student was provided more than minimal access to educational services during 33 days of suspension or emergency expulsion, nor is there any written documentation or assertion by the District response that the District was intending to provide educational services during that period of time. Although the level of support required by the District to be provided to a student eligible for special education services changes after the tenth day of removal, the Student received no support or instruction to access his assignments specific to his IEP goals that, at the time, reflected needs in written expression, task initiation, work completion and maintenance of on-task behavior.

Finally, there is no evidence that his IEP team determined the level of services the Student required to continue to receive a free appropriate public education after the tenth day of suspension.

Given the failure to provide adequate services, OSPI finds that violations of disciplinary procedures have occurred. The Student is entitled to compensatory education as provided below. The District will be required to provide training for principals and special education administrative staff on special education discipline procedures, including requirements to determine and provide appropriate education services to students after the eleventh day of suspension or expulsion.

OSPI notes that the January 2022 prior written notices (discussed below) make it difficult to determine when the IEP dated January 19, 2022 was completed and when it was to be implemented; however, there is a clear indication that the IEP team had substantially increased the Student's special education service allocation, including the provision of 1:1 behavioral

support. OSPI finds that because the Student's IEP team has already determined he requires a higher level of support, it is equitable to use the January 2022 IEP amounts to calculate the compensatory education award.

Given that the Student was not provided special education services and had minimal access to assignments for approximately 33 days and given that compensatory education will be provided in a 1:1 setting instead of a classroom setting, OSPI awards 50% of the missed time. Additionally, given the Student's social emotional/behavior and written expression goals, OSPI recommends the Student focus on completing necessary general education assignments with specially designed instruction supporting that during the compensatory hours. Thus, the District will provide:

- **Social emotional/behavior:** Student missed approximately 12,449 minutes (41 hours) of specially designed instruction in social emotional/behavior. The District will provide 20.5 hours of compensatory education.
- **Written Expression:** Student missed approximately 1,657 minutes (27.5 hours) of specially designed instruction in social emotional/behavior. The District will provide 14 hours of compensatory education.

Issue 2: IEP Development – The Parent alleged the Student's IEP team did not properly respond to her requests for IEP team meetings to address the Student's behavioral needs and disciplinary issues. The Parent further alleged that the Student's IEP was not amended to address the Student's social-emotional and/or behavioral needs.

A student's IEP is required to be reviewed and revised periodically to address any matters related to the student. Here, the Parent emailed the Student's principal and/or IEP team members on multiple dates (September 29, 20, October 28, November 29, 2021, January 24, and February 9, 2022) to indicate specific concerns that the then-current IEP was not meeting the Student's educational needs. Although there is indication that some informal meetings occurred, the District has provided copies of only two IEPs, one from the Student's prior school year that was implemented at the beginning of the 2021–2022 school year and one that was authored and completed through a period of several meetings during January, February, and March of 2022. The Student's IEP team did meet on December 13, 2021 to review the FBA; however, a meeting was scheduled for January 2022 to develop the BIP and there is no indication that the IEP was updated in December 2021. There are no formal notices of meeting, IEP revisions, or prior written notices documenting IEP team meetings having occurred, in response to the Parent's requests for meetings beginning in late September 2021.

As noted, the IEP team must convene when a parent believes the IEP is no longer appropriate for a student's needs resulting from a student's disability. OSPI notes that the documentation indicated the Parent was requesting and her concerns, and the Student's disciplinary incidents in fall 2021, warranted an IEP meeting earlier than what occurred. Although OSPI does note the District timely initiated and completed an FBA. And, OSPI recognizes that, based on the documentation, the District was making efforts to address the Student's behaviors. Still, OSPI finds a violation as the IEP team did not convene to discuss and address the Student's behaviors within a reasonable amount of time.

Issuing a timely prior written notice is a core procedural safeguard afforded to the student and parents under the IDEA and the Washington state regulations. Prior written notices are required to be provided before the initiation of the proposed or refused action described within the body of the written notice. In this Student's records, there are two documents titled prior written notice that are dated by District personnel on dates that occur before numerous meetings described within the notice themselves. OSPI believes the dates on the meeting are likely an error based on the District's IEP software program. However, the notices are confusing and indicate that decisions and actions will be implemented before the meetings occurred. The written notice dated January 10, 2022 references within decisions made on January 14, 2022 and the notice indicates that decisions made by the team would be implemented on January 14, 2022. Similarly, the prior written notice form dated January 19, 2022 references completion of an IEP and references the results of meetings on February 7 and March 4, 2022. This written notice indicates that the IEP would be implemented on January 25, 2022. However, the IEP was likely not completed by January 25, 2022, so it is not clear when the IEP was implemented. On their face, neither notices could have been issued in a reasonable time prior to the date of implementation when both notices refer to meetings that would occur on the date of the notice or meetings that occur weeks after the written notice was dated and date of implementation. OSPI concludes that the District violated the prior written notice requirements.

Finally, parent participation in IEP meetings is also a key procedural safeguard to protect the rights of students with disabilities. Meetings are to be scheduled when one or both parents can attend, and an IEP team meeting can only be held in the absence of a parent when the district has been unable to persuade the parent to attend. Here, the Parent was not in attendance at the January 14, 2022 IEP meeting and there is no record of contacts by the District's attempts to arrange a mutually agreed upon date and time for the meeting. The January 10, 2022 prior written notice that describes the January 14, 2022 meeting stated only that the Parent did not attend. As the District proceeded with an IEP meeting without the Parent in attendance—and no indication the Parent agreed that the team could proceed without her—and has not included in the prior written notice an explanation for that decision, OSPI finds a violation.

Overall, OSPI finds a violation with respect to several elements of IEP development, including not holding an IEP meeting to address the Student's behavior in a timely manner, errors with prior written notice, and holding a meeting without the Parent.

The District will be required to conduct training for special education teachers and administrators at the school the Student attended on promptly responding to parent requests for IEP meetings by either scheduling a meeting at a mutually agreed upon date and time or issuing a prior written notice, declining to convene the IEP team; prior written notice; and parent participation.

CORRECTIVE ACTIONS

By or before **May 13, 2022, May 20, 2022, May 27, 2022, June 17, 2022, July 22, 2022, September 30, 2022, and January 6, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **May 13, 2022**, the District and Parent will develop a schedule for the following hours of compensatory education.

- **Social emotional/behavior:** 20.5 hours of compensatory education.
- **Written Expression:** 14 hours of compensatory education.

The District and Parent should consider information from each of the Student's general education teachers regarding curriculum he was not able to access and specific core standards which he might need to focus on to prepare for the Student's 8th grade year. The services will be provided in a 1:1 setting by a certificated special education teacher, unless the Parent and District agree that a small group setting would be more appropriate for the social emotional/behavior goals.

After reaching agreement with the Parent, the District will provide the Parent with the schedule for services, in writing by **May 20, 2022**, and will provide OSPI with documentation of the schedule for services by or before **May 20, 2022**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **December 30, 2022**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **July 22, 2022** and **September 30, 2022** of the compensatory services provided to the Student at that point. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **January 6, 2023**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **January 6, 2023**.

DISTRICT SPECIFIC:

Training

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will develop and conduct a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 22-25.

The following District staff will receive training: District special education administrators and the following at the Student's school: principal, assistant principal, and special education teachers,

and any behavior support staff (BCBAs, behavior technicians, etc.). The training will cover the following topics:

- The requirement to schedule IEP meetings at a mutually agreed upon date and time to facilitate parent participation in the IEP meetings and the requirement to schedule IEPs when requested by a parent or when a student's needs indicate the IEP team should meet;
- Prior written notice requirements;
- Special education discipline requirements, including the documentation required following a disciplinary change of placement, including procedural safeguards; and,
- The determination of what and how special education services and access to general education will be provided for students eligible for special education who have experienced less than ten days of disciplinary removal in one school year and for those students eligible for special education who have experienced more than 11 days of disciplinary removal in one school year.

The training will include examples.

By or before **May 13, 2022**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **May 27, 2022**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by June 3, 2022.

By **June 15, 2022**, the District will conduct the training regarding the topics raised in this complaint decision.

By **June 17, 2022**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a 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.

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 ___ day of May, 2022

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.)