

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-29**

### **PROCEDURAL HISTORY**

On March 3, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from an attorney (Complainant) representing the Parents of a student (Student) attending the Edmonds School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

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

On March 16, 2023, the District requested an extension of time to respond to the complaint. OSPI granted the extension to March 29, 2023.

On March 29, 2023, OSPI received the District's response to the complaint and forwarded it to the Complainant on March 31, 2023. OSPI invited the Complainant to reply.

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

### **ISSUES**

1. Did the District follow procedures according to WAC 392-172A-05146 when conducting a manifestation determination review(s) of the Student's behavior during the incidents?
2. Did the District provide the Student with special education services in conformity with the individualized education program (IEP) from December 16, 2022 to March 3, 2023?

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on March 4, 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.

### **LEGAL STANDARDS**

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 FBA, unless the district had conducted a FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or, if a BIP already has been developed, review the behavioral intervention plan, 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 behavioral intervention plan. 34 CFR §300.530(f); WAC 392-172A-05147.

When a disciplinary exclusion exceeds ten school days and the behavior in question is found not to be a manifestation of the student's disability, a district may apply the same relevant disciplinary procedures, in the same manner and for the same duration as it would to a student not eligible for special education, except that: the student must continue to receive services that provide a FAPE and enable the student to continue to participate in the general education curriculum and progress toward meeting annual IEP goals, even if services are provided in another setting; and receive, as appropriate, a FBA and behavioral intervention services that are designed to address the behavior violation so that it does not recur. 34 CFR §300.530(c)-(d); WAC 392-172A-05145.

Educational Services During Suspensions: 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). A school district may not suspend the provision of educational services to a student in response to behavioral violations. During the suspension, expulsion, or emergency expulsion of a student, a school district must provide the student the opportunity to receive educational services. 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.

A school district may provide educational services to the student in an alternative setting or modify the suspension or expulsion on a case-by-case basis. An alternative setting should be comparable, equitable, and appropriate to the regular educational services a student would have received without the exclusionary discipline. Example alternative settings include alternative high schools, one-on-one tutoring, and online learning.

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. The school district must provide the written notice in person, by mail, or by email. The notice must include: (a) A description of the educational services that will be provided; and (b) The name and contact information for the school personnel who can offer support to keep the student current with assignments and course work as required under this section.

For students subject to suspension or emergency expulsion for six to ten consecutive school days, a school district must provide at least the following: (a) 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. School personnel must make a reasonable attempt to contact the student or parents within three school business days following the start of the suspension or emergency expulsion and periodically thereafter until the suspension or emergency expulsion ends to: (i) Coordinate the delivery and grading of course work between the student and the student's teacher(s) at a frequency that would allow the student to keep current with assignments and course work for all of the student's regular subjects or classes; and (ii) Communicate with the student, parents, and the student's teacher(s) about the student's academic progress. An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency expulsion. WAC 392-400-610 (1)–(4).

### FINDINGS OF FACT

#### 2021–2022 School Year

1. During the 2021–2022 school year, the Student was an eighth grader who attended a District middle school. The Student was eligible for special education services under the category of autism.
2. On December 7, 2021, the Student’s IEP team developed a new annual IEP for the Student. The IEP included annual goals for helping the Student to cope with frustration, follow directions, and organize his materials. The Student’s December 2021 IEP provided the Student with the following specially designed instruction:

**Services 08/01/2022–12/13/2022**

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Emotional Regulation	Special Education Teacher	Special Education Teacher	10 Minutes / 1 Times Weekly	Special Education	08/01/22	12/13/22
Learning Strategies/ Organization Skills	Special Education Teacher	Special Education Teacher	10 Minutes / 1 Times Weekly	Special Education	08/01/22	12/13/22
Social Skills	Special Education Teacher	Special Education Teacher	10 Minutes / 1 Times Weekly	Special Education	08/01/22	12/13/22
Counseling	School Counselor	School Counselor	15 Minutes / 1 Times Weekly	Special Education	08/01/22	12/13/22

3. The Student’s IEP included a behavioral intervention plan (BIP) that targeted coping with frustration, expressing frustration, and managing emotional response to frustrating situations. The BIP noted that the Student’s frustration can lead to “explosive outburst,” but there was no indication that the Student had the propensity for physical aggression. The BIP also stated that the “[Student] has not been responsive to disciplinary actions like school suspensions because it has reinforced [Student’s] desire to be out of school.”

## 2022–2023 School Year

4. At the beginning of the 2022–2023 school year, the Student attended ninth grade in a District high school and continued to be eligible to receive special education services.
5. On September 7, 2022, the school year began in the District.
6. On October 17, 2022, the District issued a one-day in-school suspension to the Student for using foul language and disrupting class. Later, the Parent appealed, and the suspension was reduced to three class periods.
7. On October 27, 2022, the District suspended the Student for 1.25 days for making racist comments to classmates and failing to comply with adult direction.
8. On November 22, 2022, District staff discovered the Student wrote a “kill list” that included three District staff and two other students. On the same day, the District issued an emergency expulsion. The suspension was later documented in a letter, dated December 12, 2022, to the Parent, stating the emergency expulsion was imposed on November 22, 2022. The letter stated that the Student would be suspended out-of-school for six days starting on December 2, 2022 and in-school suspended for one day, December 13, 2022.
9. Sometime on or around December 5, 2022, the District conducted a threat assessment regarding the Student. According to the District, the Student’s “kill list” was not a substantial threat.
10. On December 6, 2022, the District convened the Student’s team to review the IEP. The IEP provided annual goals in the areas of emotional regulation, learning strategies/organization skills, and social skills. The IEP provided the following special education services:

**Services 12/12/2022–12/11/2023**

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
Emotional Regulation	Special Education Teacher	Special Education Teacher	30 Minutes / 3 Times Weekly	Special Education
Learning Strategies/ Organizational Skills	Special Education Teacher	Special Education Teacher	30 Minutes / 3 Times Weekly	Special Education
Social Skills	Special Education Teacher	Special Education Teacher	30 Minutes / 3 Times Weekly	Special Education
Counseling	School Counselor	School Counselor	15 Minutes / 1 Times Weekly	Special Education

11. The IEP team updated the Student’s BIP as well, and it continued to target coping with frustration, expressing frustration, and managing emotional response to frustrating situations. The BIP stated, “When dysregulated emotionally, [Student] may have strong verbal and physical reactions, such as throwing himself on the floor, crying loudly, and repeatedly verbalized offensive comments...” There was no indication that the Student was physically aggressive towards staff or students.

12. According to the District, on December 16, 2022, the District administrators were informed that the Student threatened to post pictures and personal information of District staff and students on the internet and have staff fired for disrespecting him.
13. On December 16, 2022, the documentation showed a District letter, notifying the Parent that the Student was placed on "Out-of-School Short-Term Suspension" for ten days beginning January 3, 2023.
14. From December 19, 2022 to January 3, 2023, the District was on winter break.
15. On December 23, 2022, the Parent's legal counsel emailed the assistant principal, requesting to appeal the "improper 10 day suspension." Counsel requested all documentation regarding the disciplinary action and requested that an emergency IEP meeting and a manifestation determination review (MDR) be held on January 3, 2023.
16. Sometime in December 2022, two District staff members named in the "kill list" filed for protection orders against the Student in court. On December 28 and 29, 2022, temporary no-contact orders were granted.
17. On January 3, 2023, the Student's private psychiatrist wrote a letter, describing the Student's behavior involving familiar and new situations, actions or words that hurt others, and "changing 'emotional' channels." The psychiatrist, in part, stated:

Because of [Student's] intelligence and verbal abilities, it can be hard for others to appreciate the significance of his autism and the impact it has on his social functioning. Children like [Student] who do not have obvious cognitive and language deficits often struggle in more subtle ways. They struggle to feel connected and fit in. They often do not understand the experiences of others. Most importantly, they have difficulty using feedback and social cues in real time to adjust their behavior. The degree of control over words and actions can vary considerably depending on the circumstances. While some decisions are volitional if maladaptive, children like [Student] can appear to have more agency than they actually do. Control and perspective can be learned, but progress is often slow...

Once he is in a difficult situation and others around him react, the combination of anxiety and rigidity perpetuates the situation. He has trouble finding a way out. None of this is offered to suggest that he should not be held accountable or is incapable of learning from experience. But rather the trajectory of his learning and internalization of moral and social significance of his behavior will likely take a unique trajectory. It may not be predictably stepwise, progressive or linear. This may be frustrating and puzzling for some working with him. Again, while this does not mitigate his responsibility, I suspect there are times when even he is frustrated that he gets in his own way. If nothing else, he recognizes that his behavior has consequences and may impact his plans for his future...
18. Also, on January 3, 2023, the Student's private psychologist who worked weekly with the Student wrote a letter regarding the Student's behaviors involved in the suspension. The psychologist stated that despite the threats, the Student "has never been physically aggressive or violent towards adults or peers and I do not believe that he would ever harm another person." His extreme attention-seeking behaviors are meant to "trigger" adults and are related

to his autism. The Student's threat to put personal information online was "based on lack of social awareness, perspective taking, and limited problem-solving tools."

19. On January 3, 2023, the Parent and assistant principal exchanged emails that the Student would receive his classroom assignments through the District's learning management system.
20. On January 3 and 4, 2023, the District and Parent legal counsels exchanged emails regarding appealing the ten-day suspension. The Parent's legal counsel stated, in part, that if the District "will agree to overturn the suspension, she (the Parent) will keep [Student] out of school until we are able to come up with a plan on Friday..."
21. On January 6, 2023, the District conducted a MDR to determine whether the Student's behavior was directly related to his disability or due to a failure to implement the Student's IEP. The participants included the following:
  - District representative
  - General education teacher
  - Parent
  - School psychologist
  - Special education teacher
  - Director of special education
  - District legal counsel
  - Executive director
  - Parent legal counsel
  - Principal
  - Student's private therapist
22. The District's response to the complaint stated that the team considered the input from school staff who worked with the Student, the Student's outside counselors, and the letters from the Student's private providers. The team determined the behavior did not have a substantial relationship to the Student's autism and did not result from a substantial failure to implement the IEP.
23. The complaint alleged the District failed to conduct an adequate MDR. Despite the letters from the Student's private providers, stating the "hyperbolic kill list" and the threat to put staff and student online was directly related to the Student's disability, the District found there was no substantial relationship between the Student's disability and the behaviors resulting in suspensions.
24. On the same day, following the MDR meeting, the District conducted an IEP meeting. The prior written notice stated the Parent requested the District consider a list of private placements for the Student. The District agreed that the Student needed a smaller and more supportive placement apart from the pressures of a public school. The notice also stated the Parent was "not prepared to make a decision or agree with district's proposal for private placement at the time of the meeting." The team would follow up with the Parent about placements after the meeting.
25. On the same day, the District addressed the Parent's appeal of the ten-day suspension. The suspension was reduced to four days, which ended on January 6, 2023.

26. On January 17, 2023, according to the District, after not hearing from the Parent about the private placements, the District legal counsel contacted the Parent's legal counsel who responded that the Parent was interested in visiting the proposed placements.
27. At this time, the District agreed to provide tutoring to the Student. The implementation log showed that beginning on January 23, 2023, the Student received 5.5 hours of instruction. Later, in February 2023, the log showed the Student received 6.5 hours of instruction. The District stated that some services were not implemented because of internet outage, snow, and the Parent "elected not to access further services after making the decision that Student would attend [private placement]."
28. On January 18, 2023, the no-contact orders between the two District staff and Student were dismissed. At this time, according to the District, the Parent agreed the Student would not return to his previous school and work together on privately placing the Student.
29. On March 3, 2023, the Complainant filed this complaint with OSPI.
30. On March 13, 2023, the Student began attending the private placement and receiving services.
31. In the District's response, the District acknowledged that the Student's special education services were not implemented. Based on the date the Student began receiving services at the private placement, the District calculated the Student missed 47.5 hours of special education services between December 16, 2022 and March 13, 2023. With consideration of the 11 hours of tutoring the Student received and that the compensatory education would be provided 1:1, the District has proposed providing 16 hours of compensatory education to the Student.

## **CONCLUSIONS**

**Issue One: Manifestation Determination** – The complaint alleged the District failed to conduct an adequate MDR.

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.

Since the beginning of the school year, the Student accumulated approximately 13 days of suspension. No single suspension was for more than ten consecutive days. At the Parent's request, the District conducted a MDR on January 6, 2023, to determine if the Student's behavior that prompted the suspensions were related to his disability. The MDR form showed the Parent, their

legal counsel, and the Student's private psychologist (who wrote one of the letters) attended the meeting, along with the District's IEP team members, and provided input. Some of those team members had experience working with the Student. The team also considered the information from the Student's psychiatrist. The information from the psychiatrist indicated that the Student's behavior was consistent with his pattern of making threats, but the Student was not a substantial threat given that the Student would not follow through with the threat. This was substantiated by the threat assessment. However, the question addressed at an MDR is not whether the threat was viable, but whether the behavior was disability related. Considering all the information, the team found there was not a substantial relationship between the behavior and the Student's disability. Based on the information reviewed by the team, the conclusion was not unreasonable. No violation is found. No violation is found.

**Issue Two: Educational Services During Suspension** – The complaint alleged the District failed to provide special education services to the Student from December 16, 2022 to March 3, 2023.

A school district may not suspend the provision of educational services to a student in response to behavioral violations. 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. During the suspension of a student, a school district must provide the student the opportunity to receive educational services. 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. A school district may provide educational services to the student in an alternative setting or modify the suspension or expulsion on a case-by-case basis. An alternative setting should be comparable, equitable, and appropriate to the regular educational services a student would have received without the exclusionary discipline. Example alternative settings include alternative high schools, one-on-one tutoring, and online learning.

For students subject to suspension or emergency expulsion for six to ten consecutive school days, a school district must provide at least the following: 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. School personnel must make a reasonable attempt to contact the student or parents within three school business days following the start of the suspension or emergency expulsion and periodically thereafter until the suspension or emergency expulsion ends to: (i) coordinate the delivery and grading of course work between the student and the student's teacher(s) at a frequency that would allow the student to keep current with assignments and course work for all of the student's regular subjects or classes; and (ii) communicate with the student, parents, and the student's teacher(s) about the student's academic progress. An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency expulsion.

Here, the Student's December 2022 IEP provided for specially designed instruction in the areas of emotional regulation, learning and organizational strategies, and social skills. The IEP provided



270 minutes a week of specially designed instruction in these areas of counseling for 15 minutes each week. After the Student was suspended on December 16, 2022, the Student received some tutoring while suspended and awaiting the private placement that began on March 13, 2023. The District acknowledged the Student did not receive 47.5 hours of special education services according to his IEP. In addition, the District stated the Student received 11 hours of tutoring and the hours should be counted towards special education services, but there was no indication it was specially designed instruction. Based on the Student not receiving his special education services from December 16, 2022 to March 12, 2023, a violation is found. The District is required to provide the Student with compensatory education services. Since the services will be provided 1:1 rather than in a classroom with other students, the District will provide 20 hours of services in the goal areas and counseling.

### **CORRECTIVE ACTIONS**

By or before **May 12, 2023, June 1, 2023, September 1, 2023, December 1, 2023, and January 12, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

By **May 12, 2023**, the District and Parent will develop a schedule for 20 hours of compensatory education in the areas of social skills, emotional regulations, and learning strategies/organization. The District must also provide the Student with counseling.

Unless otherwise agreed to by the District and Parent, 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 schedule 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 before **May 12, 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 **December 31, 2023**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **June 1, 2023, September 1, 2023, and December 1, 2023** 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 12, 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 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 12, 2024**.

**DISTRICT SPECIFIC:**

**Written Guidance**

By **May 26, 2023**, the District will ensure that the following individuals receive written guidance on implementing the special education services during disciplinary removals: 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 2022–2023 school year. The guidance will include examples and discussion of best practices.

By **May 12, 2023**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by May 19, 2023.

By **June 1, 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.

Dated this 1st day of May, 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.)