

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-155**

### **PROCEDURAL HISTORY**

On November 1, 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 Spokane 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 November 1, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on November 6, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On November 6, 2023, OSPI received additional information from the Parent and on November 7, 2023, OSPI amended the complaint, adding an additional allegation.

On November 22, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on November 27, 2023. OSPI invited the Parent to reply.

On December 5, 2023, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on December 6, 2023.

On December 20, 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 the interviews.

### **ISSUES**

1. Whether, during the 2023-24 school year, the District implemented the Student's positive behavior supports, including but not limited to "peer motivation"?
2. Whether, during the 2023-24 school year, the District followed proper restraint and isolation procedures per WAC 392-172-02110, including if the Student was isolated in the "sensory area"?
3. Whether, since November 2, 2022, the District followed special education discipline regulations in WAC 392-172A-05140 through WAC 392-172A-05155?

### **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. 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).

Isolation: Isolation as defined in RCW 28A.600.485 means: Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. WAC 392-172A-01107.

Disciplinary Removal that Results in a Change of Educational Placement: A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days, or when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. 34 CFR §300.536; WAC 392-172A-05155. After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. WAC 392-172A-05145.

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.

## FINDINGS OF FACT

### 2022–23 School Year

1. The Student is eligible for special education services under the eligibility category other health impairment and attends a middle school in the District. The Student's individualized education program (IEP) had goals in reading, written language, and behavior/social skills. The Student also has a behavioral intervention plan (BIP).
2. On January 26, 2023, the District emailed the Parent regarding scheduling a meeting to review the Student's functional behavioral assessment (FBA) and BIP. In the same email, the District reported an increase in behaviors observed from the Student. The District wrote that when teachers used verbal redirects with the Student, the Student would make comments to teachers. The District noted that this situation might necessitate repair work between the Student and teachers to "start decreasing the negative interactions."
3. On February 9, 2023, the District completed an FBA of the Student. The FBA described the behaviors commonly displayed by the Student. These included noncompliance (refusing to work, demonstrating "shutting-down" behavior), displayed on average one and a half class periods per day depending on difficulty of academic work or the teacher the Student works with. The Student also displayed disruptive behaviors in class (blurting inappropriate words or phrases, talking over teachers, and making inappropriate noises during instruction time). The FBA addressed the observed antecedent behaviors, the educational impact of behaviors, and that the Student's diagnosis of anxiety likely impacted classroom participation and attendance. Based on observations and data gathered, the team developed the hypothesis that when the Student displayed noncompliance behavior, the Student would attempt to escape an area. When the Student exhibited classroom disruption behavior, the motivation was likely attention seeking (specifically peer attention).
4. On February 10, 2023, the District implemented a revised BIP for the Student as the result of the February 9, 2023 FBA.
5. On February 22, 2023, the District suspended the Student for two days. The District documented that the Student engaged in disruptive behavior on more than one occasion and refused to repair the disruption; disrupted the class and refused to cease the disruption when asked; argued with another teacher who attempted to correct the Student's behavior; refused a behavior intervention; left the presence of a teacher attempting to address the Student's behavior; and when requested by multiple adults, refused to stay in the space designated.
6. On February 24, 2023, the District implemented behavior interventions for the Student. The District documented that the Student left class without permission; yelled at a staff member to "get out," repeatedly; and claimed that a staff member made racist comments, though that staff member had not engaged with the Student.
7. On March 17, 2023, the District implemented specific behavior interventions for the Student.

8. Also, on March 17, 2023, the District sent an email to the Parent, reporting behaviors exhibited by the Student. Behaviors exhibited by the Student included walking on furniture, and when directed to cease the behavior, responding, "I can do whatever I want in this school." The District reported that similar behavior had occurred previously. The District also reported that the Student brought food to class, then argued with staff whether it was food or not. The District reported that the Student pinched a classmate, and when told not to do that, replied, "What are you going to do about it? Nothing." The District further reported efforts made to discuss with the Student how and why these behaviors are disruptive to the school environment.
9. On March 22, 2023, the District suspended the Student for three days. The District documented that the Student walked on furniture; disrupted a classroom; called a teacher names; followed a teacher back to their classroom using disrespectful language and gestures toward that teacher; and continued to disrupt the intervention area.
10. On April 14, 2023, the District implemented specific behavior interventions for the Student. The District documented that the Student sought out a single teacher for taunting, using disrespectful language and gestures toward that teacher; kicked and hit doors in an attempt to enter areas of the building where the Student did not have classes; refused to stay in the intervention room; and refused to attend lunch detention.
11. On April 17, 2023, the District implemented a behavior intervention for the Student. The District documented that the Student engaged in the same behaviors he had on April 14, 2023.
12. On April 18, 2023, the District assessed the Student as part of his triennial reevaluation. The information documented as part of the assessment and reevaluation included a history of the Student's special education eligibility and that in the second grade, the Student was reevaluated as the result of concerns with academic and social skills. Following that evaluation, the Student's IEP team determined that the Student met eligibility criteria under the other health impairment category, with goals in reading, written language, and behavior/social skills. At that time, concerns regarding the Student's behavior included emotional dysregulation, noncompliance, difficulties with transitions, and verbal and physical aggression.

The information reviewed as part of the assessment also documented that at the beginning of third grade, the Student's IEP team determined that a change of placement to a behavior intervention classroom was appropriate. The Student was diagnosed with anxiety, selective mutism, childhood emotional disorder, and Disruptive Mood Dysregulation Disorder. The Student's Parent reported that the Student has a history of school refusal dating back to kindergarten.

According to the April 18, 2023, assessment:

[The Student]...is experiencing significant dysfunction across all three major domains of executive function. Of the areas assessed, it appears that [the Student] demonstrates a strength in his ability to assess his own performance during or shortly after finishing a task to ensure accurate and appropriate completion in his math class. Teachers of non-preferred

classes report that [the Student] does not demonstrate that strength in their classes. [The Student] may benefit from interventions such as Self-Regulated Strategy Development (SRSD) which helps students work on persevering through non-preferred tasks when emotions or thoughts get in the way. SRSD also seeks to improve student's ability to evaluate their work and receive feedback.

Based on the above BASC-3 results, [the Student] appears to be demonstrating behaviors of significant concern in the areas of withdrawal, depression, and adaptive skill deficits in both the home and school setting. These behaviors appear to occur with greater frequency and/or intensity than is typical of peers of the same age and gender. [The Student's] internalizing behaviors appear to be more evident in the home setting, while his externalizing behaviors appear to occur more often in the school. It should be noted that [The Student's] behavior in his PE class appears to be similar to those of [the Student's] peers, with the exception of withdrawal, suggesting that when there are few academic demands and [the Student] is given the opportunity to be physically active [the Student] is better able to regulate his behavior. Based on these findings, it may be of benefit to provide [the Student] with opportunities throughout the day to move around and be physically active without academic demands.

13. On April 19, 2023, the District suspended the Student for two days. The District documented that the Student defied staff instructions, would not stay where directed, or attend certain classes. The District also documented that the Student targeted a single teacher by taunting them.
14. On May 1, 2023, the District documented a behavior incident and interventions for the Student. The District documented that the Student threw a hard baseball against the wall, lockers, and floor causing a disruption to the learning environment. In the course of this activity, the District documented that the Student almost hit classmates and adults with the ball, that the Student refused to stop when redirected, and continued the behavior for several hours.
15. On May 5, 2023, the District suspended the Student for three days. The District documented that the Student refused to stay in a supervised location; went into areas of the building where the Student's classes were not located; climbed on furniture and took items that did not belong to them; yelled in hallways; swore at staff; and used harsh language toward staff.
16. On May 17, 2023, the District emailed the Parent, reporting that adult support provided to the Student had helped the Student.
17. Also, on May 17, 2023, the District suspended the Student for two days. The District documented that the Student engaged in behavior that caused significant disruption to the learning environment, including having a cell phone out in class and recording or pretending to record staff during lessons; refusing to stay in a supervised location; and taking a baseball into the classroom.
18. Later, on May 17, 2023, the Parent sent an email to the District, asking about the Student's suspension. The Parent reported their understanding that the Student was using a phone

camera during school hours, but that there was no actual phone in the phone case, rather a piece of cardboard was placed therein, and that the Student was playing make-believe.

19. On June 14, 2023, the District conducted an occupational therapy assessment of the Student. This noted that the Student has problems with body awareness. The Student may run, hop, or bounce, instead of walk. The evaluation noted that the Student frequently stomps or slaps his feet on the ground when walking, may jump or stomp on stairs, and may slam door shut with excessive force. The assessment noted that the Student displays some balance problems in school. The Student displays fidgeting and similar behavior as a means of understanding his bodily position in space.
20. Also, on June 14, 2023, the Student's IEP team developed a new annual IEP for the Student. The IEP included annual goals in reading (independent reading, reading comprehension) writing (sentence composition), and behavior (self-regulation, task initiation) with progress reporting quarterly and with the annual IEP. The Student's June 14, 2023 IEP provided the Student with the following specially designed instruction in a *special education setting*:
  - Reading: 140 minutes a week (to be provided by special education staff)
  - Writing: 135 minutes a week (to be provided by special education staff)
  - Behavior: 275 minutes a week (to be provided by special education staff)

The Student's IEP also included paraeducator support for 1,740 minutes per week in all settings. The Student's IEP team determined that the Student would spend 68% of the school day in the general education setting.

21. The Student's June 14, 2023 IEP also included a revised BIP. The BIP observed that the Student displayed noncompliance primarily through refusing to work, demonstrating behavior, such as "shutting down," and classroom disruption, observed most often following specific transitions. The BIP included positive behavior interventions and supports to address the Student's behavior. In addition, the BIP included reinforcements for desired behaviors. Among these were enjoying time with preferred peers and adults, food, break opportunities, and the ability to play a game at the end of a successful week.
22. On August 31, 2023, the District convened an IEP team meeting to review the Student's IEP and BIP. The District reported that among the antecedent interventions specified in the Student's BIP was a "[s]ocial reinforcement program to reward positive class periods in [the Student's] week." This "social reinforcement program" included "[a]llowing peers to participate in a Friday activity with a target behavior goal." The District reported that in accordance with this BIP, the District considered peer motivation when developing a schedule for the Student for the 2023–24 school year and provided opportunities for the Student to participate with peers in a Friday activity with a targeted behavior goal.

### **2023–24 School Year**

23. At the start of the 2023–24 school year, the Student continued to be eligible for special education services, was in the eighth grade, and his August 31, 2023 IEP was in effect.

24. The District's 2023–24 school year began on September 5, 2023.
25. On September 8, 2023, the Parent sent an email to the District, explaining that the Student was struggling due to lack of access to general education classes and his placement in special education settings. As a result, the Parent reported that the Student refused to attend school.
26. In mid-September, one of the Student's friends moved out of the Student's PE class. The District reported that this upset the Student and the Student thereafter refused to attend PE.
27. On September 20, 2023, the Parent sent an email to the District, reporting that the Student felt he had a significant amount of academic pressure some days prior and that he felt he did not have friends in class. The Parent reported that the Student was unhappy that he did not have friends in classes, and that he was dissatisfied with his educational placement. The Parent stated the Student wanted to change classes to be with friends.

In a second email, the Parent, through their advocate, requested an IEP team meeting to discuss the Student's IEP implementation, and the status of the Student's BIP.

28. Also, on September 20, 2023, the Student accessed a sensory garden located outside of the school building, that is accessible from inside the school building. The Parent raised concerns about whether and how the Student could regain access to the school building. The District, in its response, observed that the door from the building is locked from the outside, but that the gate from the garden is open from the inside. As such, the Student could have exited the garden through the gate. The District further reported that the Student became agitated when the paraeducator requested that the Student ask nicely for them to open the door to the school.
29. On September 21, 2023, as part of the email discussion regarding scheduling an IEP team meeting, the Parent sent an email to the District, reporting their difficulty getting the Student to go to school. The Parent suggested that the District needed to do more to motivate the Student at school. The Parent shared that the Student was refusing to attend certain classes, and that this was due largely to the Student not having friends in those classes.
30. Also, on September 21, 2023, the Parent sent an email to the District, asking for additional information regarding an incident that had occurred at school the day before. The Parent wrote that the Student reported he was:
  - in the sensory area, tried to put in a rock in the door jam [sic] so he could get back in and the para moved it. Apparently [the Student] said when he was ready to come back in he was knocking and [the para] was just watching [the Student] thru (sic) the window. Then [the para] went out eventually and said [the Student] had to ask the right way to get back in. [The Student] was messing with the gate to get out and then [the Student reported that a teacher] came and let [the Student] back in.

The Parent asked the District to clarify why the paraeducator might not have let the Student back in.

In another email the same day, the Parent added that the Student previously experienced trauma related to locked doors. The Parent expressed concern that the experience at school might be triggering for the Student. The Parent also suggested that this information be added to the Student's IEP so that staff were aware of this potential trigger for the Student.

31. Later, on September 21, 2023, the District responded it would investigate the issue. The District also observed that the Student's IEP did not include information related to such triggers as locked spaces. The Parent responded by email that such information should be added to the Student's IEP. The Parent added that the Student's:

...reaction to the locked door could have been what [the Student] meant when [the Student] was told he had to ask to go in, so it sounds like [the Student] may have had an attitude about it and [the paraeducator] was trying to correct it but that one is a tough one because it triggers something major in [the Student's] life...

The Parent went on to explain that it was unlikely that the Student could have verbalized his feelings on this issue constructively. The Parent added that the Student felt isolated in his current educational placement, and preferred to be in a class with friends, rather than a special education setting with fewer students.

32. On September 25, 2023, the Parent emailed her advocate, reporting that the District was not following the Student's IEP by not providing access to peers during specific times of the school day. The Parent reported that this had caused the Student to voice a lack of interest in attending school.
33. On September 27, 2023, the Parent sent an email to the District, reporting that the Student was refusing to attend school. The Student wanted an apology from the paraeducator who the Student perceived had locked him in the sensory area before returning to school. The Parent added that she had explained to the Student that the paraeducator had not acted intentionally and was not aware that such actions could be traumatic for the Student. The Parent further added the Student had one motivation for attending school, which was to see friends, and that if that was disrupted, it contributed to the Student's school refusal.
34. On September 27, 2023, the Parent emailed the District again regarding the Student's concerns with his educational placement and its impact on his access to friends throughout the school day. The Parent observed that at times, there is assigned seating during lunch, which limits the Student's access to friends who are assigned seats in other areas.
35. On September 27, 2023, the District responded that there was no assigned seating at lunch. The District also added that they were "working to provide more opportunities for [the Student] to see [the Student's] friends during the school day and can share some ideas with the two of you [the next day]."
36. On September 28, 2023, the Student's IEP team met to review the Student's BIP. As part of the meeting, the District proposed additional positive behavioral interventions and supports to the Student's BIP, including but not limited to providing the Student will a "non-contingent 10



minute break with peer during 3rd and 6th period with an earned additional 10 minutes during 3rd period contingent on work completion.”

The District reported that following the September 28, 2023 IEP meeting, the District continued to implement the positive behavioral interventions and supports specified in the Student’s BIP, including but not limited to providing the Student with non-contingent 10-minute breaks.

37. On October 4, 2023, pursuant to the Student’s BIP, the Student earned 20 minutes of free time with a preferred friend but declined the opportunity.

38. On October 5, 2023, the Parent sent an email to the District, asking to review video of an incident that occurred at school. The Parent asked for clarification regarding contact between District staff and the Student. The Parent reported that the Student perceived that he was pushed down by a staff member. The Parent reported that early reports from the District suggested that the Student fell when they received a “pat on the back.”

39. On October 6, 2023, the Parent sent an email to the District, commenting on the video recording of the incident that occurred at school. The Parent wrote in part:

I watched the video, twice. [The Student] watched it and insists different about what happened and says [the teacher] ‘hit him’ on [the Student’s] back. It looks like the teacher was trying to get in the classroom and just put [their] hand on [the Student] to move [the Student] out of the way, and [the Student] fell to the ground. It doesn’t look like the teacher had an aggressive demeanor. I do think [the Student] struggles with his personal space and doesn’t like to be touched, so that could be a huge contributing factor to how [the Student] is feeling about the situation so I am glad they let me see what happened.

40. On October 9, 2023, the Parent sent an email to the District, reporting that the Student was refusing to attend school due to an event that occurred at school with a member of the District’s staff. The Parent further communicated that the Student wanted an apology from the staff member who had physical contact with him.

The District responded and suggested that focus remain on what would motivate the Student to return to school. The District suggested that the Student’s IEP team focus on such issues as changes in settings, systems of social time with peers, and other potential options to motivate the Student.

41. On October 11, 2023, the Parent sent an email to the District about the Student’s “social time.” The Parent related that the Student reported that his friend was absent from school and that the Student was not given the option for another friend to spend time with. The Parent explained that this social time was very important for the Student.

The District, responding to the Parent’s email from the same day, welcomed the Student to talk with the school principal if the Student had concerns. The District explained that the District may face logistical challenges to the Student’s schedule to ensure access to another friend.

42. On October 17 and 18, 2023, pursuant to the Student's BIP, the Student earned 20 minutes of free time with a preferred friend but declined the opportunity.
43. On October 19, 2023, the Parent's advocate sent an email to the District, seeking to schedule a repair meeting between a teacher and the Student. In a second email, the Parent's advocate asked that the Student's refusals be documented to show what classes the Student may be refusing to attend so that the Student's IEP team can understand what school settings the Student's refusals are occurring in.
44. Also, on October 19, 2023, the Parent sent an email to the District, making observations regarding the Student's school refusal. The Parent suggested that a teacher or staff's hesitancy or refusal to apologize to the Student could be understood by the Student as an attempt to conceal improper behavior and cause the Student to lose trust. The Parent also noted that the Student's educational placement contributed to the Student's school refusal because it limited the Student's access to friends. The Parent explained the Student's anxiety and PTSD impacted the Student's trust with school staff. The Parent suggested that the Student's refusals evidenced something related to his anxiety and PTSD that the Student's IEP team needed to better understand and use to find ways to motivate the Student to return to school. The Parent further wrote that even if the Student was overreacting to the physical contact from the teacher, that the Student has a "right not to want to be touched or pushed when [the Student is] literally in the middle of refusing to do something..."
45. On October 20, 2023, the District confirmed a scheduled meeting for October 26, 2023, to address the relationship between the Student and his teacher.
46. On November 1, 2023, the District sent a letter to the Parent with proposed language for addition to the Student BIP. The proposed language addressed the Student's potential anxiety regarding being in closed spaces, not restricting the Student's movements, and ensuring staff followed District and state isolation and restraint policies and laws.
47. Also, on November 1, 2023, the Parent filed this complaint.
48. On November 9, 2023, the District emailed the Parent, suggesting a meeting with the Parent and the Student to help motivate the Student to return to school.  
  
The Parent, responding to the District, reported that the Student had concerns about prior physical contact from a teacher and a desire to have an apology from that teacher, and access to friends. The Parent added that it was the Student's belief that the teacher who had physical contact with the Student intentionally attempted to cause injury to the Student.
49. On November 22, 2023, the District submitted its response to the issues in this matter. As part of the District's response, the District provided data related to the implementation of the Student's BIP during September and October 2023.

50. On December 5, 2023, the OSPI complaint investigator interviewed the Parent. The Parent generally reported that the Student's awareness and self-consciousness about his special education placement was contributing to his school refusal. The Parent reported that the Student is highly motivated to attend school to be with friends. The Student's special education placement results in the Student spending less time in classes with peers who are not eligible for special education. Changes with classmate schedules have further reduced time the Student could spend with preferred peers. The Parent explained that this has dramatically reduced the Student's interest and willingness to attend school.

The Parent further explained that the Student had previously been inappropriately isolated by the District and pointed to a previous OSPI investigation as evidence of this. The Parent noted that the incident on September 20, 2023, where the Student was not immediately allowed to reenter the building, from the sensory garden, was likely the cause of the Student's agitation with the paraeducator on that date. The Parent expressed concern that this issue was not in the Student's IEP, and therefore staff were unaware of this trigger for the Student. The Parent, having reviewed the District's response to this issue, wondered what alternative the Student had to being locked out of school. If the gate leading out of the garden was open, the Parent questioned whether it was the District's position that the Student had the option to wander off school grounds unsupervised as an alternative to staying within the gated area.

The Parent further reported an issue that occurred in early October 2023. The Parent reported that the Student came home complaining that a teacher had pushed him, causing him to fall to the floor. The Parent reported that the incident was captured on the District's video surveillance system. The Parent focused on this incident because the Student believed he was pushed to the ground, and he wanted the teacher to apologize. Absent an apology, the Student refused to return to school.

The Parent explained that from the Student's perspective, he had several suspensions in March and April 2023, were then locked in the sensory garden, and then had a teacher push him to the ground. The Parent further elaborated that from the Student's perspective, he felt as though the District did not want him to attend school. As a result, the Student was refusing to return to school without an apology.

51. On December 20, 2023, the OSPI investigator interviewed the District's director of special education and coordinator of special education. The District explained that the Student's BIP included access to preferred peers for extended play time. The Student's preferred peer experienced a change of school schedule that no longer made that peer as available for the Student. Thereafter, the District adjusted the Student's BIP such that the extended play time was not contingent upon the Student's behavior and created a list of additional peers that the Student enjoyed spending time with. The District noted that the Student sometimes rejected the play time, and that refusal of various activities was a general pattern of behavior for the Student.

Regarding the sensory garden, the District reported that the sensory garden was bounded on three sides by the school building, with building windows looking into the garden. The garden

has a gate that opens to the outside. The door from inside the building to the garden locks when closed. The District reported that the Student entered the garden with the paraeducator and propped open the door. The paraeducator removed the rock used to prop open the door. This caused the Student distress, and the Student asked to be let back into the school building. The paraeducator responded that the Student should "ask nicely." The Student became agitated and was let back into the building. The District noted that anyone in the garden can exit through the gate, which opens to the outside of the school grounds. The District reported that the Student does not have a history of elopement. Students can exit the garden and reenter the school through the main entrance. The District reported that for this reason, the garden is not an isolation space. Students exiting the garden would be observed by the front office, be accompanied by staff, or in the case of an elopement, followed by school staff with radios, with the appropriate procedures enacted. Following this event, the District initiated a meeting between the Student and the paraeducator to repair the relationship.

The District reported that the Student was not suspended for more than 10 days during the time in question. Suspensions given to the Student generally followed the District's attempts to use the behavior interventions in the Student's BIP. Suspensions generally came as the result of an increase in the intensity of behaviors, targeting specific students or staff for harassment, refusing to participate in interventions, and unsafe behavior. The District noted that the Parent had reported to the District that the Student was at times confused by his suspensions. This confusion stemmed from the Student engaging in similar behavior on successive days, but not being suspended one day, and from the Student's perspective, being suspended for the same or similar behavior the next day. The District reports having taken this feedback and having had a meeting with the Parent and the Student to explain when and how the Student's behavior resulted in suspension.

The District reported offering to meet with the Parent and the Student to address the Student's ongoing refusal to attend school. As of the date of the OSPI complaint investigators' interviews with District staff, the Student was reportedly still refusing to attend school.

## **CONCLUSIONS**

**Issue One: IEP Implementation** – The Parent alleged that during the 2023–24 school year, the District failed to materially implement the Student's IEP accommodations. Specifically, the Parent alleged that the District did not implement the Student's positive behavior supports, including but not limited to "peer motivation."

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A 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 Parent alleged that the District did not provide peer motivation as outlined in the Student's IEP. The Student's IEP included a BIP that outlined the use of reinforcements for desired behavior from the Student. The Student's BIP included that the Student "enjoys time with preferred peers and adults." The BIP noted that the Student was able to maintain appropriate behavior, not disrupting the classroom/transitions between class, that the Student would be "able to play a game with a peer at the end of the week for a more extended period of time." The Parent reported that due to the Student's educational placement and schedule changes impacting the Student's preferred peers, the Student was dissatisfied with the amount of access to preferred peers. The Parent reported that the quantity of peer access contributed to the Student's school refusal.

The District reported that the Student's BIP included, as a reward for the Student's positive behavior, additional time with a preferred peer. The Student's preferred peer experienced a change in schedule during the school year that necessitated the District revising the Student's BIP to include a list of other peers, and providing extended play time, irrespective of the Student's behavior. Despite these changes, at times, the Student refused to take advantage of the extended play time with peers. The District observed that the Student commonly would refuse to engage with various activities throughout the school day. The District reported an ongoing process of learning and adapting to the Student's needs in this area.

The evidence in the record supports that the District did implement the supports in the Student's BIP. When the Student's preferred peer was no longer available, the Student's BIP was modified to provide an alternative reward system. Furthermore, the District expressed understanding the need to continually modify the reward system given the Student's evolving responses to the behavior interventions. For these reasons, OSPI does not find a violation.

**Issue Two: Isolation Conditions** – The Parent alleged that during the 2023–24 school year, the District failed to follow proper restraint and isolation procedures per WAC 392-172-02110. The Parent alleged that this was the case specifically when the Student was isolated in the "sensory area."

A District should utilize isolation only when a student's behavior poses an imminent likelihood of serious harm. Isolation means: Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out appropriate positive behavior interventions.

On September 20, 2023, the Student was led to his school's sensory garden by a paraeducator. The District and the Parent agree that the Student propped open the door to the sensory garden with a rock. The Parent reported that the Student has significant anxiety related to isolation, or not being allowed to leave an area, due to past experience with isolation. The District reported that propping open exterior doors was against District policy. The District further noted that the Student was not isolated in the sensory garden because that garden space had a gate that could be opened from inside, allowing the Student to exit the area and further the Student was not alone in the sensory garden as the paraeducator was with him.

OSPI finds that the Student was not isolated in response to a behavior concern. Rather, the paraeducator assigned to the Student removed a rock that the Student used to prop open the door between the building and the school's sensory garden. During interview with the OSPI complaint investigator, the District reported that the Student could have exited the garden and reentered the school through the main entrance. The District also reported that the door was only momentarily closed to the Student. Since this incident, the District offered to include in the Student's IEP, that closed doors generally may be a trigger for the Student's PTSD, an issue that the District reported was previously unknown to staff. The District acknowledged that the paraeducator's verbal response to the Student caused the Student distress. The District subsequently implemented measures to repair the relationship between the Student and the paraeducator. For these reasons, OSPI does not find a violation.

**Issues Three: Disciplinary Removals** – The Parent alleged that since November 2, 2022, the District failed to follow special education discipline regulations.

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.<sup>1</sup>

Between November 2, 2022 and the end of the 2022–23 school year, the District suspended the Student for a total of eight days over three separate suspensions. Prior to the suspensions, on February 9, 2023, the District conducted an FBA, finding that the Student engaged in noncompliance behavior described as “shutting down.” This generally manifested in the Student putting his head down, not engaging or responding when spoken to, not participating in classroom activities, or leaving the classroom. The Student generally also engaged in behavior disruptive to the classroom. This behavior generally manifested in the Student blurting out inappropriate words and phrases, talking over teachers during instruction, and making inappropriate noises during instruction.

The District first suspended the Student for three days, beginning March 22, 2023. On April 19, 2023, the District suspended the Student for two days. This suspension came after the District utilized behavior interventions on April 17, and April 14, 2023 for similar behavior. On May 2, 2023, the District suspended the Student for three days. This suspension followed similar behavior the day prior, which the District addressed through behavior interventions.

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<sup>1</sup> A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days, or when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

The FBA in place at the time of the March 22, April 19, and May 2, 2023 suspensions focused on behaviors related to noncompliance and shutting down. These behaviors were related to the Student's special education eligibility and related diagnosis of anxiety. The District documented that the behavior for which the Student was suspended generally involved targeting a teacher for physical and verbal harassment, causing disruptions to the learning environment, moving around the school building unsupervised, and climbing on furniture in an unsafe manner. The suspensions generally also came after the District conducted behavior interventions the day prior when the Student engaged in similar behaviors.

The evidence in the record supports that the District did attempt the behavior interventions found in the Student's BIP. The Student was suspended on three occasions since November 2, 2022, for a total of eight days. Districts may suspend students with disabilities for violations of the code of student conduct. The Student was not suspended for more than 10 days, and his placement was not changed via discipline. For these reasons, OSPI does not find a violation regarding special education discipline regulations.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

### **RECOMMENDATION**

OSPI recommends the District and Parent continue to work together to address the Student's behavior needs and better understand the Student's school refusal behaviors, to help encourage the Student's interest in returning to school. OSPI recommends the IEP team continue to gather and review behavior data, including the impact of interventions and the BIP, and use this information to adjust behavior supports as needed. OSPI also recommends the IEP team review TAP 6 related to paraeducator support and best practices.

Dated this 27th day of December, 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.)