

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-119**

### **PROCEDURAL HISTORY**

On August 30, 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 Camas 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 August 30, 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 September 15, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On September 28, 2023, the OSPI complaint investigator interviewed the Parents.

Also, on September 28, 2023, OSPI received additional information from the Parents. OSPI forwarded the additional information to the District on October 20, 2023.

On October 13, 2023, the OSPI complaint investigator conducted interviews with District staff.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during interviews.

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on August 31, 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. During the 2022-23 school year, did the District materially implement the Student's individualized education program (IEP) accommodations in the Student's English class?
2. During the 2022-23 school year, did the District follow proper IEP development procedures, specifically, did the District follow proper procedures to respond to any potential change in need resulting from the Student's disability as it related to anxiety, appropriate IEP goals, and the appropriate least restrictive environment?

### **LEGAL STANDARDS**

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (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. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 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 (9th Cir. 2007).

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student's learning. 34 CFR §300.324; WAC 392-172A-03110. Part of the information the IEP team considers when reviewing and revising a student's IEP is the result of the most recent evaluation. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

## **FINDINGS OF FACT**

### **Background**

1. On February 4, 2021, the District completed an initial special education evaluation for the Student. The evaluation noted that the Student's diagnosis of OCD and anxiety negatively impacted the Student's academic experience. As a result of the Student's identified disability and eligibility for special education services, the Student required support in social emotional behavior and executive functioning.
2. On February 4, 2021, the District proposed to initiate the provision of special education services. The District noted the Student required more support in social emotional behavior and executive functioning than had been provided as part of the Student's previous 504 plan.
3. On February 8, 2022, the Student's individualized education program (IEP) team developed a new annual IEP for the Student. The IEP included annual goals in social emotional behavior, with progress reporting at the end of each semester. The IEP provided the Student with the following specially designed instruction in a *special education setting*:
  - Social Emotional Behavior: 10 minutes a week (to be provided by special education staff)

The Student's social emotional behavior goal was written as:

...when given an overwhelming or confusing task [the Student] will ask for help, use taught self advocacy skills improving increased perseverance, self advocacy, and reduce anxiety from from [sic] shutting down, not engaging or missing assignments in class or activity in 2 out of 5 given opportunities to to [sic] engaging in class in 5 out of 5 given opportunities using self advocacy strategies as measured by as measured by (sic) observations, teacher reports.

The Student's IEP also included the supplementary aid/service of:

- Organizational Assistance: 5 minutes a week (to be provided by special education staff)

The Student's IEP included accommodations and modifications, such as:

- Breaking tasks into manageable chunks, with staggered dates;
- Check-in with case-manager or designated staff member for collaborative problem solving;
- Email with teachers/staff to check-in to confirm understanding, progress, and questions;
- Examples of assignments to show "big picture"/end product, when possible, extended time to complete testing, extra time to complete assignments;
- Flexibility in demonstrating knowledge of skills/content;
- Graphic organizers;
- Preferential seating;
- reduced length of assignments;
- Teachers avoiding calling on the Student; and,
- Use of to-do/checklists for assignments.

### **2022–23 School Year**

4. At the start of the 2022–23 school year, the Student continued to be eligible for special education services under the category of emotional behavioral disability, was in the ninth grade, attended a District high school, and her February 2022 IEP was in effect.
5. The District's 2022–23 school year began on August 29, 2022.
6. The Parents reported that on September 10, 2022, they sent an email to one of the Student's teachers (teacher 1) and other teachers in the District, sharing the Student's IEP and accommodations. The Parents wrote in relevant part that the Student "gets overwhelmed by...attention...is very private and shy...has perfectionist/just-right OCD to a level of distress and pushes [themselves] hard." The Parents' email included a list of accommodations from the Student's IEP.
7. On September 12, 2022, teacher 1 responded to the Parents' email, thanked them for their insights, and reported their communication with the District's IEP coordinator regarding ideas for the Student.
8. Also, on September 12, 2022, the Parents, responding to teacher 1, wrote in part that, "it takes so much time for [the Student] to produce a piece of writing. [The Student] needs supports and clear direction on what steps to take to get [their] thoughts out." The Parents went on to describe that the Student came home overwhelmed by the assignment given in class that day,

and that it took the Student over 20 hours to produce the previous written assignment given in class. The Parents reported that the Student needed assistance with organizing her thoughts to improve her process and produce work in a reasonable time.

9. On September 13, 2022, teacher 1 responded to the Parents' email, explaining that the assignment under discussion was a "pre-assignment" with minimal directions. Teacher 1 explained that they "need to see where the students are with each kind of writing before [they] can determine what [they] needed to work on." Teacher 1 noted that the writing style utilized in the course was very scripted, which should be of assistance to the Student.
10. On September 13, 2022, the Student's case manager sent an email to the Parents and teacher 1, reporting that they were working to set up a meeting so that everyone could "be on the same page and support [the Student] this school year." The case manager suggested front loading some assignments to give the Student "time to process what is coming up and give [the Student] extra time on the front end."
11. On September 20, 2022, the Parents, teacher 1, and the case manager met to discuss the Student's needs. As part of that meeting, the Student's IEP team met to revise the Student's IEP. During the meeting, IEP team members observed that the Student then had an A (94%) in ninth grade English and was meeting or exceeding expectations in her other academic courses. The Student's IEP team proposed to change the Student's social emotional behavior goals to work on the Student's self-advocacy skills rather than getting started on assignments since this was seen as a bigger need for the Student.

The Student's September 20, 2022 IEP provided the Student with the same amount of specially designed instruction as provided in the February 2022 IEP. The IEP team also modified the Student's IEP accommodations to include:

- Avoid calling on in class unless student is volunteering (putting [them] on the spot);
- Break large tasks into manageable chunks with staggered dates;
- Check-in with case-manager or designated staff member for collaborative problem solving;
- Copy of class discussion questions prior to discussions, advance warning to be called upon;
- Email with teachers/staff to check-in to confirm understanding, progress, and questions;
- Examples of assignments to show "big picture"/end product, when possible;
- Extended time to complete testing (specify);
- Extra time to complete assignments (due by end of unit);
- Flexibility in demonstrating knowledge of skills/content e.g., gestures, written or verbal (especially when advocating the need for alternative);
- Home/school communication (specify communication plan);
- Graphic organizers;
- Preferential seating (based on student preference);
- Provide feedback (positive and negative) privately;
- Reduced length of assignments (no change to content);
- Sensory breaks;
- Small group or individual presentations;
- Teachers will check for understanding of instructions;
- Use of clear and specific language (avoid sarcasm and ambiguity); and,
- Use of to-do/checklists for assignments.

12. On September 22, 2022, the Parents emailed teacher 1 and the case manager. The Parents report that teacher 1 called on the Student to “speak about race in front of the class,” which caused the Student to experience known adverse effects and extreme anxiety. The Parents asked to speak with teacher 1 regarding their choosing the Student to call on in class that day. The Parents wrote that it was their “understanding from [the] meeting on Tuesday that [the Student’s] team would allow [the Student] to get comfortable and keep a low profile.” The Parents reported that the Student had sent them a text message during the school day in distress over being called on in class. The Parents noted that the topic chosen for the Student to discuss potentially also added to the Student’s distress. The Parents invited teacher 1 to share their “point of view on supporting [the Student].”
13. Also, on September 22, 2022, the Parents and the case manager exchanged emails, titled “Social Anxiety Triggers,” regarding concerns the Student had. The case manager confirmed that the Student had come to talk with them that day.
14. On September 23, 2022, teacher 1, responding to the Parents, wrote in part:

I spoke with [the Student] earlier and we made a plan on how to handle discussions. I will allow [the Student] to choose questions that work for [them]. [The Student] agreed that would allow [them] to be prepared. I asked [them] on Wednesday during class if [they were] comfortable discussing any of the questions and [they] identified three. I called [the Student] for one of the questions that [they] identified. Me calling on [them] should have been no surprise as we talked about it and [they] agreed to my plan. I handled it exactly like I handled the seating chart. I asked [them] if [they were] fine sitting beside me so I could check in regularly, though [their] IEP called for [them] to sit in the back, [they] agreed.
15. Also, on September 23, 2022, the Parent report that the Student’s case manager suggested the Student transfer to a different class.

The Parents sent an email to the case manager, inquiring whether the Student’s schedule could be changed to remove the Student from teacher 1’s class. The case manager responded that they were looking into whether the Student’s schedule could be changed, and whether the Student’s needs could be met without a schedule change.

16. On September 26, 2022, the Parents, responding to teacher 1, thanking them for sharing the steps they took before calling on the Student. The Parent went on to write that their:

...concern is around the pace and thought process behind the steps and the impact they are having on [the Student’s] learning. By calling on [the Student] as the second student to share [their] views with the class sent [the Student] into unnecessary distress. This distress carried into the next day preventing [the Student] from focusing on school work. At this point [the Student] is not ready to be called on at all.

The Parents went on to recap the prior week’s IEP meeting and the solutions agreed upon at that meeting. The Parents wrote further that the ideas coming out of that meeting included:

...meeting [the Student] where [they are] at using last weeks situation: (1) when asking [the Student] questions the day before allow [them] to come home and process it. Many times [the Student] will answer under pressure and regret [their] answer. [The Student] is working

on saying 'I need time to think about it' or 'I'd like to but I'm not ready.' (2) Have [the Student] share in a smaller group, to you, or as one of the last students (but not the last).

17. Also, on September 26, 2022, the school's dean of students (dean) sent an email to the Parents and the case manager, informing the Parents that the District continued to "find ways to best support [the Student]. A schedule change may be a possibility." But the dean stated that they wanted to connect with teacher 1 first.
18. Later, on September 26, 2022, the Parents responded by email, writing that "there have been multiple situations in the past few weeks where [teacher 1] has drawn unnecessary attention to [the Student]." And that one example of this was that "after sharing [their] challenges with an essay, [teacher 1] made comment to the class about everyone being ready, then looked at [the Student] and said 'isn't that right [Student]?' Small things like this are huge for [the Student] due to [their] social anxiety."
19. On September 28, 2022, the Parents sent an email to the dean, expressing dismay regarding the Student's experience in teacher 1's class to date. The Parents felt it important for the dean to meet with the Student directly to better understand the Student's needs.
20. On October 4, 2022, the dean emailed the Parents, reporting that the Student was called on that day in teacher 1's class. The dean expressed interest in changing the Student's schedule to move the Student out of teacher 1's class.
21. On October 5, 2022, the Parents sent an email to the dean, suggesting that the change in schedule might not have been the right decision for the Student.<sup>1</sup> The Parents wrote that despite what they felt were prior failures of teacher 1 to follow the Student's IEP, that teacher 1's "class is a much better fit at this time compared to the loose freedom of [teacher 2's] class." The Parents further noted that the Student's IEP included the accommodation for, "teachers to avoid calling on [the Student] (putting [the Student] on the spot)."
22. On October 6, 2022, the dean, responding to the Parent's October 5, 2022 email, offered to meet to discuss the appropriate next steps to assist the Student in teacher 1's class.
23. Also, on October 6, 2022, the Parents sent an email to the case manager and dean, offering suggestions for improving the Student's access to her education. Part of this email addressed the scenario of the Student remaining in teacher 1's class or switching from teacher 1's class. In this email, the Parent wrote that teacher 1 "has been consistently not following the IEP by putting [the Student] on the spot" or "not respecting [the Student's] social anxiety. Some examples are calling on [the Student] to answer questions to the class and drawing attention to the work that [the Student has] done by using [the Student] as an example."

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<sup>1</sup> The documentation reviewed in the complaint indicated the District attempted to change the Student's schedule and after one day, determined it was overwhelming for the Student to go to a new class and a class with more students than teacher 1's class.

24. On October 10, 2022, the dean sent the Parents a video conference link for a meeting scheduled for October 11, 2022.
25. On November 17, 2022, the Parents emailed the case manager, inquiring about whether they had information about an upcoming speech in teacher 1's classroom.
26. On November 18, 2022, the case manager emailed that the Student "...is going to be given [their topic] and have time to prepare. I believe it's going to take place on Monday. [The Student] mention that [they] asked to give [their] speech during conference period. I also made this request. I'm not sure where that has landed but will get back to you."
27. On November 18, 2022, the Parent's responded that this assignment appeared to violate the Student's IEP. On the same day, the Parents also expressed in an email that they are noticing a high level of stress in the Student at home, but were not sure if the pending speech assignment was contributing to that or not. The Parent's also inquired about the possibility of the Student transferring to a different class from teacher 1's class.
28. On November 22, 2022, the case manager sent an email to the Parents, suggesting that the Student meet with any potential new teachers before making changes to the Student's schedule to avoid having "another incident like the previous class swap, so hearing [the Student's] concerns is key."
29. On November 29, 2022, in response to the case manager's November 22, 2022 email, the Parents sent an email, reporting that the Student told the Parents that she and the case manager had met that day, and that everything was fine in teacher 1's class. The Parents wrote that they had talked to the Student and that the Student's opinion had changed since the prior week. The Parents reported that the Student wanted the case manager to determine if there was anyone in teacher 2's class, or another class, that the Student was friends with. That way, the Student could switch to a class with friends as that would lessen the Student's social anxiety when transferring to a new class. The Parents also suggested that the Student would be helped by meeting with any prospective teachers in advance.
30. On November 30, 2022, the Student's counselor sent an email to the Student's Parents and the case manager, observing that they could not share class rosters with families, and that while the Student "having a friend in the class may be beneficial, we cannot guarantee the class will be a better fit overall."
31. On December 15, 2022, the Parents emailed the case manager, asking to meet to discuss "concerns" for the Student, related to testing the following day in teacher 1's class. The case manager offered to call the Parents later that same day.
32. On December 16, 2022, the Parents sent an email to the District, reporting a medical condition that required the Student be absent. On the same date, the case manager responded that they hoped the condition wasn't stress related. The Parent later provided a letter from the Student's physician, documenting that the Student was seen for the reported medical condition.

33. On January 2, 2023, the Parents sent an email to the case manager and others in the District, reporting that the Student's December 15, 2022 medical condition was brought on by stress. The Parents further reported that over the holiday break, the Student had less stress, which allowed the Student to reflect on her stressors. The Parents reported that teacher 1's class was consistently a source of stress for the Student. The Parents suggested that this was due to teacher 1 not following the Student's IEP. The Parents requested an IEP team meeting to discuss these concerns.
34. On January 3, 2023, the case manager responded that they knew the seating chart in teacher 1's class was a concern for the Student, and that the Student had an outstanding assignment to complete for teacher 1's class, a speech to present.
35. On January 4, 2023, the Parents emailed the case manager, the dean, and others, reporting conduct on the part of teacher 1. The Parents reported that the prior day, teacher 1:  
Whispered to [the Student] while the entire class silently worked on their own. [Teacher 1] whispered to her the following: Concerns on how to motivate [the Student] more and get [their] grades up...Telling [the Student that they are] one of [teacher 1's] brightest students...Would do well in [teacher 1's] honors class...That [teacher 1] shared [the Student's] work with the principal, and that principal responded with 'wow', Shared that [the Student] is very smart and [they] would know if [teacher 1] was just saying this, [teacher 1] know [they] can be stubborn.

The Parents wrote further that the "last remark is highly inappropriate, let alone addressing [their] thoughts and concerns for [the Student] during class, especially in such a way that draws attention from [the Student's] peers. This behavior escalates [the Student's] anxiety. [The Student is very uncomfortable around [teacher 1]." The Parents further reported that teacher 1 handed the Student a physical copy of a book that other students were reading digitally. The Parents reported that they stated during the Student's September 2022 IEP team meeting that physical books can trigger the Student's OCD. The Parents communicated the opinion that these examples on the part of teacher 1, evidenced teacher 1's failure to follow the Student's IEP.

The principal responded in part, "I will work alongside the team to make sure [the Student] does not have any further stressful situations in [teacher 1's] classroom. While [teacher 1's] intent was coming from the right place I certainly understand how it would be rather stressful for [the Student]."

36. Later, on January 4, 2023, the Parents sent an email, reporting that teacher 1 had used the Student as an example while demonstrating handing out papers. The Parents also reported that teacher 1 had "asked the class to raise their hand in [sic] they had a missing assignment. [The Student] was the only student to raise [their] hand. Because [the Student] was the only one, [teacher 1] announced [the Student] would now need to sit next to [their] desk." The Parents reported that this caused the Student to feel humiliated and that the Student left feeling ill. The Parents reported that the Student wanted to leave the classroom but couldn't get herself to leave the room. The Parents further asserted that the two instances highlighted did not support the Student's IEP.



37. On January 5, 2023, the principal sent an email to the Parents, reporting their conversation with teacher 1 and that teacher 1 was receptive to the concerns raised. The principal wrote in relevant part that the Student "will not have further issues or stressful interactions moving forward in the next three weeks." The Principal also reported that they would work with the Student's IEP team on a "plan B."
38. On January 6, 2023, the Parents sent an email to the case manager, dean, and principal, asking that the Student not return to teacher 1's class.
39. On January 10, 2023, the Parents sent an email to the District, reporting that teacher 1 "sent an email about an assignment needing to be turned in by the end of the day due to [the Student's] absence. Unfortunately this again speaks to [teacher 1's] inability to follow the IEP as [the Student] is allowed extra time and reduced assignments. This also raises the question for why there is extra work for being out sick." The Parents went on to ask about the District's grade policy and IEP accommodations, and provided a recap of incidents the Parents felt were instances of teacher 1 not following the Student's IEP.
40. On January 12, 2023, teacher 1 sent an email to the Parents, reporting that they left a quiz in the library for the Student to complete. Teacher 1 reported that the Student had not completed the quiz, which modified to provide the Student with 50% more time than typical. Teacher 1 reported that library staff provided the Student with the exam and instructions, but that the Student chose not to do the work.
41. On January 13, 2023, the Parents asked teacher 1 for more information regarding the quiz discussed in teacher 1's email the prior day. Teacher 1, responding the same day, wrote that the quiz "requires students to write two paragraphs for each question on [a novel]. I shorted [the Student's] and allowed [them] to write a single paragraph for each question. The hard part for [the Student] is that [they have] not been doing the reading. I loaned [the Student] my book last week, and [the Student] was on Chapter 4, while the class was on Chapter 11-12."
42. On January 16, 2023, the Parents sent an email to teacher 1, asking further clarifying questions regarding the quiz given to the Student on January 12. The Parents asked for more information about the quiz, how much time was given to the class for the assignment, and the timeframe for the assignment. The Parents also asked whether the Student was provided the book earlier than the copy provided to the Student in class, and what interventions were attempted prior to giving the Student the book in class. The Parents further reported that according to the Student, library staff may have given the Student the assignment late and did not provide the Student with clear instructions.
43. On January 19, 2023, the Parents sent an email, asking for an answer to their January 16, 2023, email.
44. On January 20, 2023, the principal, responding to the Parents, reported that a response would come to their January 16, 2023 email, by the end of that day. Later in the day, the principal

sent an email to the Parents, reporting that teacher 1 and the case manager were then “working on a document that will clearly identify the current missing assignments on record for [the Student] and next steps.” The principal indicated that this would assist the Student in earning their first semester credit in teacher 1’s class “without added anxiety...”

45. On January 23, 2023, the Parents sent an email to the principal, reporting that they had not received a document from teacher 1 and the case manager as described; rather, the Student reported to the Parent that teacher 1 requested a participation paper. The Parents raised objections to the work assigned based on the Parents’ concerns regarding teacher 1’s implementation of the Student’s IEP accommodations.
46. On January 30, 2023, the Student’s IEP team met to revise the Student’s IEP. As part of the meeting, a draft IEP was provided for the IEP team’s discussion.
47. The Student stopped attending school full-time, in-person, at the end of January 2023. Thereafter, the Student attempted to attend some of her classes in-person and accessed other classes online.
48. On March 30, 2023, the District held a meeting with the Parents to discuss options for school for the Student because the Student’s migraines were impacting the Student’s ability to attend school. As part of the meeting, a District administrator and the Parents agreed to meet again on April 10, 2023, to decide what options best suited the Student’s learning needs.
49. On April 10, 2023, District administrators met with the Parents and determined that they would shorten the Student’s school day. As a result of the schedule change, the Student would attend school for foreign language class and two math classes. The Student would then attend English, history, and biology through remote learning.
50. On May 5, 2023, a District administrator and the Parents met to discuss the impact of the Student’s health on her learning. The Student was then formally placed on a home/hospital placement due to medical needs following this meeting. The goal at the time was for the Student to return to a full day of classes for the 2023–24 school year.
51. The District reported that the Student’s IEP team met seven times between January 30 and June 12, 2023, to consider revisions to the Student’s IEP with the input of the Parents.
52. On June 12, 2023, the District conducted an assessment revision. As part of the revision, the Parents reported that the Student had the following diagnoses: attention deficit hyperactivity disorder (ADHD), Obsessive-Compulsive Disorder (OCD), Generalized Anxiety Disorder (GAD), and that the Student suffered from chronic migraines.
53. On June 12, 2023, the Student’s IEP team met to revise the Student’s IEP. The Student’s IEP team noted that the Student’s health had impacted her attendance. The IEP team cited a February 13, 2023 letter that indicated that beginning in December 2022, the Student had a

particularly difficult time managing migraine headaches. The Student's physician indicated that they were then working to identify and mitigate triggers and develop a treatment plan.

The IEP further indicated the Parent's concerns around the Student's grades in English and history. The Parents reported that the Student began to experience emotional distress in October 2022, and developed aura migraines beginning in December 2022. The Parents further indicated they observed a decline in the Student's grades in English over the course of three semesters and attributed this decline to the Student's needs not being met in that class.

The IEP included the following specially designed instruction:

- Social Emotional Behavior: 10 minutes a week (to be provided by special education staff, in the special education setting)
- Social Emotional Behavior: 20 minutes a week (to be provided by school psychologist, in the general education setting)
- Executive Functioning: 100 minutes a week (to be provided special education staff, in the general education setting)
- Executive Functioning: 10 minutes a week (to be provided special education staff, in the special education setting)

The Student's IEP included the same accommodations and modifications as the January 30, 2023 draft.

The Student's IEP also indicated that to address the Student's medical concerns that the Student's IEP team met on January 30, March 13, March 30, April 10, and May 5, 2023.

54. On September 15, 2023, the District submitted a response, denying the allegations in this complaint and providing supporting documentation.
55. On September 28, 2023, the OSPI investigator interviewed the Parents regarding the concerns raised in this complaint.

The Parents reported that an element of the Student's anxiety and OCD was that they felt pressured to agree with whatever was being asked of them. The Parents highlighted that while the Student's accommodations may include obtaining the Student's agreement in advance to participate in class, that the Student's anxiety would be triggered, and that the Student would feel pressured to agree.

The Parents provided details regarding the Student's anxiety and the manner in which the Student's anxiety was triggered by teacher 1. The Parents asserted that teacher 1 had not appropriately implemented the Student's IEP on numerous occasions. The Parents pointed to emails sent to the District to this effect. The Parents also suggested that the case manager's willingness to move the Student from teacher 1's class to teacher 2's class was evidence of the District's agreement that teacher 1 had not appropriately implemented the Student's IEP.

The Parents asserted that the District, and teacher 1 in particular, had not provided the Student with the appropriate IEP accommodations to the degree that the Student suffered an

exacerbation of her anxiety, requiring medical attention in December 2022. The Parents reported that this situation continued through January 2023, such that the Student was medically unable to return to school, leading to a change in placement from the least restrictive environment to the most restrictive environment.

56. On October 13, 2023, the OSPI investigator interviewed the District's director of special education and assistant director of special education. During the interview, District staff provided additional information regarding the Student's IEP accommodations and goals. The District noted that the Parents' initial concerns were about the length of time the Student took to complete assignments. When these concerns were brought to the District, and IEP team meeting was convened to address the concerns.

During the September 20, 2022 IEP team meeting, the District indicated that the Parents did report that it took the Student a long time to complete assignments in teacher 1's class. The team discussed additional modifications, including the possibility of modifying curriculum standards. District staff reported that the Parents did not support modification of curriculum standards, so the team determined that modifying the length of assignments was an appropriate accommodation.

The District also noted that the team added additional accommodations for the Student to address the concerns they raised. These accommodations were used to address the Student's needs, without modifications to the curriculum standards, as the Parents requested. The District also noted that the Student was then taking a higher course load. The District noted that the added accommodations did not include that the Student would not be called upon in class, rather that the Student and the teacher would work together to encourage classroom participation by asking the Student in advance when she wanted to participate or respond to questions/discussions in class. The District observed the difficulty of implementing this collaborative accommodation, given the Parents' assertion that the Student felt pressured to agree with whatever a teacher might suggest. The District reported the difficulty for teaching staff to understand when a student might feel pressured in the context of implementing an accommodation.

The District denied that teacher 1 failed to follow the accommodations in the IEP; rather in collaboration with the Parents, the District agreed to investigate transferring the Student to teacher 2's class to address their concerns. Prior to the transfer, the District afforded the Parents and the Student the opportunity to talk with teacher 2, and for the Student to visit teacher 2's class. The District agreed that one of the factors that made teacher 2's class unsuitable for the Student may have been the class size. Teacher 1's class was comparatively smaller.

Regarding the implementation of the Student's seating accommodation, the District observed several challenges with the implementation. The Student's IEP called for "preferential seating (based on student preference)." The District indicated that the Parents asked that the Student be seated in the back of the classroom. Teacher 1's classroom had desks arranged in a "U" shape, such that there was not necessarily an area that could be identified as the back. The

District further understood that the Parents had concerns about bringing attention to the Student. As such, teacher 1 attempted to move the Student to her preferred seat at a time that coincided with the usual seating rotation. The District also noted that allowing the Student to consistently sit as far from teacher 1 as possible would not allow teacher 1 to accomplish checks for understanding or check ins with the Student. The District reported that teacher 1 did move the Student's seat as requested with the next scheduled seating arrangement, so as not to draw attention to the Student.

The District, responding to the Parents' concern that teacher 1 had provided the Student with a physical copy of a book, observed that this came at a time when the Student was behind on her reading. The District understood that while the Student had a digital copy of the book, that the Student also suffered from migraines and that a physical copy, which did not emit light, might be more suitable. The District staff stated they wondered how they could anticipate that such an action would trigger more anxiety for the Student.

Finally, the District highlighted the number of IEP team meetings during the 2022–23 school year to address the Student's needs and the suggestions of the Parents. The District observed that some of the Student's needs may have exceeded what the educational environment could anticipate.

## **CONCLUSIONS**

**Issue One: IEP Implementation** – The Parents alleged that during the 2022–23 school year, the District failed to materially implement the Student's IEP accommodations in the Student's English class. The Parents further alleged that these failures led to the Student eventually becoming medically unable to attend school.

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. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 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.

Through October 2022, the Parents communicated with the District that teacher 1's class may not be the best fit for the Student. The Parents alleged that this was due in part to their belief that teacher 1 was not implementing the Student's IEP accommodations appropriately. Specifically, the Parents voiced concerns about check-ins with the Student, seating, and calling on the Student in class. The record indicates the District responded to these concerns as they were raised by the Parents.

The Parents noted that the Student's IEP provided preferential seating. The record included discussion regarding the Student's preferred seating location, discussion, and agreements between teacher 1 and the Student regarding seating. The District reported that teacher 1's classroom had "U" shaped seating arrangement which complicated balancing the Student's preference, at times agreement to sit near teacher 1 to facilitate check-ins (another IEP accommodation), and the Parents' perception that the Student wanted to sit further away from teacher 1.

The Parents also highlighted an occasion on September 23, 2022, when teacher 1 coordinated with the Student for her to participate in an upcoming classroom discussion. The Parents noted that this caused the Student extreme anxiety. The case manager responded at the time, that the Student and teacher 1 had discussed the issue with the Student in advance and that the Student had agreed to the plan. The Student's IEP accommodations included, "avoid calling on in class unless student is volunteering (putting [them] on the spot)" and "advance warning to be called upon." The case manager explained in an email to the Parents at the time that teacher 1 had followed those accommodations and that the Student had agreed to the participation.

The Parents raised the concern that other interactions with teacher 1 failed to conform to the Student's IEP accommodations. The Parents noted a January 3, 2023 occasion when teacher 1 whispered to the Student during class, providing the Student positive feedback. The Student's September 20, 2022 IEP included that feedback, positive and negative, would be provided to the Student, and that it would be given privately. The Parents report the potential that teacher 1 whispering the feedback to the Student drew attention to the Student, which potentially triggered the Student's anxiety.

The District provided information in interviews and documentation related to the District's attempts to respond to the Parent's concerns, and also shared the practical obstacles to implementing the Student's accommodations given subjective variables, or the Student's perception of the implementation of the accommodations. The District also observed the practical inability to anticipate how actions by teacher 1 may be subjectively interpreted by the Student. Such was the case with the Student being called on to participate in class. The District observed that the accommodation was for teachers to discuss the participation in advance and obtain the Student's agreement. Teacher 1 complied with the accommodation in this case. Despite this, the Parents reported that the Student felt compelled to comply with teacher 1's request. The District explained that implementing IEP accommodations with fidelity may be unable to avoid such inner emotional responses in some situations.

In the instances highlighted by the Parents and documentation/information reviewed in the investigation, there is insufficient information to determine that the District materially failed to implement the Student's IEP accommodations. In fact, there are instances the District implemented or attempted to implement accommodations, and unfortunately, the accommodations still triggered anxiety for the Student. Further, the few instances where the IEP accommodations may have been implemented imperfectly, do not represent a material failure to implement the IEP. For these reasons, OSPI does not find a violation. There is, however, evidence the Student's needs changed and increased over the year, which is addressed in issue two below.

**Issue Two: IEP Revision** – The Parents alleged that during the 2022–23 school year, the District did not follow proper IEP development procedures. Specifically, the Parents alleged that the District failed to follow proper procedures to respond to any potential change in need resulting from the Student’s disability as it related to anxiety, appropriate IEP goals, and the appropriate least restrictive environment.

A student’s IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student’s anticipated needs; or any other matters. In conducting its review of a student’s IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student’s learning. Part of the information the IEP team considers when reviewing and revising a student’s IEP is the result of the most recent evaluation. When the student’s service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed.

On September 12 and 13, 2022, the Parents sent emails to the District, reporting that the Student was struggling to complete assignments in teacher 1’s class. The Parents reported that the Student was taking much longer than peers to complete written assignments. Thereafter, the Parents and the Student’s case manager discussed the Student’s needs. These conversations led to the Student’s IEP team convening on September 20, 2022, to discuss the Student’s needs and revising the Student’s IEP. The Student’s accommodations were changed and added. The District reported that the Parents were not in favor of changes to curriculum standards to address the Student’s needs. As a result, the District made modifications to the length of assignments, and the manner and location of testing. Additional accommodations and modifications were added at this time to address the Student’s needs.

Ahead of the winter break, on December 15, 2022, the Parents sent an email to the case manager, asking to discuss concerns regarding upcoming testing. Before a meeting could be held, the Parents informed the District that the Student was experiencing health concerns that required the Student seek medical attention. Following the end of winter break, the Parents raised further concerns about the Student’s needs and progress in teacher 1’s class. The following week, the Student was informed of her need to complete testing in teacher 1’s class. Thereafter, the Student was unable to complete testing and was informed of several incomplete assignments. The Parents requested a meeting to discuss the Student’s needs, suggesting that the incomplete work was a sign that the Student required that her IEP be amended to address those unmet needs. On January 30, 2023, the Student’s IEP team met to discuss and revise the Student’s IEP.

As part of the January 2023 IEP meeting, the Student’s team discussed ending the Student’s self-advocacy goal, in favor of adding medical-physical and executive functioning, organizational, and study skills. Soon after this meeting, the Student stopped attending school due to medical concerns. The Student’s IEP team met seven times between January and June 2023, to revise the Student’s IEP with the Parents’ input and the District conducted an assessment revision to gain updated information about the Student’s needs given the Parents’ concerns and changing needs.

The District acknowledged that the IEP was not finalized until June 12, 2023. The District reports that despite this, accommodations discussed during the meetings were implemented for the Student during this time while the Student shifted to a hybrid schedule, accessing some instruction in-person and some remotely. The Student's placement was ultimately formally changed due to the Student's medical condition.

In summary, soon after the start of the 2022–23 school year, the Parents raised concerns regarding the Student's progress and response to her academic environment. The Student's IEP team met and revised the Student's IEP to address those concerns. By January 2023, the Parents contended that the Student required further adjustments to the IEP. The Student's IEP team met to revise the Student's IEP again. The Student ceased to attend school in-person thereafter. The Student's IEP team met seven times during the latter half of the school year to revise the Student's IEP to address these evolving needs. Finally, the District changed the Student's placement to home/hospital due to the Student's medical needs. OSPI finds that the District followed procedures to amend the IEP and worked throughout the school year to meeting the Student's changing needs, including working with the Parents to address concerns. For these reasons, OSPI does not find a violation.

### **CORRECTIVE ACTION**

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

None.

Dated this 26th day of October, 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.)