

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-83

PROCEDURAL HISTORY

On June 5, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Snoqualmie Valley School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On June 5, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 6, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On June 23, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on June 27, 2023. OSPI invited the Parent to reply.

On July 18, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on July 18, 2023.

On July 24, 2023, OSPI requested additional information from the Parent and the Parent provided the information on the same day. OSPI forwarded the additional information to the District on July 25, 2023.

On July 24, 2023, OSPI requested that the District provide additional information, and the District provided the requested information on July 25, 2023. OSPI forwarded the information to the Parent on the same day.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on June 6, 2022. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District implement the special education services and accommodations in conformity with the Student's individualized education program (IEP) during the 2022–23 school year according to WAC 392-172A-03105?
2. Did the District consider the Parent's request for a functional behavioral assessment and a behavioral intervention plan for the Student during the 2022–23 school year according to WAC 392-172A-01031?

LEGAL STANDARDS

IEP Implementation: A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

IEP Must State Amount of Services: An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student. An IEP must also include a statement of the program modifications or supports for school personnel that will be provided to enable the student: to advance appropriately toward attaining the annual IEP goals; to be involved and progress in the general curriculum in accordance with present levels of educational performance and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children in the above activities. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d). "The amount of services to be provided must be stated in the IEP, so that the level of [the district's] commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP." Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (34 CFR Part 300, Question 35).

Functional Behavioral Assessment (FBA): An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a behavioral intervention plan (BIP) that will reduce or eliminate the misbehavior. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2). The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4). Once the need for a reevaluation is identified, a district must act "without undue delay and within a reasonable period of time;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008). The IDEA does not specify who is qualified to conduct an FBA, for example there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

Behavioral Intervention Plan (BIP): A BIP is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The BIP, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031.

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

FINDINGS OF FACT

Background: 2020–21 & 2021–22 School Years

1. In November 2020, the Student was a fifth grader who attended a different Washington school district. The Student was evaluated and found eligible for special education services under the category of emotional behavioral disability. The evaluation recommended that social/emotional services be provided to the Student. As part of the evaluation, the District conducted a functional behavioral assessment (FBA).
2. After the evaluation in November 2020, the previous district developed the Student's individualized education program (IEP) and developed a behavioral intervention plan (BIP). The Student's IEP provided annual goals and special education services in the area of social/emotional and 18 accommodations that included quiet spaces, advance notice in routines, check-ins with adults, and visual reminders.

3. The FBA determined that the Student's target behavior was displaying inappropriate behavior when anxious. The BIP addressed the target behavior by providing breaks, coaching, positive adult and peer interactions, and de-escalation strategies.
4. In November 2021, the previous district reviewed the Student's IEP. The accompanying prior written notice stated the Student's team addressed the Student's transition to middle school and the Parent's concern about slow progress.
5. In January 2022, the Student enrolled in the District.
6. On May 31, 2022, according to the documentation, the District restrained the Student when the Student "threw paper airplanes at student, slamming books down on students computer, taking students laptops, throwing books and bottles at staff."
7. On June 6, 2022, the complaint investigation timeline for this complaint began.
8. On June 8, 2022, the assistant director of student services emailed the board-certified behavior analyst (BCBA), introducing the Parent of the Student "for whom we'd like for you to conduct the FBA in the fall."
9. On August 26, 2022, the Student's special education teacher emailed the Parent, stating the teacher met with the Student and the Student met most of his teachers and the behavior technician (BT). The teacher told the Parent the Student would be receiving his services daily during fourth period. In addition, the teacher sent the Parent an "updated" behavior response plan and a consent form to complete an FBA. The teacher also stated that the District's policy was to call 911 if a student left the school property.
10. On August 29, 2023, the Parent replied that she sent the signed consent form with the Student.

2022-23 School Year

11. At the start of 2022-23 school, the Student attended a District middle school and continued to be eligible for special education services under the category of emotional behavioral disability.
12. On August 30, 2022, the 2022-23 school year began in the District.
13. Also, on August 30, 2022, the Student's team revised the Student's IEP (from August 30 to November 8, 2022) to include the following services in a special education setting:
 - Social/emotional/behavioral: 10 minutes daily (provided by the special education teacher)
 - Social/emotional/behavioral: 5 minutes daily (provided by the special education teacher)
 - Social/emotional/behavioral (related service): 10 minutes daily (provided by the special education teacher)
 - Social/emotional/behavioral (related service): 5 minutes daily (provided by the special education teacher)

The IEP also included the following supplemental aids and services:

- Behavior support: 1,725 minutes weekly (provided by a behavior therapist)
- Social/emotional/behavioral consultation: 120 minutes weekly (provided by a board-certified behavioral analyst)

The IEP provided the following accommodations:

- Allow extra time on assignments
- Accept late work
- Provide copy of class notes and study guides
- Allow breaks for self-regulation
- Testing in small group as needed
- Modified assignments as needed
- Scribe
- Speech-to-text
- Advance notice of changes in routine (i.e., substitute teacher)
- Allow choice of working on computer or paper
- Can have backpack in class; beginning 03/31/2023 [Student] is supported by a Safety Plan and is not able to carry his backpack from class to class. To continue the need of having access to supplies, the school will supply all necessary supplies in all of [Student's] classes.

In the section of the IEP that addressed isolation, restraint, or a restraint device, the "no" box was checked, meaning that the Parent and District agreed not to use isolation, restraint, or a restraint device.

14. On August 26, 2022, the special education teacher emailed the Parent, along with other District staff, that the teacher went through the schedule with the Student and met his teachers along with the behavior technician (BT) who was assigned to support the Student. The email stated, in part:

Attached is [Student's] updated Behavior Response Plan. Not much was changed but as we gather more behavioral data from the BT, we will begin a Functional Behavior Assessment (FBA) and generate a new Behavior Intervention Plan. Also attached is the consent form for us to complete the FBA, the amended Educational Services and Placement to add the Behavioral Tech and [board-certified behavior analyst (BCBA)], and Notice of IEP Amendment...

I will work with [Student's] BT to help them create a trusting relationship. We talked with him how walking is a great way to help [Student] reset, especially outside. It is however, our district's policy to call 911 if a student leaves school property, though he did stop when prompted last year and we hope this is not an issue.

15. On August 29, 2022, the associate superintendent exchanged emails with the Parent and District staff regarding when the Student wanted to leave school and go home. The associate superintendent stated the students cannot leave school "without a formal checkout from parents" but asked the Parent if there were other options to excuse the Student. The District would not call 911 because the Student was in trouble, "it's because we have to make sure someone is checking on his safety if he leaves campus..." The Parent stated that the Student did not trust or feel safe with anyone at school because of a previous restraint. The Parent stated, "...[Student] has my direction to walk home if he ever feels like someone will put hands on him again at school."

16. On August 30, 2022, the District began documenting the Student's behavior regarding avoidance, request break, disruption, and compliance in 10-minute increments from 7:50 to 10:10 am and 12:50 to 2:50 pm each day. Later, the District also began documenting the antecedent, behavior, consequence, and function of the Student's behavior. All behavior tracking documentation stopped on March 16, 2023.
17. On September 20, 2022, the special education teacher emailed the Parent a second consent form for the FBA.
18. On November 8, 2022, the Student's team met along with the Parent to review the IEP. The prior written notice that accompanied the meeting indicated the team proposed to have the Student receive his special education services in a special education setting and conduct an FBA. The Parent signed the consent form for the FBA at the meeting.
19. Sometime in or around March 2023, the District conducted a new FBA. The FBA noted the following "Supports in Place During Observational Portion of FBA:"
 - "A 1:1 Behavioral Support, Licensed Assistant Behavior Analyst (LaBA) [LaBA] was with [Student] throughout the school day. The LaBA would sit in the back of the classroom where [Student] was in visible range and take data on [Student] behavior throughout the day."
 - "Regular check-ins with [Student] were provided to help support his attentiveness and ability to stay on task and follow the class routine."
 - "The LaBA had a data sheet that tracked [Student's] challenging behaviors throughout the school day."
 - Data was taken in 10-minute intervals and if the behavior happened the LaBA will circle yes on the data sheet. 43 intervals were tracked Monday-Thursday, while 29 intervals were tracked for Fridays due to early release.
 - "If [Student] became dysregulated the LaBA would check in with the client and provide and appropriate replacement (taking a break, walk outside, playing cards) to help [Student] get regulated and be able to return to class."
 - "In the case of change in the clients' routine (i.e., substitute teacher) [Student] was notified of change ahead of time and a check in with both the LaBA and Case Supervisor was provided to have a talk with [Student] on how to be successful."
20. On March 17, 2023, the District suspended the Student for two days for ripping off a student's lanyard and "following around sharpening a stick with scissors."
21. On March 27, 2023, the District developed a new BIP that addressed classroom disruptions, elopement within campus, access to control, noncompliance with directions, work refusal, and aggressive/threatening language. The BIP provided strategies to address the target behaviors.
22. The District also developed a "Safety/Re-Engagement Plan" to begin on March 31, 2023. The plan provided for, among others, for the following:
 - Breaks
 - "The Student's behavior technician (BT) will be available in the hallway outside the classroom to be of assistance."
 - "The Student's teachers will remove and safeguard scissors in their respective classrooms"

- In the event the Student exhibits one of the following behaviors: Exhibits physical aggression; Wields an object as a weapon (e.g., scissors, rock, etc.); Makes direct or implied threats of physical violence, harm, or aggression; or leaves [school] property – then “Supervising administration will be notified and contact with emergency services (911) will be initiated. [Parent] will be notified [phone number] as soon as reasonably possible in light of circumstances.”
- “The Student will engage in maintaining appropriate physical proximity from staff and students. [Student] will not touch others; [Student] will not come within 2-3 feet, or arm’s length, proximity of others.”
- “Student will engage in maintaining appropriate communication with staff and students. [Student] will not make direct or implied threats to staff and students.”

23. On March 31, 2023, the associate director emailed the Parent the “finalized versions” of the FBA and BIP, along with the amended IEP and safety plan.

24. On April 3, 2023, the Parent responded, stating, “To be clear I have not and do not consent to the iep being amended as those changes are based on an invalid FBA. The FBA is invalid because it performed by someone untrained to assess anxiety and not yet certified to perform this type of crucial assessment.” The Parent stated that after talking with medical and mental health professions, the Student would not return to school until his anxiety was regulated, and a “valid assessment is completed and implemented to meet [Student’s] current needs at school.”

The associate director emailed the Parent, asking if the Parent intended to withdraw the Student or homeschool the Student. The associate director invited the Parent to discuss the IEP amendment and safety plan in light of the threat assessment conducted.

25. On June 5, 2023, the Parent filed this complaint with OSPI.

26. The Parent alleged that the District failed to implement most accommodations (except having a backpack in class and working on computer or paper) on the Student’s IEP.

27. OSPI requested information from the Parent about how often the accommodations were not implemented and how the Parent became aware of the accommodations that the Parent alleged were not implemented. The Parent stated that the allegation was based on Student reports that accommodations were not implemented, such as check-ins for work and copy of notes, preferential seating, and study guides. With other accommodations, such as a scribe, visual reminders, and breaks, the Parent did not indicate how she knew how frequently they were not implemented and how she became aware of it.

28. The complaint also alleged the accommodations were not implemented because the BT sometimes sat outside the classroom or only recorded behavior data for the Student.

29. The District’s response provided explanations of how each accommodation was provided. For example, the accommodation for breaks were implemented by allowing the Student to have “unrestricted access” to the case manager’s classroom, adjacent empty classrooms, and

an empty conference room in the administrative offices. According to the District, the Student was prompted often to utilize the accommodation.

Regarding the break accommodation, the Parent alleged:

...It became standard practice to lock him out of the building until he was able to self-regulate and calm himself alone without any sensory or grounding tools and without BT support as she would lock herself inside the building or stay far out of range for [Student] to access. When this happened, [Student] would try to leave school and go home but he was threatened with having the police call on him if he left.

The District responded, stating:

This is false. The Student often chose to go outside and the BT went with him to ensure he did not leave campus and to engage in de-escalation techniques. The Student frequently eloped outdoors, and before the 1:1 Behavioral Technician joined him outside, he did not have key access and would not be able to re-enter the building. However, the BT would immediately join him outside, and would open the door with her badge at his request. The external doors to the building have an auto-lock feature which requires badge-only access for entry.

30. To address the issue of implementing the accommodations, the District provided 31 emails between the District and the Parent from August 25, 2022 to March 24, 2023 regarding, in part, the implementation of the Student's program. Of the 31 emails, 13 emails referenced the District implementing the accommodations. For example, referring to the accommodation for breaks, on February 28, 2023, the special education teacher emailed the Parent about the Student taking a break in art class. Some of the 13 emails referenced multiple accommodations that were implemented.
31. In addition, the observation conducted as part of the FBA in March 2023 described accommodations being implemented, such as check-ins and breaks. Behavior data that was collecting from August 2022 to March 2023 did not show that the Student requested a break.
32. The complaint stated the Student did not "receive any of the special education service minutes listed in his IEP." OSPI requested further clarification, asking what services were not provided, when the services were not provided, and how the Parent was aware that services were not provided. The Parent stated:

...The District claims this service time (social/emotional/behavioral services) was provided during Student's weekly enrichment period by a Special Education teacher, but [Student's] enrichment class was only a study/work period with 24 other IEP students in the class and just the one teacher, he did not receive educational services and there were no individualized support or services provided throughout the 22-23 school year...
33. The District responded, "This is false. The Case Manager designed and monitored Social, Emotional, Behavioral SDI (specially designed instruction) in the special education setting which was the Enrichment class, in addition to twice a week check-ins."

34. The Parent also alleged the BT was not qualified to provide behavior services according to the IEP. The Parent stated that she was told in the March 2023 meeting that the BT was still “in training” and would be certified (as a BT) until summer of 2023.
35. The District responded that the BT was certified at the time as a BT and was preparing for certification as a BCBA.
36. The complaint stated that after the May 2022 behavior incident, the Parent requested an FBA to be conducted. The Parent stated that a BIP cannot be written until after an FBA is completed. The Parent again requested an FBA be conducted at the November 2022 IEP and in February 2023.
37. The District response stated that the FBA occurred after the series of behavior incidents. The District stated that it implemented the BIP that was current at the time until the new FBA was completed in March 2023. The District provided a draft copy of the FBA and then finalized the FBA on March 20, 2023. Meanwhile, the District completed the new BIP and provided a draft copy to the Parent on March 29, 2023, and finalized the BIP on March 30, 2023.
38. In the Parent’s reply to the Districts response, the Parent stated, “Though the (isolation, restraint, or restraint device) box was checked no, the District provided documentation of regular use of isolation by holding [Student] in an IEP classroom alone during his gen ed class periods.” The Parent did not provide any dates or times when the Student was isolated.
39. The District responded to the Parent’s allegation regarding isolation and restraint:

This is false. There are no instances of Restraint and Isolation in the 2022-2023 school year school year. Anytime the Student was in the classroom without other students, it was because it was his choice for a break, the 1:1 Behavioral Technician was present, and the Student was permitted to leave at will.

CONCLUSIONS

Issue One: IEP Implementation – The complaint alleged the District failed to implement the Student’s special education services, including the accommodations. A district is required to implement special education services and accommodations in conformity with the IEP.

Here, the Student’s IEPs that were implemented during the 2022–23 school year provided specially designed instruction in the area of social/emotional/behavioral, accommodations, and a BIP. The Parent alleged none of the special education services were provided and most of the accommodations were not provided.

Regarding the implementation of the IEP, there was conflicting information reviewed in the investigation. The Parent based much the allegations on what the Student reported to her. While this information should not be readily dismissed, it conflicted with the documentation from the District that the services and accommodations were implemented in conformity with the IEP. The special education teacher’s emails, the FBA, the daily behavior charting confirmed

implementation. Based on insufficient documentation to support a violation, no violation is found.

It should be noted that the Student's accommodations on the IEP were vague. Except for the two accommodations that added "as needed," there was no indication in the IEP when the accommodation would be implemented or who was responsible for implementing it—whether it was the Student (to ask for a break, for example) or the staff to ask. Some of the reason for this dispute appeared to be due to how the Parent and the District thought the accommodations would be implemented. OSPI recommends the District and Parent review the accommodations and clarify their implementation.

Regarding isolation and restraint, the Parent alleged the District inappropriately isolated the Student on many occasions. The Parent did not provide any specific information regarding isolation. The District stated the Student was not restrained or isolated during the 2022–23 school year. The District explained that the Student was allowed to leave the classroom at will, which the Parent never disputed. Since there was no evidence of restraint or isolation involving the Student, no violation is found.

Issue Two: Consideration of an FBA and BIP – The complaint alleged the District failed to follow through with the Parent's request for an FBA and BIP. The district is required to ensure that an FBA is conducted if necessary and a BIP is developed when it is required for a student to receive a free appropriate public education (FAPE). When conducting an FBA, the district must act without undue delay and within a reasonable period of time.

Here, a June 2022 email referred to an FBA being conducted in fall 2022. The documentation showed some difficulty with getting the Parent's signed consent, which eventually happened in November 2022. Once consent was received, the District was required to act without undue delay and within a reasonable amount of time. In this case, the District completed the FBA (and BIP) in March 2023. The four months the District took to conduct the FBA constituted an unreasonable amount of time. Thus, a violation is found. The District is required to provide written guidance to the District's administrators and special education staff regarding conducting an FBA within a reasonable period of time.

Regarding the BIP, the Parent stated that an FBA was required to be conducted before a BIP could be developed. As a point of clarification, there is no requirement for an FBA to be conducted before developing a BIP, although it may be appropriate in some situations. In this case, the delay in conducting the FBA caused a delay in developing the BIP.

CORRECTIVE ACTIONS

By or before **September 15, 2023** and **October 20, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Written Guidance

By **October 13, 2023**, the District will ensure that the following individuals receive written guidance on conducting timely FBAs and BIPs: special education administrators, the principal, the assistant principal, and special education certificated staff (teachers), and school psychologists, at the school that the Student was enrolled in during the 2022–23 school year. The guidance will include examples and discussion of best practices.

By **September 15, 2023**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by September 22, 2023.

By **October 20, 2023**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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

RECOMMENDATION

OSPI recommends the District convene the Student’s IEP team to review and revise, as necessary, the Student’s accommodations to ensure that the Parent, Student, and District staff know when the accommodations must be implemented.

Dated this 4th day of August, 2023

Dr. Tania May
Assistant Superintendent of Special Education
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THIS WRITTEN DECISION CONCLUDES OSPI’S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)