

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-129**

### **PROCEDURAL HISTORY**

On September 22, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the guardian (Guardian) of a student (Student) attending the Edmonds School District (District). The Guardian alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On September 22, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on September 25, 2023. OSPI asked the District to respond to the allegations made in the complaint by October 13, 2023.

On October 6, 2023, the District requested an extension of time to respond to the complaint. OSPI granted the extension to October 20, 2023.

On October 20, 2023, OSPI received the District's response to the complaint and forwarded it to the Guardian on October 23, 2023. OSPI invited the Guardian to reply by November 3, 2023.

On October 26, 2023, the Guardian request an extension of time to reply to the District's response and OSPI granted the extension to November 8, 2023.

On November 7, 2023, OSPI received additional information from the Guardian. OSPI forwarded the documents to the District on the same day.

On November 9, 2023, OSPI received the Guardian's reply to the District's response. OSPI forwarded it to the District on the same day.

On November 11, 2023, the OSPI complaint investigator consulted with an OSPI program supervisor/dispute resolution complaint investigator.

On November 12, 2023, the OSPI complaint investigator communicated with the Guardian regarding missing attachments from the Guardian's reply.

On November 13, 2023, OSPI received additional documents from the Guardian. OSPI forwarded them to the District on the same day.

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

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on September 23, 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. Since September 23, 2022, has the District ensured that the Guardian has had the opportunity to provide input into the Student's individualized educational program (IEP) per WACs 392-172A-03110 and 392-172A-03100/05001?
2. Since September 23, 2022, has the Student's IEP been implemented properly per WAC 392-172A-03105?
3. Since September 23, 2022, did the District follow the manifestation determination procedures to determine the relationship between the Student's behavior and disability according to WAC 392-172A-05146?
4. Since September 23, 2022, has the District provided the Student the opportunity to receive educational services during the Student's suspensions per WAC 392-172A-05145?
5. Whether the District followed procedures to determine the Student's placement for the 2023-2024 school year?

## **LEGAL STANDARDS**

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

The parent is an integral part of the IEP development process. The district must consider the parents' concerns and any information provided.

School district staff may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding IEP content, but the district must make it clear to the parents at the outset of the meeting that the services proposed by the district are only recommendations for review and discussion with the parents. Parents have the right to bring questions, concerns, and recommendations to an IEP meeting as part of a full discussion of the student's needs and the services to be provided to meet those needs before the IEP is finalized. School districts must ensure that, if district personnel bring drafts of some or all of the IEP content to the IEP meeting, there is a full discussion with the parents, before the student's IEP is finalized, regarding drafted content and the student's needs and the services to be provided to meet those needs. IDEA, 64 Fed. Reg. 12478 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 32).

Parent Participation in IEP Meetings: Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their

concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. IDEA, 64 Fed. Reg. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

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).

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

If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct a functional behavioral assessment, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or if a behavioral intervention plan 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.

Disciplinary Removals – No Change of Placement: School districts may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155. 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; WAC 392-172A-05145(2).

Placement: When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: the student's IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; the placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he or she needs. 34 CFR §300.116; WAC 392-172A-02060.

## **FINDINGS OF FACT**

### **Background**

1. At the start of the 2022–23 school year, the Student was eligible for special education services under the eligibility category of emotional behavioral disability (EBD), was in the fourth grade, attended a District elementary school, and their March 2022 individualized education program (IEP) was in effect.
2. On March 16, 2022, the Student's IEP team developed an annual IEP for the Student. The IEP included an annual goal in self-advocacy (self-regulation), with a written progress report each semester provided to the Guardian. The Student's IEP provided the Student with the following specially designed instruction in a *special education setting*:
  - Self-advocacy: 20 minutes a week (to be provided by special education staff)The Student's March 2022 IEP also included a 1:1 assistant for 360 minutes, 5 times per week, as well as counseling consultation by a school psychologist for 20 minutes per month in the general education setting, as a supplementary aid/service.
3. Previously, on May 24, 2022, the Guardian signed consent for a reevaluation of the Student. The reevaluation notice stated that the areas of evaluation include review of existing data, behavior, social/emotional, adaptive, communication, sensory processing, general education,

cognitive, fine motor, student observation, and speech. The reevaluation was requested in order to consider a change of services for the Student. The Guardian suggested seven areas to be considered as part of the reevaluation: executive functioning, short-term and long-term memory, visual vs verbal learning ability, social cognition, processing speed and attention.

The 2021–22 school year ended on June 24, 2022, so the reevaluation was not completed by the end of the school year.

4. The District's 2022–23 school year began on September 7, 2022.
5. On September 7, 2022, the school psychologist communicated with the school principal that she had spoken with the Guardian who shared that she did not plan on sending the Student to school until after the special education evaluation was completed. The school psychologist further indicated she would coordinate testing with another team member.
6. On September 9, 2022, the school psychologist communicated with the Guardian, discussing the scope of the reevaluation, answering questions the Guardian had shared, and introducing new team members (e.g., occupational therapist (OT), district representatives). The school psychologist indicated that space was reserved at the District office to complete any in-person evaluation of the Student that might be needed if the Student felt comfortable participating in additional assessments. In addition, the school psychologist confirmed the date of the reevaluation meeting, which was scheduled for September 22, 2022, per the Guardian's request. The meeting invitation was attached to the email communication. District documents indicate multiple communications with the Guardian prior to the reevaluation meeting, as well as documentation of drafts of the reevaluation report shared with the Guardian prior to the meeting. The school psychologist also offered to meet with the Guardian in advance of the meeting.
7. The reevaluation meeting was held on September 22, 2022, to discuss the results of the reevaluation, and included reviewing the results of an outside psychological evaluation the Guardian obtained on the Student. The Student was determined to continue to be eligible for special education services under the EBD category with specially designed instruction recommended in the areas of reading, math, written language, emotional regulation and learning strategies/organization skills.
8. A prior written notice (PWN) was provided to the Guardian, dated September 22, 2022, informing the Guardian of the continued eligibility of the Student for special education services. In addition, it was noted that the team "reiterated that the Student was welcome to return and attend school. The Guardian indicated they would need to know the teacher and class before getting the Student ready to return."

#### **Complaint Investigation Timeline Begins September 23, 2022**

9. At the start of October 2022, the Guardian continued to decline to send the Student to school. An email from the Guardian, dated October 7, 2022, stated that the Student "was not attending

school because the District had not designated an appropriate placement for her as the IEP meeting...had not yet occurred”, though the Student’s March 2022 IEP was still current.

10. An IEP meeting, following the reevaluation and eligibility determination, was scheduled with the Guardian on October 19, 2022, with the initial invitation sent to the Guardian on September 22, 2022.
11. District documents indicate that the District sent the Guardian a draft IEP on October 17, 2022, in preparation for the IEP meeting. The Student’s Guardian and the Student’s Parent provided written input for the IEP meeting, and the Student’s outside social worker was invited to participate, as requested by the Guardian.
12. On October 19, 2022, the Student’s IEP team developed a new annual IEP for the Student. The IEP included annual goals in math (computations and reasoning), reading (comprehension), written language (paragraph organization), emotional regulation (self-regulation, and learning strategies/organizational skills (self-direction), with a written progress report to be provided each semester. The Student’s October 2022 IEP provided the Student with the following specially designed instruction in a *special education setting*:
  - Math: 45 minutes, 5 times per week (to be provided by special education staff)
  - Reading: 45 minutes, 5 times per week (to be provided by special education staff)
  - Written language: 45 minutes, 5 times per week (to be provided by special education staff)
  - Emotional regulation: 30 minutes, 5 times per week, (to be provided by special education staff)
  - Learning strategies/organizational skills: 45 minutes, 5 times per week (to be provided by special education staff)

The October 19, 2022 IEP also included the following supplementary aids/services:

- 1:1 assistant: 210 minutes per day (concurrent)
  - 1:1 assistant: 150 minutes per day (not concurrent)
  - Counseling consultation by school psychologist: 30 minutes per month (concurrent)
13. The Student began attending school on October 20, 2022, and attending regularly through November 15, 2022, during which time the Student’s October 2022 IEP was implemented.
  14. The Student eloped from school on October 24 and 28, 2022, prompting the Student’s case manager to conference with the Guardian, to reach out to the school nurses regarding safety planning, and to obtain additional behavioral/safety care training for team members to address the elopement issues by the school assigned safety care trainer.
  15. On November 7, 2022, another elopement incident occurred. The Student’s case manager suggested meeting weekly with the Guardian to support the Student’s transition back to school, and reaching out to the Student’s outside social worker for suggestions related to the Student’s school supports.
  16. Two incidents of elopement occurred on November 8 and 9, 2022, resulting in the use of restraint holds both days. Formal documentation was recorded as to the time of the incidents and length of the behavior, including the restraint techniques used by staff, and for how long,

for the Student's safety. School staff then met with the Guardian on November 14, 2022, to discuss the Student's elopement concerns.

17. On November 15, 2022, the Student eloped four times during a 40-minute timespan in the morning.
18. On November 15, 2022, the Student was emergency expelled by the principal for safety reasons, and the principal spoke with the Guardian. Written communication was sent to the Guardian on November 16, 2022, explaining the emergency expulsion and the convening of the team to conduct a manifestation determination meeting. Procedural rights were attached to the email.

The Guardian responded to the principal, requesting information on how long the suspension would last and what alternative means of education would be provided the Student.

19. The Student's case manager scheduled the manifestation determination meeting for November 18, 2022, after communicating with the Guardian, and the invitation was sent to the Guardian on November 16, 2022.
20. On November 18, 2022, the manifestation determination meeting was held and included the following team members: Guardian, school psychologist, special education teacher, principal, District representative, general education teacher, outside social worker, Student, and uncle. The manifestation determination document indicated the team determined that the behavior (eloping) was a manifestation of the Student's disability, and that the conduct in question was not a direct result of the District's failure to implement the Student's IEP, though the Guardian, Student, and the Student's uncle disagreed with this statement. The team also documented that the Student did not have a functional behavioral assessment (FBA) nor was a behavior plan a part of the IEP. The team determined it would initiate an FBA upon receipt of the Guardian consent and stated that the Student could "return to school as soon as possible."
21. A PWN was provided to the Guardian on November 18, 2022, that stated that the District was proposing to continue the Student's current educational placement and to initiate an FBA to learn more about the Student's elopement behavior. Discussion also included the possibility of a modified day as the Student tended to elope in the afternoons, or tutoring services. The Guardian was not supportive of a half-day schedule, so the team decided to convene another IEP meeting to discuss the supports and options further and determine next steps.
22. The case manager contacted the Guardian on November 18, 2022, to schedule an IEP meeting for November 30, 2022, to discuss the Student's program.
23. The records indicate that on November 20, 2022, the Guardian emailed the District, stating they would like to access tutoring services until the Student's program could be discussed further, and shared concerns regarding the half-day option. The District responded on November 21, 2022, that the "partial day schedule would be temporary...to support

stabilization and increase stamina." The IEP team will work to identify specific target behaviors and benchmarks to determine when to increase the school day..."

24. Between November 20 and 30, 2022, communication continued between the Guardian and the District regarding the options discussed at the manifestation determination meeting (partial day, tutoring) for the Student, and District responses indicated the Student's program would be discussed at the November 30, 2022 IEP meeting.
25. The Guardian responded on November 28, 2022, to the case manager that they would like to pursue tutoring and requested a mediated IEP meeting using Sound Options. The District replied on November 29, 2022, that they had received the Guardian's request and indicated they would reach out to Sound Options.
26. The previously scheduled IEP meeting on November 30, 2022 did not occur.
27. On December 8, 2022, the District communicated with the Guardian that Sound Options had been contacted regarding a facilitated IEP meeting and the District was awaiting a response from Sound Options.
28. On December 22, 2022, Sounds Options sent a letter to the District, acknowledging the request for mediation.
29. On January 5, 2023, the Guardian emailed the District, inquiring about a request for an independent educational evaluation (IEE) that was mentioned through the Guardian's work with the ombuds. The special education director confirmed on January 12, 2023, that the IEE request process was moving forward.
30. On January 17, 2023, the District mailed a letter, dated January 13, 2023, to the Guardian, acknowledging receipt of the request for an IEE and outlining the process the District must follow after receiving a request. The District stated it "must either agree to fund the IEE or file a request for a due process hearing to demonstrate that the parent is not entitled to an IEE at public expense. The District will consider your request for an IEE and provide a decision within 15 calendar days of the date that we received your request."
31. The District agreed to fund the IEE for the Student and communicated this decision to the Guardian with a letter, dated January 27, 2023. Subsequently, the request for mediation was closed.
32. On March 17, 2023, the Guardian emailed Sound Options and requested a facilitated IEP meeting for the Student. Sound Options communicated with the District on March 20, 2023, confirming the Guardian's request for a facilitated IEP meeting.
33. The facilitated IEP meeting was held on April 17, 2023, with the team agreeing that the Student would be served in a 1:1 setting at a nonpublic agency (NPA), and that the Student would be added to the waitlist for another school. The Guardian was provided a PWN following the facilitated IEP meeting where the agreement to amend the IEP to include: daily home to school

communication between adults only; that the 1:1 assistant would attend general PE with the Student; an annual meeting with staff to share key components of Student's disability would be held; and, to amend the IEP to update the District's offer of FAPE (e.g., 1:1 NPA setting, Student added to waitlist at another school).

34. The District made the referral of the Student to the NPA on April 26, 2023, with a signed release of information by the Guardian, and the NPA responded they were scheduling a site visit with the Guardian.
35. On May 16, 2023, the NPA advised that it had identified a teacher to work 1:1 with the Student for 20 hours per week. After scheduling difficulties were resolved, and the Student began attending the NPA on June 1, 2023, with transportation provided by the District.
36. The Student's October 19, 2022 IEP indicated that the Student was not eligible for extended school year (ESY) services, and the mediated IEP meeting of April 17, 2023, did not amend that section of the IEP. However, the District agreed to continue the Student's services at 20 hours per week through the summer session at the NPA to make up for missed services in the 2022–23 school year.
37. The outside evaluator completed the Student's IEE on July 13, 2023, and provided a copy of the report to the District.
38. In late August, the District and Guardian communicated about scheduling a meeting to discuss the results of the IEE. The District confirmed with the Guardian that the NPA services would continue until the team meeting to discuss the results and any resultant program changes.
39. On September 1, 2023, the NPA informed the District that they were no longer able to provide services to the Student, as they did not have a teacher or case manager available to meet the Student's needs. The District communicated this with the Guardian and informed them of the possibility of another program that may be able to meet the Student's needs.
40. The District was unsuccessful in finding an alternative program available to meet the Student's needs as of the filing of this complaint on September 22, 2023.
41. The District's 2023–24 school year began on September 6, 2023.
42. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of EBD and was in the fifth grade. The Student's October 2022 IEP was in effect.
43. According to information from the Guardian, they were concerned about the Student's placement, as the NPA had just communicated they would not be able to continue to provide services to the Student. The Guardian had been pleased with the program at the NPA and the progress that the Student had made. The District began working with the Guardian and team members to schedule an IEP meeting to review the results of the Student's IEE and determine next steps.

## CONCLUSIONS

**Issue 1: Guardian opportunity to provide input into Student's IEP** – The Guardian alleged that the District has not provided an opportunity for her input into the Student's IEPs.

Parents of a child with a disability will participate with school personnel in developing, reviewing, and revising the student's IEP. This is an active role in which the parents provide critical information regarding the strengths of their child and express their concerns for enhancing their child's educational program.

In this case, the District held multiple IEP meetings with the Guardian, relative to the issues in the complaint, including the March 2022 IEP meeting, the October 2022 IEP meeting, and the facilitated IEP meeting of April 2023. The record shows that the Guardian was provided a draft of the October 2022 IEP prior to the meeting to review and had the opportunity to communicate via phone and email with the case manager/special education teacher prior to the meeting. The record also indicates that the Guardian, the Student's Parent, and outside social worker provided written input for the IEP. The Guardian and outside social worker were both present at the October 2022 IEP and participated in the discussions and decisions. The April 2023 IEP meeting was facilitated and included preparation prior to the meeting by both the District and Guardian. An agenda or list of goals were developed jointly by the Guardian and District and shared with the facilitator. The PWN from the facilitated IEP meeting also documented that the Guardian, Student, and outside team provided an update at the beginning of the meeting and that the team reviewed specific requests of the Guardian/Student.

In summary, the Guardian was properly invited to all IEP meeting, participated in the meetings via written input and discussion input, invited participants of her choosing to attend as well, and was provided PWNs following each of the IEP meetings. Therefore, OSPI finds no violation of this issue.

**Issue 2: Implementation of the Student's IEP** – The Guardian alleged that the District did not properly implement the Student's IEPs during the 2022–23 school year. A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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.

The March 2022 IEP, in effect at the beginning of the 2022–23 school year, provided the Student with specially designed instruction in self-advocacy skills in a special education setting. The Student's IEP also provided a 1:1 assistant for 360 minutes per day, and 20 minutes per month of counseling consultative services. The Student's placement was a general education fourth grade class at a District elementary school. On September 7, 2022, the school psychologist who was completing the Student's reevaluation from the previous school year (consent signed May 24, 2022) spoke with the Guardian who indicated she would keep the Student at home until the reevaluation was complete. The reevaluation meeting was held on September 22, 2022, with the PWN stating that the Student was welcome to attend school, though the Guardian reiterated that

she would need to know who the Student's teacher would be before getting the Student ready to return to school.

The IEP meeting following the reevaluation meeting occurred on October 19, 2022, and provided the Student with specially designed instruction in math, reading, written language, emotional regulation and learning strategies. In addition, the IEP provided the Student with 1:1 assistant support for 360 minutes per day. The Student was placed in a general education fourth grade classroom and began school the next day, October 20, 2022, and continued regular attendance until November 15, 2022. Following several episodes of elopement from school grounds, the Student was emergency expelled from school on November 15, 2022. A manifestation determination meeting was held three days later, with the team decision that the behavior was related to the Student's disability. The PWN stated that the Student could return to school as soon as possible and that the Student's current placement would continue pending consent from the Guardian for the District to initiate an FBA. An IEP meeting was scheduled for November 30, 2022, to discuss a partial day schedule or tutoring services for the Student. However, this IEP meeting did not occur as the Guardian requested tutoring and mediation.

The Student did not attend school from November 16, 2022 through May 31, 2023, and the District acknowledged that the Student's IEP was not implemented as written. The District calculated that the Student missed 437.5 hours of small group, specially designed instruction.

After the April 17, 2023 IEP meeting, the District updated its offer of FAPE to 20 hours of 1:1 instruction per week at an NPA. The Student attended the NPA from June 1 through 26, 2023, and received 60 hours of 1:1 instruction. After the 2022–23 school year ended, the District continued to offer the Student 20 hours per week of 1:1 instruction at the NPA through August 31, 2023. During this time, the Student received a total of 220 hours of 1:1 instruction. The District stated it believes that the summer program of 220 hours of 1:1 compensatory instruction is appropriate, calculated at a 2:1 ratio to the 437.5 hours of small group instruction missed during the school year.

OSPI finds a violation as the Student's IEP was not materially implemented. And OSPI accepts the District's calculation of compensatory services already provided to the Student as an appropriate corrective action and determines that no further corrective action is required.

**Issue 3: Manifestation determination procedures:** –The Guardian alleged the District did not properly conduct the manifestation determining meeting following the Student's emergency expulsion.

Within 10 school days of any decision to change the placement of a student eligible for special education service, relevant team members must determine if the behavior in question is a manifestation of the student's disability and if the behavior in questions was the direct result of the district's failure to implement the IEP.

In this case, the District held a manifestation determination meeting three days after the Student was emergency expelled. Relevant IEP team members, including the Guardian and the Student's

outside social worker, participated in the meeting. It was determined that the Student's behavior was a manifestation of their disability and that the District had not failed to implement the Student's IEP. A PWN was provided to the Guardian following the manifestation determination meeting, detailing the decisions made by the team. OSPI finds no violation of this issue.

**Issue 4: Educational services provided during suspensions** – The Guardian alleged that the District did not provide educational services to the Student during the period the Student was removed from school.

Districts are required to provide education services during periods of removal (10 days or less) to special education students if it provides services to students without disabilities who is also removed for 10 days or less. The Student was emergency expelled for three days from November 16 through 18, 2022, when the manifestation determination meeting was held. The District informed the Guardian that the emergency expulsion had ended, and the Student could return to school. The Student was not provided with educational services during the three days of expulsion, which the District acknowledged. The District included November 16–18, 2022 in the determination of the compensatory education services it owed the Student (see Issue 2 above).

OSPI finds a violation of this issue and accepts the District's determination that compensatory hours have already been provided during the summer session at the NPA as an appropriate corrective action. The District will also be required to develop written guidance on the provision of services during removals.

**Issue 5: Determination of Student's placement for 2023-2024 school year** – The Guardian alleged that the District did not provide an appropriate educational placement for the Student following the NPA's notice that they no longer could serve the Student.

At the beginning of the 2023–24 school year, the Student's October 19, 2022 IEP was in effect with amendments from the April 17, 2023 facilitated IEP meeting. Immediately prior to the start of the 2023–24 school year, the NPA the Student was attending notified the District that they were no longer able to serve the Student. The District promptly began to identify an alternative provider to serve the Student, and at the time of the filing of this complaint, the District continued its efforts to locate a service provider. The District acknowledges that it owes the Student compensatory services from September 6, 2023, to when the Student's program can be implemented, calculated to be 120 hours of 1:1 instruction, as of the submission of their response.

OSPI finds violation of this issue. The District will be required to provide the Student with further compensatory education for all of the minutes of special education services missed since September 6, 2023.

### **CORRECTIVE ACTIONS**

By or before **December 15, 2023, January 24, 2024, March 15, 2024, June 28, 2024, August 30, 2024, and October 11, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

## **STUDENT SPECIFIC:**

### **Compensatory Education**

By or before **December 15, 2023**, the District and Guardian will develop a schedule for the number of hours of compensatory education, based on the date the Student's program is implemented, in other words 100% of the hours owed between September 6, 2023 and the date the Student's new placement is determined and program implemented.

Unless otherwise agreed to by the District and Guardian, 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 Student'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 provides 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 **December 15, 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 **September 30, 2024**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **March 15, 2024, June 28, 2024, and August 30, 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 **October 11, 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 Guardian for the cost of providing transportation for these services. If the District reimburses the Guardian 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 **October 11, 2024**.

## **DISTRICT SPECIFIC:**

### **Written Guidance**

By **January 19, 2024**, the District will ensure that the following individuals receive written guidance on the provision of educational services during periods of disciplinary removal: special education administrators, the principals, the assistant principal, and special education certificated staff (teachers), at the school that the Student was enrolled in during the 2022–23 school year.

By **December 15, 2023**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by January 8, 2024.

By **January 24, 2024**, 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 16th day of November 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.)