

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-84**

### **PROCEDURAL HISTORY**

On June 7, 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 Kiona-Benton City 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 8, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent the same day. OSPI asked the District to respond to the allegations made in the complaint.

On June 20, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on June 21, 2023. OSPI invited the Parent to reply.

On July 25, 2023, the investigator interviewed the Parent.

On July 27, 2023, OSPI forwarded the District and Parent additional information provided by each the Parent and District.

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

### **ISSUES**

1. Whether the District followed procedures to respond to the Parent's request for an evaluation beginning in September 2022?
2. Whether the District implemented the Student's individualized education program (IEP), including accommodations and speech therapy, during the 2022–23 school year?

### **LEGAL STANDARDS**

Parental Request for Evaluation: Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. 34 CFR §300.301; WAC 392-172A-03005(1). A referral may be implied when a parent informs a school that a child may have special needs. *In the Matter of the Lake Washington School District*, 57 IDELR 27, OSPI Cause No. 2011-SE-0020X (WA SEA 2011). 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.

Child Find: School districts must conduct child find activities calculated to locate, evaluate, and identify all students who are in need of special education and related services, regardless of the severity of their disability. WAC 392-172A-02040(1). “[T]he child find duty ‘is triggered when the [school district] has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability.’” *Dep’t of Educ., State of Haw. v. Cari Rae S.* 35 IDELR 90 (U.S. District Ct HI, 2001)(quoting *Corpus Christi Indep. Sch. Dist.* 31 IDELR 41 (SEA TX 1999)). A disability is “suspected” when a school district “has notice that the child has displayed symptoms of that disability.” *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9<sup>th</sup> Cir. 2016). The 9<sup>th</sup> Circuit has stated that “if a school district is on notice that child may have a particular disorder, it *must* assess that child for the disorder, regardless of the subjective views of its staff members concerning the likely outcome of such an assessment” and that notice that a child may have a particular disability can come from expressed parental concerns about a child’s symptoms, expressed opinions by informed professionals, or less formal indicators such as the child’s behavior. *Timothy O.*, 822 F.3d at 1121. *See also, Pasatiempo v. Aizawa*, 103 F.3d 796, 803 (9<sup>th</sup> Cir. 1996)(“The informed suspicions of parents, who may have consulted outside experts, should trigger the statutory protection.”); *J.K. v. Missoula Cnty. Pub. Sch.*, 713 F. App’x 666, 667 (9<sup>th</sup> Cir. 2018)(“The duty to evaluate a student arises when disability is ‘suspected,’ or ‘when the district has notice that the child has displayed symptoms of that disability’”); *N.B. v. Hellgate Elementary Sch. Dist.*, 541 f.3d 1202 (9<sup>th</sup> Cir. 2009)(The requirement to evaluate a student may be triggered by the informed suspicions of outside experts).

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 their 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 service needs, whether or not they are commonly linked to the disability category in which the student has been classified. No single measure or assessment as the sole criterion is used for determining a student’s eligibility or determining an appropriate educational program for the student. WAC 392-172A-03020. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. 34 CFR §300.304; WAC 392-172A-03020.

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. 34 CFR §300.323(a); WAC 392-172A-03105(1). A school district must develop a student’s IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. “When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child’s IEP. A material failure occurs when there is more than a

minor discrepancy between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9<sup>th</sup> Cir. 2007).

### **FINDINGS OF FACT**

1. At the start of the 2022–23 school year, the Student was not eligible for special education services and was enrolled in a first-grade classroom at a District elementary school.
2. The District's 2022–23 school year began on August 30, 2022.
3. In its written response, the District stated that no special education referral was made for the Student between September and December 2022. The Parent did not provide any written records to confirm a written request for special education services was made during this timeframe.
4. The District submitted an extensive number of service logs from a paraeducator at the school, who assisted with the Student's numerous behavioral incidents in the first-grade classroom during the 2022–23 school year.
5. The logs showed that on September 6, 2022, the Student was crawling on the floor and causing a distraction in class. The logs stated the Student went to the "bears den" to calm down. These logs also showed that the same paraeducator checked in on the Student in class on September 13, 2022, and that he was doing well at that time.
6. The Student's paraeducator logs showed that on September 15, 2022, the Student was throwing chairs in the classroom and the Student was asked to go to the "bear's den" to calm down. The notes showed he took a positive break and then returned to class.
7. On September 16, 2022, according to the logs, the Student did not listen to the teacher and told her "no." The notes say that he began to climb under the table and did not go to recess. The log entries for this date showed that the Student was crawling under desks and tables two other times and needed adult assistance.
8. The log notes showed that on September 20, 2022, the Student refused to work and hid under the table.
9. On September 22, 2022, according to the log notes, the Student was "disobedient and crawling under the tables."
10. On September 23, 2022, the log notes showed that the Student was crawling around the classroom and screaming in class and that the Parent was called in to get him.
11. On September 26, 2022, the log notes showed the Student was rolling around the classroom floor and not listening to the teacher.

12. On September 28, 2022, the Student's logs showed that the Student was crawling under desks and interfering with the learning of other students.
13. The logs for the Student showed that similar incidents occurred throughout the school year, as follows:
  - October 2022: There were eight similar behavioral incidents reported for the Student, which often resulted in the Student being sent to the "bear's den." The Student hit another student in October of 2022 and the Student also hit his teacher on October 28, 2022.
  - November 2022: There were six similar behavioral incidents, one of which included throwing chairs in the classroom.
  - December 2022: There were eight disruptive incidents logged for the Student.
  - January 2023: There were nine logged behavioral incidents in which it was often reported that the Student refused to do his work and disrupted instruction in the class.
  - February 2023: There were four logged behavioral incidents.
  - March 2023: There were six logged behavioral incidents.
  - April 2023: There were six logged behavioral incidents.
  - May 2023: There were eight logged behavioral incidents, one of which was hissing at other students, and another was reported as the Student throwing chairs in the classroom.
  - In June 2023, there were six logged behavioral incidents reported for the Student.

The Student was sent to the "bears den" after many of these incidents. In total, there were 75 of these log entries related to behavioral incidents during the 2022–23 school year.

14. In its written response, the District reported that sometime during the fall or October 2022, the Parent met with the school principal and assistant principal to discuss the Student's behavior. The District reported that at that time, the Parent expressed that she believed that the Student may be on the autism spectrum and that the Parent wanted to get him evaluated for autism outside of school. The District reported that it did not believe that the Parent wanted to pursue a special education evaluation or services from the school at that time.
15. During interviews, the Parent reported that all conversations about the fall 2022 behavior incidents were verbal in the school office. The Parent reported that nothing was put into writing at this time.
16. In its written response to this complaint, the District reported that in December of 2022, the principal and assistant principal met with the Parent to discuss a referral for a special education evaluation. The District wrote that at this time, the Student had not been taken to the school "Student Assistance Team" (SAT) process and the school staff explained the difference between the SAT process and the special education evaluation process. The District wrote that it explained the special education referral process, in case the Parent wanted to "start the process" and informed the Parent of how to put her request for an evaluation in writing.
17. During an interview with the Parent, she said that to her recollection, this December 2022 meeting was the third time she had been called to the school for the Student's behavior incidents. The Parent said that she requested the evaluation and IEP that day, in writing. The

Parent reported that the District told her that only a parent could request an IEP and gave her a copy of the Washington state rule at this time.

18. On December 19, 2022, the District's special education director (director) emailed the principal and assistant principal about a voicemail that the Parent had left for the director, inquiring about a possible special education evaluation. The email stated that the Parent was told to work with the classroom teacher and the school counselor to complete a written referral form. This same date, District staff emailed the Parent information about the special education referral process and explained that after receiving her signed consent to evaluate form, that the District could evaluate the Student for special education.
19. Also, on December 19, 2022, the school counselor emailed the Parent and attached all the evaluation paperwork, including a consent form. The counselor also wrote that she sent a hard copy home with the Student. In the email, the counselor also explained more about the evaluation process.
20. On December 20, 2022, the Parent emailed a number of District staff with a copy of her completed request for special education evaluation and consent form. In the message, the Parent wrote that, "I hope this can be expedited, if at all possible, it is frustrating that I was just told of this process last week and it takes so long. We are looking at February or even March before he could even be on an IEP to help him be successful and happy at school."

In this email message, the Parent also gave the District feedback and shared that, "...if a parent comes to the school and tells staff that a child is receiving outside services for special needs or autism, that parents should be advised of the special education referral process at that time, and not months later." The Parent additionally wrote, "I would have started the process months ago if the school and staff had properly informed me. I am very disappointed and frustrated in this whole process."

On the request for special education form, the Parent also wrote that the Student "currently has a referral for an autism evaluation [from his primary care physician]." The Parent also wrote that the teacher was sending home behavior sheets for the Student and that he would often disassociate, struggles to regulate emotions, and cannot keep up with peers in his classroom. The Parent also wrote that "he is on a long wait for the autism evaluation, but I can obtain a copy of the letter for the referral from his doctor."

21. On the December 20, 2022 consent for a special education evaluation form, the Parent expressed concerns related to the Student's attention and concentration, frustration, extreme mood swings, social/peer skills, motivational issues, articulation, expressive communication, ability to follow directions, and his ability to work with math and writing.
22. On December 20, 2022, the school principal forwarded the Parent's signed evaluation consent and referral form to the special education office.

23. In its written response, the District conceded the building level staff did not provide the Parent with correct or clear information about the special education evaluation and referral process. The District offered proposed corrective actions to address this area of noncompliance.
24. The District was on winter break from December 22, 2022 through January 3, 2023.
25. The District reported that the Parent's referral was received in the special education office on January 4, 2023.
26. On January 4, 2023, the District issued a prior written notice (PWN) for the special education referral. This PWN stated the District had 25 days to review the referral and that the Parent would be notified of the District's decision to evaluate by February 9, 2023.
27. On February 9, 2023, a PWN was sent to the Parent. The PWN stated that the Student would be evaluated in communication only. The reason listed for this decision was that "the District is in need of further information from the ongoing medical evaluation. Team agreed to proceed with a Communication evaluation only at this time."
28. Also, on February 9, 2023, the Parent was also sent a "Notification of Special Education Referral." This document stated that the IEP team was to meet that day to review the Student's performance.
29. On March 7, 2023, the Parent returned a signed consent for the communication evaluation, dated March 7, 2023. The Parent also wrote on this form that she believed the Student should be evaluated for his behavior needs. She wrote that the Student was on a waitlist for an autism and attention deficit hyperactivity disorder (ADHD) evaluation, with an estimated screening date of fall 2023.
30. On March 27, 2023, the District convened an evaluation team meeting for the area of communication. The evaluation report showed that the Parent made a referral due to concerns about the Student's academic performance, communication, attention, and concentration. The report indicated that the Parent also expressed concern that the Student was very easily frustrated, had extreme mood swings, issues complying with adults, motivational issues, and issues with peers/social interaction. The evaluation report indicated the Student met the criteria for a communication disorder and documented that the Student had delayed speech abilities and below average social language skills. The team determined the Student needed specially designed instruction for articulation and social language skills. The evaluation report documented that the meeting was attended by the Parent, a District administrator, a general education teacher, and a special education teacher who is also a speech language pathologist.
31. On March 27, 2023, the District also sent a PWN, which proposed to initiate an IEP with specially designed instruction in communication. The PWN further stated that the Parent shared that the Student was referred for an autism evaluation by his primary care physician and that the Student is now "on the waitlist for the waitlist [for the autism evaluation in a medical setting]."

32. The District reported that during the March 27, 2023 evaluation team meeting that the Parent and District discussed the need for additional testing. The District reported that, "the Autism evaluation would be in June, and if determined eligible could trigger a reevaluation to change eligibility from communication."
33. On March 29, 2023, the District provide the Parent with a consent to evaluate form for the testing related to the Student's behavior and academic needs. The Parent signed the consent to evaluate the Student for the areas of behavior, communication, and academic on the same date.
34. Also, on March 29, 2023, the District emailed the Parent and asked for any medical information, records, or diagnoses to give to the school psychologist for the next evaluation. The District also emailed the Parent on this date and specifically asked for a copy of the Doctor's referral for the medical autism evaluation.
35. On March 30, 2023, the District created an initial IEP for the Student based on his eligibility for special education services under the category communication disorder. This IEP provided the Student with social language and communications goals. The IEP also provided an accommodation of text-to-speech for testing. The IEP provided the Student communication services for 25 minutes per week in the special education classroom. The placement selected at the meeting was 80–100% general education classroom.
36. Also, on March 30, 2023, the District created speech therapy log for the Student to receive his weekly communication services. The log shows that the Student received his services when the school was open and when the Student was present, through June of 2023.
37. On May 5, 2023, the Parent signed the initial consent form for the provision of special education services.
38. On May 19, 2023, the District reported that it sent an email to all special education staff, to provide information and correct the consent process. The email stated that when parents request speech services, District staff are to have a meeting with the parent, to determine any other areas of concern, and to include each area of concern on the consent for evaluation form. The document also says that teachers may make referrals for special education, but that parents must be given a consent for the evaluation. The message reminded staff to note all concerns about a student on the parent consent form.
39. On May 24, 2023, the District held a reevaluation meeting for the Student, to discuss the behavior and academic assessments. The reevaluation group changed the Student's eligibility category from communication disorder to developmental delay.

At the May 24, 2023 meeting, the team also discussed the need for an occupational therapy (OT) evaluation for the Student. The Parent signed a consent for an OT evaluation, including fine motor skills, on this date.

40. Also, on May 24, 2023, the District completed its first "Student Incident Profile Report" for the Student to document an incident of seclusion or restraint. This report stated that the Student was escorted to the "pass room" because he was throwing furniture, climbing on tables, and throwing objects. While in the pass room, the report said that the Student climbed up a metal file cabinet and was removed for his safety. The Student was subsequently restrained on June 1 and 5, 2023, during incidents wherein the District reported the Student was punching staff and throwing items, and the Student bit the staff, punched them in the stomach, and tried to kick them.
41. During interviews, the Parent reported that the Student struggled in class all school year.
42. The Parent also reported there was a two-hour IEP team meeting in June 2023. The Parent said that she is now satisfied with the status of the IEP and the evaluation, but that it took the assistance of an advocate and a state complaint to get the needed supports for her Student.
43. In its response, the District submitted a draft IEP for the Student, with a proposed team meeting date of August 29, 2023. This IEP documented that the Student was eligible for special education services under the eligibility category of developmental delay and noted that the Student's behavior adversely impacted the Student's access to his education. The draft IEP also noted that the Student was observed by a behavior specialist on June 7, 2023. This draft IEP included social emotional, fine motor, cognitive, and communication goals and services.

The August 2023 draft IEP included several accommodations and the following special education and related services:

- OT (fine motor skills): 25 minutes a week in a special education setting;
- Cognitive: 45 minutes, five times per week, in a special education classroom;
- Social Emotional: 15 minutes five times per week, in a special education setting;
- Communication: 25 minutes weekly with a speech language pathologist, in a special education setting.

44. The District provided progress reports for the March 2023 IEP, dated June 12, 2023. The progress report stated the Student was making sufficient progress toward his communication goals.

## **CONCLUSIONS**

**Issue One: Evaluation Procedures** – The first issue is whether the District followed procedures to respond to the Parent's request for an evaluation beginning in September 2022. The Parent alleged that they requested an IEP or special education services for the Student many times throughout the school year and stated that they asked the school to help with the Student's behavior episodes in class, while in the school's office.

### Request for Special Education Services & Referral

The District stated that the Parent did not request special education services until December 2022. However, the Parent sent an email in December of 2022, that documented her frustration with the



District and noted that she requested an evaluation several times in the fall of 2022—indicating the Parent had suggested the Student had a potential need for special education services earlier in the fall. Further, the paraeducator’s logs show that the Parent was at the school on many occasions, to pick up the Student after his behavioral incidents in class. Therefore, while there are no written requests to corroborate the Parent’s assertion that she asked for an IDEA evaluation or services in the fall of 2022, it is found to be more likely than not that the Parent did in fact ask for a special education evaluation or services at some point during the many documented visits to the school campus that were related to the Student’s behavioral incidents.

Washington state law and federal regulations hold that any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. An IDEA referral may be implied when a parent informs a school that a child may have special needs. 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.

Here, the District said that “only a parent” may make a referral for special education evaluations. This is incorrect under state and federal law. The classroom teacher, school administrator, or paraeducator could and likely should have referred the Student for a special education evaluation after his many behavioral incidents, which started in September of 2022. These incidents grew in intensity and impacted the Student, his peers, and the educators. The District is incorrect in its position that only a parent may refer a student for a special education evaluation; further, the District failed to act on the Parents above-described requests for a special education evaluation in fall of 2022.

In this case, the Parent notified the District of the pending autism evaluation and suspected disabilities; however, the Parent’s referral was not documented in the fall of 2022 nor was a PWN sent to the Parent at this time. Further, when the Parent did make a written referral in December 2022 and was provided, and signed consent for a special education evaluation on December 20, 2022, the District seemed to treat the signed consent form as a parental referral. The District stated it received the Parent’s referral on January 4, 2023, and then had the Parent sign a consent for evaluation again on March 7, 2023. It is unclear from the records that were provided, if the District mistakenly sent the Parent the consent form in December 2022, if it conflated the parental consent for evaluation requirements with the general special education referral process, or whether the District improperly required the Parent to sign a consent again later the same school year, for a separate area of suspected disability. Ultimately, the end result remains the same, in that the District was out of compliance with the requirements of the IDEA.

#### Child Find & Initial Evaluation

Concurrent with referral responsibilities, the District also has a “child find” obligation—an obligation to find and evaluate children with disabilities and these evaluations must include all areas of suspected disability. The purpose of an initial evaluation is to determine whether a

student is eligible for special education. A school district must assess a student in all areas related to their 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 service needs, whether or not they are commonly linked to the disability category in which the student has been classified.

Here, the District failed to conduct a timely comprehensive initial evaluation, as it required the Student's Parent to sign a new consent form for each specific area related to his disability (communication, behavior, motor skills, etc.) and started a new evaluation process after each form, delaying the overall timeline to complete a comprehensive evaluation of the Student. The end result was that the Student continued to struggle in a general education classroom without services for an entire year, and that the Student did not get an IEP that addressed all areas of his disability and all his disability related needs during the 2022–23 school year. Additionally, the District's child find obligation to evaluate a child with a suspected disability was triggered many times during the school year, but the evaluation was not fully completed until June of 2023.

#### Medical Information & Diagnoses

The 9th Circuit has stated that "if a school district is on notice that a child may have a particular disorder, it *must* assess that child for the disorder, regardless of the subjective views of its staff members concerning the likely outcome of such an assessment" and that notice that a child may have a particular disability can come from expressed parental concerns about a child's symptoms, expressed opinions by informed professionals, or less formal indicators such as the child's behavior.<sup>1</sup>

Here, the Parent notified the District multiple times that they suspected the Student had autism and ADHD and that the Student was on a waitlist for medical evaluations in these areas. Instead of the District incorporating these suspected areas of disability into its evaluation, the District stated it could not evaluate in these areas because there was a lack of medical information. For example, the February 9, 2023 prior written notice stated they would only evaluate in the area of communication because "the District is in need of further information from the ongoing medical evaluation." Later, the District stated that the team determined it did need to do additional testing and stated the "...the Autism evaluation would be in June, and if determined eligible could trigger a reevaluation to change eligibility from communication."

While OSPI recognizes that the medical information and results of the medical autism evaluation would be very helpful to the District, it was contrary to the IDEA for the District to delay in

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<sup>1</sup> See, e.g., *Timothy O.*, 822 F.3d at 1121. See also, *Pasatiempo v. Aizawa*, 103 F.3d 796, 803 (9th Cir. 1996) ("The informed suspicions of parents, who may have consulted outside experts, should trigger the statutory protection."); *J.K. v. Missoula Cnty. Pub. Sch.*, 713 F. App'x 666, 667 (9th Cir. 2018) ("The duty to evaluate a student arises when disability is 'suspected,' or 'when the district has notice that the child has displayed symptoms of that disability'"); *N.B. v. Hellgate Elementary Sch. Dist.*, 541 f.3d 1202 (9th Cir. 2009) (The requirement to evaluate a student may be triggered by the informed suspicions of outside experts).

assessing these areas instead of conducting its own comprehensive evaluation. While the District cannot make medical diagnoses of autism or ADHD, it can educationally evaluate these areas and make an educational determination of eligibility for special education services. Further, a district cannot require a student to have a medical diagnosis before determining the student's eligibility for special education services. The district cannot require that a parent obtain and provide their own medical documentation of the student's disability as a precondition before proceeding with a special education evaluation. If medical information is necessary to complete a comprehensive evaluation of the student in all areas related to the suspected disability, the district may seek parent consent to obtain a medical evaluation at the district's expense. As part of a comprehensive evaluation and depending on a student's suspected area(s) of disability, the district may need to obtain a medical diagnosis or other medical information from an outside provider.

Overall, OSPI finds a violation with respect to referral, child find, and initial evaluation procedures. As corrective action, the District will be required to conduct training regarding child find, referral, and initial evaluations.

**Issue Two** – The Parent alleged that the District did not implement the Student's IEP, including accommodations and speech therapy, during the 2022–23 school year.

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP.

The Student's initial IEP, developed in March 2023, only included communication services. The District was able to demonstrate that the Student was given communication services after the March 2023 IEP was developed. Thus, OSPI finds no violation with respect to the implementation of the March 2023 IEP as written.

However, as discussed above, the District's initial evaluation of the Student was insufficient, resulting in the need for multiple reevaluations and additional assessments of the Student to ensure the IEP team had information on all his disability related needs. And thus, when an IEP was first created in March of 2023, it only included provisions related to the Student's communication needs. OSPI cannot overlook the fact that the Student should have been receiving additional special education services during the 2022–23 school year and that the receipt of these services was delayed due to the insufficient evaluation. An IEP must "aim to enable the child to make progress," the educational program must be "appropriately ambitious in light of [the student's] circumstances," and the student should have the opportunity to meet challenging objectives.<sup>2</sup> However, many of the Student's specific needs had to do with his behavior in class and with peers. While the District was able to demonstrate the Student made progress on his communication goals on the IEP, by the end of June 2023, overall, the only IEP that was finalized during the school year at issue was insufficient to address the Student's needs. As such, the District is found out of

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<sup>2</sup> *Endrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017).

compliance for this allegation and the District will be required to provide the Student compensatory education, based on the August 2023 draft IEP, as the draft IEP better represents the services and supports the Student's needs.

Based on the District's calendar for the 2022–23 school year, there were 14 weeks of school from March–June 2023. Thus, based off of the August 2023 draft IEP, the Student should have received the following services and will receive the following as compensatory education:

- OT (fine motor skills): 350 minutes
- Cognitive: 3,150 minutes
- Social Emotional: 1,050
- Communication: 350 minutes

### **CORRECTIVE ACTIONS**

By or before **August 18, 2023, September 6, 2023, September 15, 2023, October 2, 2023, November 6, 2023, February 27, 2024, and August 1, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Compensatory Education**

By or before **August 30, 2023**, the District and Parent will develop a schedule for the following hours of compensatory education, divided as follows:

- 350 minutes of OT (fine motor skills work)
- 3,150 minutes of cognitive services
- 1,050 minutes of social emotional services
- 350 minutes of communication services with a SLP

Unless otherwise agreed to by the District and Parent, all services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services will be provided outside the District's school day and can be scheduled on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program, if that program will provide specially designed instruction in the Student's areas of service. The District will provide OSPI with documentation of the schedule for services by or **September 6, 2023**.

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 **August 1, 2024**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **November 6, 2023** and **February 27, 2024** 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 **August 1, 2024**, 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 any needed 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 **August 1, 2024**.

**DISTRICT SPECIFIC:**

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer) and OSPI Special Education staff, will co-develop and jointly conduct a training on the below topics.

The following District staff will receive training: District special education administrators and psychologists, and the following at the Student's school: principal, assistant principal, special education certified staff (teachers), general education teachers who have students with IEPs in their classes, educational staff associates (ESAs), and paraeducators. The training will cover the following topics:

- Child find responsibilities, process and procedures;
- Referral process and timelines, including responding to parent and other referrals; and,
- Initial evaluation procedures, including consent, conducting sufficient evaluations, and obligations around obtaining medical information.

The training will include examples.

By or before **August 18, 2023**, the District will contact OSPI to schedule a planning meeting for the training and below implementation plan, attended by the District, OSPI Special Education staff, and any other trainer the District wants to use.

The training will also include post-training implementation activities for staff to demonstrate their learning and the District to support implementation. The District will propose the plan and OSPI will review and provide input. The implementation should include technical assistance support from OSPI Special Education staff and support could include job-embedded coaching, holding community/parent engagement meetings, additional trainings or development of a training series, exploring policy and procedure revision, development of a District monthly audit to ensure discipline is being properly tracked, etc. By or before **September 15, 2023**, the District will provide OSPI with the training plan and post-training activities for review, input, and approval.

By or before **October 2, 2023**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by October 9, 2023.

By **October 30, 2023**, the District will conduct the training regarding the topics raised in this complaint decision.

By **November 6, 2023**, 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 a 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 to OSPI.

Dated this 1st day of August, 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.)