

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-134

PROCEDURAL HISTORY

On September 28, 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 Omak 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 September 28, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on October 2, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On October 19, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on October 20, 2023. OSPI invited the Parent to reply.

On November 7, 2023, OSPI received additional information from the Parent and forwarded this information to the District the same day.

On November 17, 2023, OSPI received additional information from the Parent and forwarded this information to the District the same day.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on September 29, 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.

ISSUE

1. Beginning on September 29, 2022, did the District follow proper child find/referral, initial evaluation, and individualized education program (IEP) development procedures?

LEGAL STANDARDS

Child Find: "The child find duty is triggered when the [school district] has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability." *Dep't of Educ., State of Haw. v. Cari Rae S.* 35 IDELR 90 (U.S. District Ct HI, 2001) (quoting *Corpus Christi Indep. Sch. Dist.* 31 IDELR 41 (SEA TX 1999)). A disability is "suspected" when a school district "has notice that the child has displayed symptoms of that disability." *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9th Cir. 2016). The 9th Circuit has stated that "if a school district is on notice that child may have a particular disorder, it *must* assess that child for

the disorder, regardless of the subjective views of its staff members concerning the likely outcome of such an assessment” and that notice that a child may have a particular disability can come from expressed parental concerns about a child’s symptoms, expressed opinions by informed professionals, or less formal indicators such as the child’s behavior. *Timothy O.*, 822 F.3d at 1121. *See also, Pasatiempo v. Aizawa*, 103 F.3d 796, 803 (9th Cir. 1996) (“The informed suspicions of parents, who may have consulted outside experts, should trigger the statutory protection.”); *J.K. v. Missoula Cnty. Pub. Sch.*, 713 F. App’x 666, 667 (9th Cir. 2018) (“The duty to evaluate a student arises when disability is ‘suspected,’ or ‘when the district has notice that the child has displayed symptoms of that disability’”); *N.B. v. Hellgate Elementary Sch. Dist.*, 541 f.3d 1202 (9th Cir. 2009) (The requirement to evaluate a student may be triggered by the informed suspicions of outside experts).

Referral: Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. 34 CFR §300.301; WAC 392-172A-03005(1). A referral may be implied when a parent informs a school that a child may have special needs. *In the Matter of the Lake Washington School District*, 57 IDELR 27, OSPI Cause No. 2011-SE-0020X (WA SEA 2011). When a student suspected of having a disability is brought to the attention of school personnel, the district must document that referral. It must provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with parental input, will determine whether there is sufficient data to suspect a disability. It must review the referral, and it must collect and examine existing school, medical, and other records. The district must determine within 25 school days after receipt of the referral whether it will evaluate the student. The district must provide the parent with written notice of its decision. 34 CFR §300.301; WAC 392-172A-03005.

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all the student’s special education and related services needs, whether or not they are commonly linked to the disability category in which the student has been classified. No single measure or assessment as the sole criterion is used for determining a student’s eligibility or determining an appropriate educational program for the student. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. 34 CFR §300.304; WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040.

IEP Development: When developing each child’s individualized education program (IEP), the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the

education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP team has decided that a BIP is appropriate, the IEP team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

Restraint Conditions: Restraint device shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of restraint as defined by RCW 28A.600.485 is subject to each of the following conditions: a) the restraint must be discontinued as soon as the likelihood of serious harm has dissipated; b) The restraint shall not interfere with the student's breathing; and c) any staff member or other adults using a restraint must be trained and certified by a qualified provider in the use of such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of restraint consistent with RCW 28A.600.485. WAC 392-172A-02110.

FINDINGS OF FACT

Background: 2021–22 School Year

1. During the 2021–22 school year, the Student was in the first grade and was not eligible for special education services.
2. The prior school year, the Student's kindergarten teacher stated in a May 17, 2021 written observation of the Student, that the Student was "defiant" and "severely lacking" in fine motor skills. The teacher believed the Student's behavior might escalate in first grade because during the time he was in kindergarten, he refused to listen and follow directions.

The District's elementary school, where the Student attended in first grade, was in possession of the observation written by the Student's kindergarten teacher.

3. The Student's "Discipline Report" reflected that between September 17 and December 16, 2021, the Student had 12 "offenses" reported for behaviors, including running away on the

playground and inside the school, throwing wood chips and snowballs at other students, pushing another student off the monkey bars resulting in injury, and lying about his behavior.

4. The District's response to the Parent's complaint stated, in part, that during the 2021–22 school year, the Student's behavioral referrals increased to 28, but all were considered "minor" offenses ranging from non-compliance to disruption in the classroom.
5. On December 13, 2021, the Student's teacher stated in an email to the Parent that she was concerned about the Student's behavior and that his impulsivity was a constant concern in the classroom and at recess.
6. On December 14, 2021, the Student's teacher reported to the Parent that she had reached out to the principal and assistant principal to contact the Parent.
7. On December 17, 2021, the student's teacher stated in an email to the Parent that she believed the Student was misbehaving because he was struggling with impulse control.
8. On March 3, 2022, the assistant principal emailed the Parent that the Student refused to do any work in school. The Parent emailed the assistant principal that the Student had refused to get off the school bus and had hit and kicked the Parent while being escorted into the building. Once inside, he continued to punch, kick, and hit the Parent.

2022–23 School Year

9. During the fall of 2022, the Student started second grade at the District's elementary school and had no discipline referrals at the start of the school year. The Student was not eligible for special education services.
10. The complaint timeline investigation began on September 29, 2022.
11. The District's attendance report reflected that between September 12 and December 21, 2022, the Student was absent from school 16 days.
12. On December 2, 2022, the Student received his first discipline referral of the 2022–23 school year. According to the District, the discipline referral was of increased severity from those he had received in the previous school year and for the first time, the Student's behaviors included physical aggression.
13. Between December 2 and 19, 2022, the Student was disciplined 13 times for behaviors, such as disruption, defiance, elopement, and physical aggression.
14. On December 19, 2022, the school principal reported that the Student was running down the hallway flinging his arms up and down, nearly hitting every student he passed. The Student, after not listening to the adults asking him to stop, ran away and had to be tracked down by the principal.

15. On January 18, 2023, the Student was suspended for one day for repeated incidents of non-compliance, elopement, and "violence without major injury".
16. On January 18, 2023, the Parent emailed the District, requesting a behavioral evaluation of the Student.
17. On February 6, 2023, a meeting was held in which the District and Parent agreed to move forward with a special education evaluation of the Student with a projected completion and review date of April 17, 2023.
18. On February 18, 2023, the Student's teacher emailed the Parent that during a small group reading, the Student prevented the paraeducator from teaching the group by making noise and being a distraction.
19. On February 18, 2023, the principal emailed the Parent that he was concerned about the Student's disruption in the classroom.
20. On February 18, 2023, the school counselor emailed the Parent that the Student was aware that some of his actions were inappropriate but could not seem to stop them from happening.
21. On February 23, 2023, the Student was suspended for one day for repeated incidents of non-compliance, elopement, and "violence without major injury".
22. From February 8 to March 15, 2023, the Student was absent from school 13 days and present at school for 10 days.
23. On March 15, 2023, the Student was expelled from school until March 29, 2023, due to an increase in physical aggression, including hitting, kicking, punching, and pushing adults attempting to direct him or with whom he disagreed.
24. The District did not conduct a manifestation determination after the Student had been referred for a special education evaluation and had received two, one-day suspensions and a 10-day expulsion, totaling more than ten school days of exclusionary discipline.¹
25. On March 31, 2023, the assistant principal met with the Parent to review a plan that would be implemented when the Student returned from spring break. The plan included weekly meetings with the Parent to review the Student's weekly behavior data. The Parent approved the plan.
26. On April 13, 2023, while in the classroom, the Student hid under the table, aggressively hissing and shoving books at other students. He refused to leave the classroom when asked and was

¹ OSPI reminds the District that per WAC 392-172A-05170, "Protections for students not determined eligible for special education and related services", the special education discipline protections would apply as the District was evaluating the Student for special education; thus, a manifestation determination would have been required.

escorted to another room. He attempted to leave the room and as a result of kicking, hitting, and charging at the staff, he was put in a hold for 30 minutes.

27. On April 20, 2023, the Parent emailed the principal and assistant principal, stating that the Student had been absent from school for two days because he refused to get up and get dressed.
28. On April 17, 2023, completion of the Student's initial evaluation was extended until May 22, 2023. Reasons for the extension included the significant numbers of days the Student had been absent from school, the long period of time the Student had been suspended and expelled due to threat issues, and the difficulty in getting the data necessary to determine if new interventions were successful and completing evaluation testing. The District and the Parent agreed to the extension.
29. On April 20, 2023, an isolation and restraint report was issued, stating that the Student hid in the supply room and was restrained for five minutes when he had to be escorted to the classroom by the paraeducator and the principal.
30. On April 21, 2023, an isolation and restraint report was issued, stating that the Student refused to get off the bus, was escorted into the classroom, and began to hit and kick the assistant principal. He was told if it continued, he would be restrained. The Student threw his backpack at the assistant principal and was restrained for four minutes and then for five minutes.
31. On May 5, 2023, the Student's family doctor evaluated the Student, and made diagnoses of attention deficit hyperactivity disorder (ADHD) (primary) and oppositional defiant disorder (ODD) and recommended that the Student be evaluated for autism spectrum disorder (ASD).

The District was aware that the Student was being evaluated by the family doctor and received the doctor's report. The District did not have the Student evaluated for ASD prior to the development of the Student's IEP, or at any time before the end of the school year.

32. Also, on May 5, 2023, the evaluation group met to sign the evaluation report and determine whether the Student was eligible for special education services. The group determined that the Student was eligible as a student with a health impairment and required services in the social/emotional/behavioral area.
33. On May 26, 2023, the IEP team, including the Parent, met to develop an IEP for the Student.

The IEP was to be implemented from May 30, 2023 to May 29, 2024 in two phases:

- In the first phase from May 30 to August 30, 2023, the Student's social/emotional services would be provided by the general education teacher for 10 minutes once a week.
- In the second phase of the IEP, from August 31, 2023 to May 29, 2024, the Student's social/emotional services would be provided by an instructional assistant for 15 minutes twice weekly.

- In both IEP phases, accommodations for the Student would be short breaks and a visual schedule, and consultation would be provided by a special education teacher for 5 minutes once a week.

The IEP stated that the Student would receive his IEP special education services in a pullout model. The rest of the day would be in the general education classroom. The Student's placement would be 80–100% in the general education classroom.

34. The District did not conduct a functional behavioral assessment (FBA) or include a behavioral intervention plan (BIP) in the Student's IEP.

2023–24 School Year

35. On August 30, 2023, the first day of the 2023–24 school year, the Student entered the third grade at a different elementary school within the District. The Student went to school with the Parent, but would not enter the building and was eventually taken home.
36. On August 31, 2023, the Parent brought the Student to school with a "Wraparound with Intensive Services" (WISE) team member. The Student ran away from the classroom setting and pulled the fire alarm. The special education director was brought in and implemented a program over the next two weeks that included a token system, thinking social, a reinforcement inventory, and a visual schedule.
37. From September 5 to 7, 2023, the staff noted a sharp decline in the Student's compliance in the afternoon. After consulting with the Parent, it was decided that the Student did not have the stamina for the afternoons and adjusted his day to end at 12 pm. Mornings went well with minimal setbacks according to the District.
38. On September 5, 2023, a "Moving All to Success and Health" (MASH) team referral was initiated as they had openings and the Student had been on the wait list from the previous year.

The MASH contract provided for giving assistance to the District in this process and giving direct services to the Student. The District signed the MASH contract to fund the evaluation and program recommendations. On September 6, 2023, the Parent signed the MASH evaluation consent.

39. On September 11, 2023, the Student engaged in elopement and non-compliance. The District stated the special education director was able to "bring him back to compliance." The District stated the team adjusted his reinforcement rate and after the reset, the Student had some great days.
40. During mid-September, the Student responded well to updates and changes to the special education services and supports—including the token system, thinking social, a reinforcement inventory, and a visual schedule—and was spending about three hours a day in the general education classroom without major behavioral disruptions.

The District noted the special education department ordered additional thinking social essentials and skills streaming, allowing for the Student to receive further direct instruction in social skills development.

41. From September 12 to September 21, 2023, the Student was absent.
42. On September 20, 2023, the District's elementary school counselor was contacted by a local behavioral health clinic to share that the Student had received an autism diagnosis. After receiving this information, a meeting was scheduled for September 27, 2023, to discuss conducting a reevaluation.
43. On September 22, 2023, according to the District, the Student was less engaged in his environment, continued to ask to go home, and would not go into classroom and engaged in elopement behaviors when addressed with a request.
44. On September 25, 2023, the Student was physical for the first time that school year with another student at recess and would not leave the playground after the incident. The District noted an increase in the Student's:
 - Unwillingness to attend his general education classroom.
 - Resistance to following requests, including staying in a room and completing work.
 - Physical aggression toward staff.
45. On September 27, 2023, the IEP team held a reevaluation consideration meeting and made the following determinations and changes:
 - The team decided to open the reevaluation process to consider changing the area of eligibility and to add a speech and language evaluation based on recommendations from the doctor.
 - The team also decided to begin an FBA (in combination with MASH and WISE).
 - The District's special education director attended a WISE team meeting to determine if services could be aligned.
 - The District moved the behavioral specialist into the role of coordinating the Student's program, working directly with the Student and supporting the general education classroom.
46. The District stated in its response to the complaint that it would ensure the Student had appropriate programming as follows:
 - An FBA would be developed for the Student in collaboration with the special education director, behavior support specialist, MASH, WISE, and school psychologist.
 - The Student would have a one-to-one certificated staff member working with him.
 - The Student would have direct instruction in social skills using skills streaming and thinking social.
 - To address concerns about the Student's attendance and the increase of challenging and aggressive behaviors exhibited following extended absences, an attendance plan would be developed, as well as a bus plan to help the Student ride the bus to school.
 - The District would continue to attend WISE team meetings and offer to attend any medical appointments with the family to ensure wrap around services are aligned.

CONCLUSIONS

Issue 1: Child Find and Referral – The Parent alleged the District did not properly follow IDEA’s child find and referral procedures, during the 2022–23 school year. To understand what occurred during the Student’s 2022–23, a review of events that occurred during the 2021–22 school year is required.

Background: 2021–22 School Year

On August 31, 2021, the Student began attending one of the District’s elementary schools. The Student was in the first grade and had not been found eligible for special education services. The District, however, was put on notice that the Student might have a disability and significant behavioral issues by the written observations of the Student’s kindergarten teacher. In the observation, the teacher stated that the Student was defiant and had refused to listen or follow directions. Washington state and federal law hold that the child find duty is triggered when the district has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability. A disability is “suspected” when a school district has notice that the child has displayed symptoms of that disability. The Student’s kindergarten teacher’s observations put the District on notice that the Student had exhibited symptoms of a potential disability.

Even if the information from kindergarten did not trigger the District’s child find obligation, soon after the Student entered the District’s elementary school, notice of a possible disability were confirmed by additional indicators. The Student had 13 behavioral offenses reported between September 17 and December 16, 2021. During December 2021, the Student’s teacher reported to the Parent that the Student’s behavior and impulsivity were a constant problem in the classroom and at recess. By the beginning of winter break in December of 2021, the Student’s classroom teacher and the school administrators were aware of the Student’s behavioral challenges and should likely have made a referral of the Student to initiate the evaluation process.²

During March of 2022, the assistant principal reported to the Parent that the Student was refusing to do any work in school and the Parent reported to the District the Student’s aggressive behaviors. In its response to the Parent’s complaint, the District stated that although the Student’s behavioral referrals had increased to 28 during the 2021–22 school year, they were all considered “minor”—a description that does not necessarily align with the reports of the Student hitting, pushing, throwing items, and eloping.

Referral: 2022–23 School Year

On August 31, 2022, at the start of the 2022–23 school year, the Student was in the second grade. Although the Student received no behavioral referrals during the fall, he was absent from school

² See, e.g., *J.K. v. Missoula Cnty. Pub. Sch.*, 713 F. App’x 666, 667 (9th Cir. 2018) (“The duty to evaluate a student arises when disability is ‘suspected,’ or ‘when the district has notice that the child has displayed symptoms of that disability’”).

16 days between September 12 and December 21, 2022. Once the complaint investigation timeline began on September 29, 2022, the District had information related to the behavior concerns exhibited the previous school years and the Student's numerous absences. Early in December 2022, the Student received a discipline referral of increased severity. Between December 2 and 20, 2022, the Student was disciplined 13 times for behaviors, including disruption, defiance, elopement, and physical aggression. On January 18, 2023, the Student was suspended for one day for repeated non-compliance, elopement, and violence without major injury.

Prior to the Parent's referral, the Student had exhibited behaviors that should have resulted in a referral by the District. On January 18, 2023, the Parent requested a behavioral evaluation of the Student and on February 6, 2023, the District and the Parent agreed to move forward with a special education evaluation. There is no evidence that the District documented the referral or provided the Parent with written notice that the Student had been referred because of a suspected disability. Nor is there evidence that the District, with Parental input, reviewed the relevant information and records, determined within 25 school days after receipt of the referral whether it will evaluate the Student and notified the Parent of its decision in writing as required. Although the District did make a decision to move forward with the evaluation within 25-school days.

OSPI finds a violation with respect to child find and referral procedures, specifically referral procedures related to documenting the referral and providing prior written notice. As corrective actions, the District will be required to conduct training regarding child find and referral procedures. The IEP team will also be required to meet and propose how much compensatory education the Student requires to address the delay in referring and evaluating the Student.

Issue 2: Initial Evaluation – The Parent alleged the District did not follow proper procedures for conducting an initial evaluation of the Student.

The purpose of an initial evaluation is to determine whether a student is eligible for special education and the nature and extent of the special education and related services required for the student to make educational progress. The student must be assessed in all areas related to their suspected disability. The evaluation must be sufficiently comprehensive to identify all the special education and related services the student needs.

The projected date for completion of the Student's initial evaluation was April 17, 2023. However, on April 17, 2023, the date for completion was extended to May 22, 2023, for a variety of reasons, including the Student's absenteeism, his suspensions and expulsion, to allow for completion of the evaluation testing, and to factor in difficulty in collecting data on the success of new interventions. The Parent agreed to the extension of the evaluation.

On May 5, 2023, a meeting was held during which the evaluation group determined that the Student was eligible for special education services as a student with health impairment and the evaluation report recommended special education services in the social/emotional/behavioral area. Also, on May 5, 2023, the Student was diagnosed with ADHD and ODD by the family doctor. The doctor also recommended that the Student be evaluated for autism spectrum disorder (ASD). The District was provided this information about the Student's diagnoses and doctor's

recommendations. Although the evaluation summary states under “assurances” that the District had conducted a full evaluation of the Student in all areas of suspected disability, this was not the case given the information from the Student’s doctor. While the information was provided the same day the evaluation group met, the May 5th recommendation that the Student be evaluated for ASD reflected the need for information that was a necessary part of the Student’s comprehensive evaluation. Given that the Parents had already agreed to extend the evaluation date until May 22, 2023, the District had an obligation to consider whether additional assessment and evaluation was needed related to the recommendation the Student be evaluated for ASD. Without consideration of this recommendation and potential additional assessments, the initial evaluation was not sufficiently comprehensive to identify all of the Student’s special education and related services needs. Thus, OSPI finds a violation.

As a corrective action, the District will be required to conduct training regarding initial evaluation procedures.

Issue 3 IEP Development – The Parent alleged the District did not follow proper procedures for the development of the Student’s IEP.

When developing each child’s IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.

Initial May 2023 IEP

The Student’s IEP was developed on May 20, 2023 and consisted of two phases:

- The first phase was from May 30 to August 30, 2023.
 - In the first phase, the Student was provided with social/emotional services by the general education teacher for 10 minutes once a week.
 - Accommodations were short breaks and a visual schedule.
 - Consultation was provided by a special education teacher for five minutes once a week.
- The second phase of the Student’s IEP began on August 31, 2023 and is to end on May 29, 2024.
 - The second phase included social/emotional services for the Student provided by an instructional assistant for 15 minutes twice weekly.
 - Accommodations for the Student were short breaks and a visual schedule.
 - Consultation was provided by a special education teacher for five minutes once a week.

In both stages, the Student received his special education services through a pullout model. The rest of the day was spent in the general education classroom. The Student’s placement in both phases of the IEP was 80–100% in the general education classroom. Because the school year ended on June 16, 2023, with early releases on June 15 and 16, 2023, there were only 12 full days for implementation of the first phase of the Student’s IEP.

As discussed above, the Student’s evaluation was insufficient, as the District did not consider whether an autism evaluation or additional assessment was conducted before an IEP was developed for the Student. As a result, the necessary information regarding an autism diagnosis could not have been considered or included in the IEP development process. In addition, the

District did not develop a behavioral intervention plan (BIP) proactively as required, despite the Student's history of behavior challenges and need for specially designed instruction in social/emotional and behavior. For a student whose behavior impedes his learning or that of others, as in this case, the District was required to consider conducting an FBA and developing a BIP. Given the degree of the Student's behavioral challenges, it is hard to imagine that the level of special education services provided by the first and second phases of the IEP would have been sufficient.

In addition, the investigation indicated there were a few instances of restraint used in April 2023. On April 13, 2023, while in the classroom, the Student hid under the table, aggressively hissing and shoving books at other students. He refused to leave the classroom when asked and was escorted to another room. He attempted to leave the room and as a result of kicking, hitting, and charging at the staff, he was put in a hold for 30 minutes. On April 21, 2023, the Student refused to get off the bus, was escorted into the classroom, and began to hit and kick the assistant principal. He was told if it continued, he would be restrained. The Student threw his backpack at the assistant principal and was restrained for four minutes and then for five minutes. OSPI notes that upon review of documentation in this investigation, incidents of restraint or isolation were documented appropriately, and the Parent was notified. However, OSPI does note that a hold of 30 minutes seems excessive and reminds the District that restraint or isolation must be discontinued as soon as the likelihood of series harm has passed, which is not necessarily the same as a student being fully calm or deescalated. OSPI also notes it is not clear that there was an imminent likelihood of series harm present in the instances on April 21, 2023. In addition, it does not appear these restraint incidents were considered and addressed when developing the Student's IEP, and further given the restraints, it raises a concern that the amount of specially designed instruction in the IEP was insufficient.

The District's development of the Student's IEP was insufficient given the missing information and failure to consider an FBA and BIP. Thus, OSPI finds a violation with respect to the District's development of the Student's IEP. However, as discussed below, the District has taken steps during the 2023–24 to increase the Student's supports and conduct a reevaluation. As corrective action, the IEP team will be required to meet to consider the results of the reevaluation and whether the IEP needs to be amended or redeveloped. The District will also be required to conduct training on IEP development and restraint conditions and procedures.

2023–24 School Year

August 30, 2023 was the first day of third grade for the Student at another of the District's elementary schools. After arriving at school, the Student would only enter the foyer of the building. He threatened to become physical if the Parent left, at which point he was taken home. The next day, the Student eloped from the classroom and pulled the fire alarm, requiring an evacuation of the building. The special education director was brought in and over the next two weeks, implemented the following:

- Token system
- Thinking Social (revisit of Expected vs Unexpected)
- Reinforcement Inventory and purchased desired items

- Thinking Social (Behavior Contingency Mapping with visuals)
- Visual Schedule

Between September 5 and 7, 2023, the staff noted a sharp decline in compliance in the afternoon when the Student would often sit by himself or sleep. After consulting with the Parent, it was decided that the Student did not have the stamina for the afternoon and his day was shortened to 12 pm. As a result of this change, mornings were going well with minimal setbacks. On September 5, 2023, a MASH team referral was initiated, which provided support and direct services to the Student. The District also decided to develop an FBA and BIP for the Student.

In early September 2023, the Student continued to struggle with engagement. The team adjusted his reinforcement rate and after the reset, the Student had some great days. The special education department ordered additional thinking social essentials and skills streaming, allowing for the Student to receive further direct instruction in social skills development. The Student responded well to updates and changes and was spending about three hours a day in general education classroom without major behavioral disruption. From September 12 to September 21, 2023, the Student was absent.³ And at the end of September 2023, the District noted a shift in the Student's behavior, including a reluctance to attend the general education classroom, wandering in the hallways, failing to complete schoolwork, and physical aggression toward the staff.

On September 20, 2023, the school counselor was contacted by a behavioral health clinic to share that the Student had received a diagnosis of ASD. When the District received this information, a meeting was scheduled for and held September 27, 2023, to discuss and consider a reevaluation of the Student, and the team decided to open the reevaluation process to consider changing his area of eligibility, to add a speech and language evaluation, and to initiate an FBA (in combination with MASH and WISE). Additionally, in response to the Student's needs, the District's special education director attended a WISE team meeting to determine if services could align and discussed WISE goals and how the District could be involved. The District also moved an in-house behavioral specialist into the role of coordinating the Student's program, working directly with the Student and supporting the general education classroom as needed.

Since the beginning of the 2023–24 school year, the District has taken significant steps to address the Student's behavior needs and disability, including initiating a reevaluation that will necessitate updating the Student's IEP once complete. OSPI finds no violation by the District in the reevaluation process or other action taken by the District during the time the Student has been at the elementary school he now attends.

CORRECTIVE ACTIONS

By or before **December 8, 2023, January 12, 2024, and February 23, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

³ As a result of the District's concern about the Student's absenteeism, the District stated that a meeting with the Parent will be scheduled to draft attendance and bus plans.

STUDENT SPECIFIC:

IEP Meeting

By or before **January 5, 2024**, the Student's IEP team, including the Parent, will meet. At the meeting, the IEP team must review the reevaluation, FBA, and any other information and determine if the Student's IEP needs to be amended or redeveloped to sufficiently meet his needs.

The team will also determine how much compensatory education the Student requires, based on his new IEP, to address the delay in referring and evaluating the Student. OSPI will review the proposal and either modify or approve the proposal, and then add additional corrective action monitoring dates.

By or before **January 12, 2024**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) a list of people, including their roles, who attended the meeting; d) the Student's IEP; e) the compensatory education proposal; and f) any other relevant documentation.

DISTRICT SPECIFIC:

Training

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will co-develop and co-present a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 23-134.

The following District staff will receive training: District special education administrators and psychologists, and the following at the school the Student attended during the 2022-23 school year: principal, assistant principal, and special education certified staff (teachers). The training will cover the following topics:

- Child find obligations.
- Referral procedures.
- Procedures for conducting a sufficient initial evaluation, including best practices for incorporating additional information provided late in the evaluation timeline.
- IEP development, including developing a sufficient IEP to meet a student's disability related needs, and when to consider including a BIP in the IEP.
- Restraint – regulations, allowable use, documentation and follow up procedures, and best practices for reducing the use of restraint.

The training will include examples.

By or before **December 8, 2023**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **January 12, 2024**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by January 26, 2024.

By **February 9, 2024**, the District will conduct the training regarding the topics raised in this complaint decision.

By **February 23, 2024**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

The District will submit a completed copy of 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.

RECOMMENDATIONS

OSPI notes that the investigation showed the Student's placement was changed via discipline, while the Student was in the process of being determined eligible for special education. The District did not hold a manifestation determination meeting. OSPI recommends the District review the regulations related to manifestation determinations (beginning WAC 392-172A-05146) and also WAC 392-172A-05170, "protections for students not determined eligible for special education and related services."

Dated this 22nd 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.)