

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-156

PROCEDURAL HISTORY

On November 2, 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 Mercer Island 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 2, 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 22, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On November 27, 2023, OSPI requested additional information from the District and received it on the same day and forwarded it to the Parent on the same day.

On November 30, 2023, OSPI interviewed the Student's case manager and the District director of special services.

On November 30, 2023, the Parent requested an extension to submit a reply to the District's response. This extension was granted, and the reply deadline was extended until December 5, 2023.

On December 5, 2023, OSPI received the Parent's reply to the District's response, and forwarded it to the District on December 6, 2023.

On December 7, 2023, OSPI received the Parent's additional information, and forwarded it to the District on the same day.

On December 7, 2023, OSPI interviewed the Parents and the Parents' advocate.

On December 8, 2023, OSPI interviewed the Student, Parents, and the Parents' advocate.

On December 8 and 14, 2023, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. On the December 14 and 18, 2023, OSPI received the requested information from the District and forwarded it to the Parent on December 18, 2023.

On December 11, 2023, OSPI received additional information from the Parent, and forwarded it to the District on the same day.

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

ISSUES

1. Since November 3, 2022, did the District properly consider and appropriately determine recovery services for the Student?
2. Per WAC 392-172A-03110, did the District appropriately take into consideration the Parent's concerns regarding the Student's December 6, 2022 individualized education program (IEP)?
3. Per WAC 392-172A-02020, did the District properly evaluate whether the Student needed to participate in the extended school year (ESY) program during the summer of 2023?
4. Per WAC 392-172A-03105, has the Student's IEP been implemented properly, including accommodations, since November 3, 2022?

LEGAL STANDARDS

Recovery Services: Recovery services are intended to mitigate the impact of COVID-19 school facility closures and COVID-19 pandemic generally. Recovery services should enable the student to make progress on IEP goals and be used if students have not been provided or were unable to access IEP services during the COVID-19 pandemic, primarily the impact of school facility closures and remote or hybrid school models. While the need for recovery services may not have been able to be fully measured while schools were operating in remote or hybrid models, districts were not prohibited from providing recovery services during the 2020-2021 school year. Recovery services should be determined by IEP teams on a case-by-case basis. Districts should examine the effect of COVID-19 and the special education and related services provided during school building closures and during the 2020-2021 school year on the student's overall progress and engagement, including progress toward their IEP goals. *Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in Fall 2020* (OSPI, August 26, 2020).

IEP Development: A student's IEP must be developed annually and reviewed and revised periodically if necessary. 34 CFR §300.324; WAC 392-172A-03110. The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5). The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them to make joint, informed decisions regarding: the student's needs and appropriate goals and the services needed to support that involvement and participation and to achieve agreed-upon goals. IDEA, 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a FAPE to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. 34 CFR §300.106; WAC 392-172A-02020. A student's IEP team must decide whether the student requires ESY services and the amount of those services. In most cases, a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for ESY services based only on one criterion or factor. *Letter to Given*, 39 IDELR 129 (OSEP 2003).

IEP Implementation: 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 school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 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 disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Appropriate Educational Progress: A district is not required to provide the very best, potential-maximizing education for a student. Rather, it must provide specialized instruction and related services that are individually designed to provide educational benefit to the student. If a district has complied with IDEA's procedural requirements, and if the IEP developed through those procedures is reasonably calculated to enable the student to receive educational benefit, then the district has satisfied the obligations imposed by Congress. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 199, 201, 206 (1982).

One of the factors that should be considered in determining whether a student's IEP is reasonably calculated to provide meaningful educational benefit is whether the student has achieved appropriate educational progress under that IEP. A student's IEP must address, among other things, measurable annual goals that are designed to help the student progress in the general curriculum and meet the educational needs that result from his or her disability. The IEP must also describe the special education and related services that the student will receive in order to make appropriate progress toward attaining those goals, how that progress will be measured, and how the student's parents will be informed about that progress. 34 CFR 300.320(2)-(4); WAC 392-172A-03090(1)(b)(d).

FINDINGS OF FACT

2022–23 School Year

1. On August 31, 2022, the District held its first day of instruction for the 2022–23 school year. The Student was a twelfth grader at a District high school and the Student's March 3, 2022 IEP was in effect. The Student was eligible for special education services under the category of autism.
2. November 3, 2022 was the starting date for this complaint's investigation timeline.
3. A November 3, 2022 prior written notice (PWN) stated:

The District proposes to continue the IEP and postpone the decision around the specifics of Recovery Services.

...

The new evaluation is in process and the feedback meeting is on November 21. The team will wait to review the updated evaluation data to update the IEP. Recovery Services will be discussed at the next IEP meeting once the Evaluation has been completed. The team wants to use this information to inform the nature of the services.
4. Then, a PWN, dated November 21, 2022, stated:

Results of the evaluation indicate that [the Student] continues to qualify for specially designed instruction (SDI) in reading, math, written language, social-emotional behavior, adaptive skills, and communication and counseling as a related service. Additionally, audiology will continue as supplementary aid and service and parent training.

...

The parent and advocate are requesting more academics be added to the evaluation to support the IEP decision for recovery services. [School psychologist] added available general education data found in the IEP.

The parent asked that a statement be added to the Adaptive evaluation regarding the ABAS-3. [School psychologist] added a statement acknowledging the discrepancy (sic) between private evaluation and current evaluation scores.

The parent requested that an adaptive rating form completed by [the Student's] French teacher be added to the evaluation on 11/22/22.

The final evaluation will be sent to the parent and advocate.

5. On December 6, 2022, the Student's IEP team met and developed a new IEP for the Student. The Student's IEP provided SDI, provided primarily by a special education staff, from December 13, 2022–December 5, 2023, and in a special education setting, as follows:

- Social/Emotional Behavior: 120 minutes/4 times weekly
- Written Expression: 30 minutes/4 times weekly
- Reading: 30 minutes/4 times weekly
- Math: 60 minutes/4 times weekly
- Adaptive: 45 minutes/4 times weekly

The IEP included the following related services:

- Counseling: 50 minutes/weekly (provided by a counselor)
- Speech and Language Therapy: 160 minutes/monthly (provided by a speech and language pathologist (SLP))

The IEP also included the following supplementary aids and services:

- Audiologist Consult: 60 minutes/annually (delivered by an audiologist)
- Parent Training: (Behavior Specialist): 45 minutes/2 times monthly

The Student received 1,895 minutes per week of building instructional time, with 1,190 minutes served per week in the special education setting. The percent of time in a general education setting was 37.2%. The Student's LRE was 0–39%.

The IEP also included daily accommodations (1–13), testing accommodations (14–19), and class period accommodations (20–21):

1. A visual checklist for multi-step activities
2. Can verbally supplement answers to written work
3. Break material into manageable parts
4. Check work frequently to ensure understanding
5. Extended time (1 school day for assignments)
6. FM System
7. Frequent breaks
8. Intentional pairing with compatible student for partner and group work
9. Preferential seating to maximize visual and auditory access to the primary speaker and away from noises
10. Preparation for transition and change for scheduling/staff

11. Present information auditorally and visually
12. Provide a copy of notes/study guides
13. Visual and verbal supports for self-regulation
14. Calculator
15. CBA: 150% Extended time
16. CBA: Alternate test setting
17. CBA: Teacher provides the option to word process tests and quizzes
18. CBA: Use of student created note card for tests and quizzes
19. Option for use of notes for tests and quizzes
20. Provide access to keyboard
21. Frequent checks for understanding and on-task behavior by asking student to verbally paraphrase instructions

The IEP also included a daily classroom modification: "Grading: Non-grading of class/course tests/exams."

6. A PWN, dated December 7, 2022, and documenting the December 6, 2022 IEP meeting, stated:
The IEP Team agrees the IEP is appropriate at this time.

...

The Team considered Pathways (18 to 21 program)

...

The team will revisit this conversation in March as student is continuing to work on high school credits and his pathway to graduation.

...

Parent would like the team to consider ESY. The team will revisit this in March when we also discuss his progress toward graduation and his possible attendance at Pathways.

7. On December 16, 2022, the Parent advocate emailed the District as follows:
When [Parent] and I reviewed the updated draft IEP we noticed that ESY was accidentally marked no. We want to make sure this error is correct before it is finalized since the previous draft had ESY services and dates included and we didn't discuss making changes to this in our meeting.

Everything else looks good on our end with the IEP. The other follow up items I had noted were:

...

2. [Director of Special Services (director)] was going to send the recovery services plan to [Parent] and where his hours are at currently. I don't think [Parent] has received this either.

The director responded:

Since [the Student] will be finishing up all his graduation requirements except for his transition plan, the ESY discussion will not happen until Spring when we also discuss Pathways as an option.

We can add some language to the PWN that states that we will address ESY in March 2023.

...

I have been working with the team on the Recovery Services plan for [Student's] remaining 11 hours. The team will work with [the Student] after school on ... Thursday's.¹

8. An undated tracking document for recovery services drafted by the District provided the following information about the Student's progress on his winter 2023 goals:
1. [Student] will make an inference given a verbal and/or written cue in 4/5 trials.
 2. [Student] will explain an inference by providing the clues he read and/or his background knowledge in 4/5 trials.
 3. When given a topic of conversation initiated by a peer or school staff (teacher, para, etc.) and a written list of possible questions [Student] will ask a question to gain more information improving conversation skills from 0/5 opportunities to ask a follow-up question to 5/5 opportunities to ask a follow-up question.

Date	Goal Targeted	Results
1/12/23	#1	3/4 (75%)
	#2	Clues: 11/15 (73%) Background Knowledge: 10/14 (71%)
1/19/23	#1	22/25 (88%)
	#2	Clues: 12/13 (92%)
1/26/23	#1	14/18 (77%)
	#2	Clues: 4/8 (50%)
2/2/23	#1	9/10 (90%)
	#2	Clues: 5/8 (62%)
2/16/23	#1	13/17 (76%)
	#2	Clues: 4/7 (57%)
3/2/23	#3	6/7 (85%)
3/9/23	#3	7/10 (70%) Initiating topics: ¾
3/14/23	#1	5/6 (83%) Make predictions 3/6 (50%)
	#2	Clues: 3/5 (60%)
	#3	9/10 (90%)
3/23/23		Reading Comprehension: Response to comprehension questions after reading a short text (1-2 paragraphs): 5/7 (71%); 4/5 (80%) Idioms: 1/5 (20%)
4/4/23	#3	2/2
		Reading Comprehension: Response to comprehension questions after reading a short text (1-2 paragraphs): 5/6 (83%); Idioms: 2/7 (28%)
4/6/23	#1	17/21 (81%) Clues: 5/5
	#3	2/3 (66%)

¹ This email included a chart that set forth hour-long service sessions for the Student from January through March 2023.

9. On April 16, 2023, the Parent emailed the District, in part:
About his reading goal. I am just noticing the goal was set to achieve 65% at 8th grade level. I didn't agree when you guys changed that goal. My input wasn't considered when I said that goal was too low and needed to be changed. You didn't change it...We need to determine extra recovery services past his graduation date.
10. A April 27, 2023 PWN documented consideration of ESY and additional recovery services and stated:
[The Student] is making progress in reading and written language.
...
The team considered and rejected parent request for: 1) Extended School Year 2) Additional Recovery Services in Reading, Writing, and Speech.
...
1) [The Student] is not showing regression/recoupment or an emerging skill. The team considered current data progress monitoring data, grades, and anecdotal data. [Student] is showing appropriate progress towards goals and there is not a loss of skills over breaks.
2) [The Student] has made satisfactory progress on his 3 goals that the IEP worked on during Recovery Services.
...
The Transition teacher and current teacher will meet in the upcoming week to gather data for reading and writing for the adult transition program.
11. A May 8, 2023 PWN documented an amendment to the IEP and stated:
The District proposes to initiate the attached amendment. The IEP includes an updated reading goal and new goals which will be implemented in September when [the Student] attends the Pathways program.
...
[The Student] has met the coursework requirements for his high school program. The team agrees that [the Student] is a candidate for Pathways. When he attends Pathways his goals will focus on post secondary employment and living.
...
[The Student] will be transitioning to the Pathways program next year. The parent was sent a copy of the proposed amendment with new goals and asked to respond with any questions or comments on May 8, 2023.
12. On May 15, 2023, the Student's IEP was further amended without a meeting. The IEP was to be in effect from May 19–June 23, 2023, and specially designed instruction was to be provided in a special education setting, as follows:
- Adaptive: 30 minutes/4 times weekly
 - Social/Emotional Behavior: 100 minutes/4 times weekly
 - Written Expression: 20 minutes/4 times weekly
 - Reading: 20 minutes/4 times weekly
 - Math: 28 minutes/4 times weekly
- The IEP included 60 minutes annually of audiologist consultation and the following related services:
- Speech and Language Therapy: 160 Minutes/monthly (provided by an SLP)
 - Counseling: 50 Minutes/weekly (provided by a therapist)

The Student received 1,895 minutes per week of building instructional time, with 842 minutes served per week in the special education setting. The percent of time in a general education setting was 55.57%. The Student's LRE was 40–79%.

13. On May 16, 2023, the Student's IEP was amended again without a meeting. This amended IEP is in effect from June 24–December 5, 2023, and provided for the same SDI as the May 15, 2023 amended IEP. For this IEP, the Student received 1,560 minutes per week of building instructional time, with 842 minutes served per week in the special education setting. The percent of time in a general education setting was 46.03%. The Student's LRE was 40–79%. The IEP included the same daily, testing, and class period accommodations and modification as listed in the December 2022 IEP.

14. On May 30, 2023, the Student emailed the French teacher about improving his grades. Then the Parent emailed the French teacher as follows, "Is there anything else he can do to perhaps bring his grade up to a B or more instead of a B-?...I would really like to see his grade go higher if possible."

The French teacher responded, "We have many more Edpuzzles coming up. Let's see what happens with his grade. I can give him something at the end if not."

15. On June 4, 2023, the Parent emailed the French teacher:

I still see both semesters grades at a B-. I need to know what exactly [Student] needs to do to bring his semester one and semester 2 grades to a minimum grade of a B. Ideally he should have gotten B+ this year on both semesters. For semester one he is missing 0.25 points to get the B.

...

I would like him to get a B+.

16. On June 5, 2023, the French teacher responded to the Parent, "A 'B' grade is considered a good grade. An A means 'excellent'. [Student] is doing fine in French class but does not perform at an above-standard proficiency level."

17. On June 20, 2023, the Parent emailed the associate principal, "I kept asking [Student]'s French teacher to assign more work to bring [Student]'s grade. So she wasn't willing to assign a few more assignments to make up 0.50 points and get the B+? I need her to assign all the work necessary to get those 0.50 points."

18. On June 13, 2023, the Student walked in his school's promotion ceremony.²

19. On June 21, 2023, the associate principal emailed the Parent:

When you first contacted [French teacher], [Student] had a B-. [Student] was interested in learning more and earning a B. With the help of [French teacher], [Student] was able to gain additional knowledge and earn a B. His grade went from a B- to a B.

² The Student has all the credits necessary for graduation, but he has not been conferred a diploma yet. He is currently working on transition skills through his IEP.

[Student] then graduated (which was a wonderful event!).

He no longer was a student of [French teacher] after he received a B at that point. Due to that, he won't have any further opportunities to demonstrate learning in French since he's graduated...

20. On November 2, 2023, the Parent filed this complaint with OSPI that alleged, in part:

1. We have requested that recovery services be discussed as an IEP team at each meeting during the 2022-2023 school year and we have not met as a team to review data and determine recovery services for my child. Instead at the last IEP meeting the team said that [Student] did not qualify for recovery services and we did not review data or discuss as a team.
2. The district did not include parent concerns as part of the 12/6/2022 IEP and team considerations...The current IEP continues to not include all concerns/input that were shared during the IEP meetings that were held during the 2022-2023 school year.
3. The district failed to meet as a team to review data and determine ESY services.
4. The district failed to provide appropriate instruction which impacted our child's ability to measurable progress on their goals...During the 2022-2023 school year his progress reports show his lack of measurable progress and the team continued teaching the same way when he wasn't making progress...The period where they were supposed to be teaching life skills all they did for a full year was use him to do the work they were supposed to pay someone else to do. They used [Student] as free labor. He didn't need to do those few activities for a whole year to learn them. Perhaps one or two weeks was enough, then move into more life skills.
5. The district did not implement our child's IEP to access the general education classroom...[because] in his classes (special education and general education) his accommodations weren't consistently implemented by his teachers. On example is his French Teacher did not break tasks into smaller steps as documented in his IEP. The period where they were supposed to be checking for missing assignments and teaching him to organize, etc (as written in his goals) the team didn't teach him the skills...just on his French class second semester second trimester he ended up with 19 F's in his class...In [Student]'s special education classes, his accommodations weren't consistently implemented by his teachers. For example, (his teachers) ... did not provide access to the use of an FM system, by not wearing a microphone as stated on his accommodations.

21. On November 22 and 27, 2023, the District submitted its response to the Parent's complaint.

Regarding the first allegation related to recovery services, the District responded, in part:

[B]ased on its assessment, it determined that Student needed 10 hours of Independent Skills and 35 hours of Independent Living – Transition hours due to the March 2020 through June 2020 building closure, which caused the District not to be able to provide the skills in the same manner as before...Additionally, Student made adequate progress in all areas of his writing goals, with the exception of writing conventions, so the District proposed four hours of recovery services in Writing...Student made slow progress in Math and continued to struggle with the subject, so the District proposed 10 hours of recovery services in Math...The District determined that Social Emotional would be served concurrently so Student would have access to his general education peers and proposed 8 hours of recovery services.

Following the IEP team's initial determination, the IEP team met again in April of 2023 and decided that Student did not have a need for additional Recovery Services.

Regarding the second allegation, the District responded, in part:

During the December 6, 2022 IEP team meeting, the District appropriately considered Parent's identified concern when she requested ESY for Student...The IEP team did so by proposing that it would re-visit the issue during the spring IEP team meeting when it would discuss Student's progress toward graduation and his possible attendance at ATP...As proposed, the IEP team then met again in April of 2023, reviewed the available data, and determined...that Student did not have a need for ESY in the summer of 2023.

Regarding the third allegation related to ESY, the District responded, in part:

In this case, the District properly determined under WAC 392-172A-02020 that Student did not need to receive ESY during the summer of 2023, because he did not show regression/recoupment or an emerging skill...The IEP team considered Parent and team reports, current progress monitoring data and grades...Student was showing appropriate progress toward his goals and there was not a loss of skills over breaks, as documented in his progress reports.

Regarding the fourth allegation, the District responded, in part:

Based on Parent's allegations, it appears her concerns include whether Student's accommodations were followed in his French class and special education classrooms. Parent's allegations related to French class specifically appear to be related to her dissatisfaction with Student's grades, as she emailed his French teacher at the end of the school year regarding him receiving a B- in both semesters and inquired about whether he could do assignments to bring up his second semester grade...Additionally, Parent accused [French teacher] of changing expectations of Student, not notifying her of his lack of progress or poor grade and not following his accommodations. [French teacher], who taught Student for three years, informed Parent that she would not notify any parent of a student receiving a B, because that is a good grade...She further explained that she did not change her expectations of Student, nor did she make any changes as to what was outlined in the expectations in his IEP...Finally, [French teacher] gave Student an opportunity to improve his grade for both semesters, increasing both to a B...

Further, Parent seems to allege that the District failed to use the audio amplification (DM) system in the special education classroom settings. The District states that Student had received support from the District-contracted audiologist on the DM system and was able to independently use the so-called 'boots' that attached to his hearing aids in order to access the DM system. The District is unaware of any specific instances or periods of time that the DM system was not accessible to Student and, to the extent that the DM system was not accessed on specific dates, it has not been shown to be a material violation of Student's IEP.

Regarding allegations related to progress and IEP implementation, the District responded in part:

When Student made progress in his goals, the IEP team set new goals for Student or provided him further challenges in his current goals...

The IEP team also added a new Reading Comprehension goal in the spring of the 2022-2023 school year for Student to increase his ability to draw conclusions...He was able to make progress on this goal by the end of the school year...In May 2023, the team added a Reading goal, which included reading for leisure and discussion – a life skills goal.

...

While Parent alleges that Student worked in 'labor' in a life skills class in her allegations, Students was really in a Transitions Skills focused classroom, where he developed skills that included communication, relationships, interviewing and resume writing...Students in the Transition Skills focused classroom also developed and honed their skills within the context of a work environment. This included two days a week in the classroom and three days a week in the field. While in the classroom, Students collaborated to make decisions about jobs, who would perform each skill and how they would work together to complete each task. There were three main job sites that students utilized on their field work days: (a) the bus barn, (b) the cafeteria, and (c) the outside reader board. All students worked on appropriate IEP goals and transition services during this time.

In Student's case, the field work included focus on his Social/Emotional/Behavior Goal, in which he made sufficient progress on by the end of the school year, including initiating topics of conversation using relevant subjects.

22. On November 30, 2023, OSPI interviewed the Student's case manager and the District's director of special services. Below is a summary of that interview based on topic.

Regarding the FM hearing device accommodation, staff shared:

- Student can hear only the teacher using the FM device, but not classmates who may be contributing to the conversation.
- During the 2022–23 school year, the Student obtained new hearing aids.
- The Student worked regularly with audiologists to problem solve how to get FM device to work with the hearing aids.
- The hearing aids had a control switch.
- The Student chose not to use his new hearing aids with the FM.
- Forcing to someone to use the FM device with the hearing aids is not good idea. He was an adult student.

Regarding recovery services, the staff interviewed stated:

- Prior to the 2022–23 school year, the Student had received a significant amount of hours of recovery services. For example, the Student had received 36 hours in August 2021.
- Going into the 2022–23 school year, the Student was still entitled to 11 hours of recovery services.
- During the 2022–23 school year, the District provided the Student with the remaining 11 hours of recovery services.
- Upon receiving all his recovery services, the District determined the Student had met all his pre-pandemic IEP goals.

Regarding ESY and Parent input, the staff shared:

- During the 2022–23 school year, the IEP team determined that the Student was not regressing regarding his IEP goals, and that there were no emerging skills.
- The Parent emailed the District regularly and the District responded to the Parent's emails.

- The Parent was accompanied by an advocate at IEP meetings.
- On progress report, the Parent believed the Student should demonstrate 100% success when data was taken.

And, regarding the Student's transition life skills class:

- The class follows the career and technical education (CTE) standards.
- This course has a curriculum, and it is more than just doing the jobs. The course also deals with relationship building.
- This class's students are assigned jobs at the following District locations: the school's reader board, school cafeteria, and the District's bus barn.
- For this class, the students perform segments of a job, such as a part of what a custodian does.
- In addition, a student may take on the role of the job site manager, engage in quality control, submit time-cards, and practice interviewing skills.
- If a student demonstrates the ability to perform the job independently, then the job assignment must end.

23. On December 5, 2023, the Parents submitted their reply to the District's response. Regarding the first issue, they alleged in part:

[A]t the 4/27/2023 IEP meeting the team said that [the Student] did not qualify for recovery services and we did not review recovery services data or discuss as a team.

...

The progress report from the 4/7/2023 reporting period...that occurred prior to the 4/27/2023 IEP Meeting shows regression. During the meeting only anecdotal data was shared by the team and the parent and student shared that they are seeing regression of skills and continued impact from access to services during the COVID shutdown. The district's claim that the student made adequate progress also doesn't take into account that the team continued to lower the criteria of his goals in order to make it closer for him to meet them versus providing more instructional time to address his needs.

Regarding the second and third issues related to Parent input and ESY, the Parents alleges in part:

On the 12/6/2022 draft IEP, the IEP had ESY marked as 'yes' and the updated IEP after the meeting had this removed. The team did not discuss removing ESY from the IEP during the 12/6/2022 IEP and in response to the parent bringing up the change in the document [director of special services] stated that they will add language to the PWN to reflect addressing ESY in March 2023 but doesn't address the concern with the agreed upon IEP not reflecting the team decision of marking yes for ESY. This impacts the student accessing ESY services supported by progress report data.

...

Since November 3, 2022 we have not met as a team to review data and determine ESY services for my child. There wasn't data collected or other documented evidence shared by the team to show whether there was regression/recoupment of skills. The student was previously eligible for ESY services and the draft IEP for the 12/6/2022 IEP (included is shared documents folder from parent) meeting was marked 'yes' for ESY...the goal's baseline data on 12/6/2022 had the student at an average of 2.2 points. The next reporting period after a break (winter break) on 2/3/2023 had the student with an average of 2.1 points. This is a regression from the baseline data point after a break instruction. The

student wasn't able to recoup these skills either by the 4/7/2023 reporting period and again was reported at having an average of 2.1 points.

Regarding the fourth issue, the Parents alleged in part:

...since 9th grade the student has continued to regress with his skills. His IEP goals continued to stay the same in his IEPs ...The student reported that during his life skills class he was asked to perform cleaning duties or help assist other students in class during the time he was to receive specially designed instruction.

...

We don't see how these tasks align with the specially designed instruction he was supposed to be receiving as written in his IEP.

The student reported that he felt that his accommodations were not being provided and when he would bring this up to his teachers he would be talked out of his concerns. If the student's accommodations were being provided, why did he receive failing grades in French? The student would feel pressured to not access his accommodations based on how his teachers would respond to his requests. In the district's response they stated that they were unaware of any specific instances or periods of time that the 'DM system' was not accessible to the student. In correction to what the district stated, the student's accommodation is for an 'FM system' not a 'DM' system. In order for the FM system to work, staff need to wear a mic or transmitter. The student reports that staff did not wear this which made the system ineffective to support his access to auditory instruction.

24. On December 7, 2023, OSPI interviewed the Parents and the Parents' advocate for 60 minutes, and on December 8, 2023, OSPI interviewed the Student, Parents, and the Parents' advocate for 60 minutes. Some of the points that they expressed, in addition to concerns shared in their complaint, regarding the Student included:

- Since Covid, he has regressed instead of progressed.
- Any progress the Student demonstrated from February through May 2023 was because the Parents had hired a private tutor for the Student.
- The Student did not receive his IEP service minutes.
- Other accommodations that were not provided included the Student's checklists, verbal paraphrasing of instructions, and the opportunity to supplement written work with verbal work.
- The Student's mental health has deteriorated over the last year, and he does not want to go to school. The mother saw change in his mental health, but the school would not follow through or speak to the Parent.
- Services was not being received even if he was in the classroom.
- The family hired a tutor that discovered the Student had difficulty with inferences. Based on the tutor's comment, the Student was given 10 hours of recovery services.
- The Student was not getting any instructions on his exams. The teacher just expected the Student to know how to do the exam.
- Whenever the Student had his accommodations in place, he did well and thrived, and struggled without his accommodations and this crushed the Student's morale.

25. On December 11, 2023, the Parent sent OSPI a detailed summary of her notes from OSPI's interview with the Student. The summary included the Parent's notes of what the Student said and what the Student indicated staff had said. The summary provided in part as follows, regarding teacher 1.

Mondays

The lectures were exactly the same as last year. Always reading in my own...She never explained to me why my answers were wrong, not even once. Afterwards, we looked at NRI (No red ink) assignments on our own. The assignments were exactly the same as last year and the year before that. No instructions were given at all.

Tuesdays

First thing, I and the entire class did was fill out a weekly vocabulary sheet with words randomly selected...out of the novel we were reading.

For the rest of the 90 minute period, with the remaining time left, we did Hamburger Paragraphs on our own. We opened the document and downloaded it on Google Docs and began doing it with her just sitting at her desk...No instructions were given at all.

Thursdays

...She just expected us to know all the answer automatically, to re-do it again and she expected for the assignment to be submitted 5 minutes before class ends. I was told by her 'to re-do it again.'

Fridays

The class began with the weekly vocabulary test that lasted about 10 minutes and then we did the No Red Ink test, the NRI test was the same test as last year and year before.

The same exact sheet of paper we were given for the week's vocabulary was given for the test on 11 and 12 grade. She complained that kids were 'taking too long'. The test was just to write the same exact thing we were given before the test...

For the rest of the period, we gathered around the big table to read the novel. Kids took turns reading it.

The NRI and the 6 way paragraph lessons were exactly the same as the previous years. For the reading passages since the previous years she didn't teach me why the answers were wrong I didn't know the answers. For the NRI since my tutor taught me all that I already knew it all and always got high scores.

Conclusion

Teacher 1 did not take the time and effort to teach kids nor me why we were failing. She didn't explain things or say why things were wrong. No notes nor instructions were provided, no steps, no directions.

Regarding the case manager, the Parent's notes of the Student's interview stated that the Student shared the following:

...

Around May 2023, I had a D in French class. It was very obvious and clear that [case manager was] in denial. She didn't accept the truth and said to me multiple times your French grade is fine. I kept telling her that is not fine.

...

My case manager...thought it was 'ok' that I sat and did nothing, and forced me to stay in the 1st and 7th period. It was her obligation to advocate for my best interest.

On October 14, I asked her to remove me from 1st and 7th period and from the counseling sessions ... I wanted to try other classes like radio and cooking. She made the excuses that 'the radio and cooking class were full'.

I was bored to death in the class. She chose to lie to me and my parents.

In [the case manager's] 1st period class, for an ENTIRE 2 years, I sat doing NOTHING for 50 minutes. There were no instructions nor checklists given whatsoever. I sat on my own and I did assignments from other classes, with no help nor guidance from [case manager] or the para in the class. I thought I was supposed to get help from them. There were no activities done at the table. All the other kids were on Instagram or playing video games instead of doing any of their work. Often, [case manager] criticized me for 'doing nothing' and 'for sitting alone and not joining the table' by [case manager] where all the kids were just goofing on their phones and not doing any schoolwork whatsoever, no one cared what they did.

...

If I had known better, I would have not gone to the class...There was no point in going to [case manager's] class.

7th period was a lot worse. I was forced by [case manager] to clean the school for them, and it made me feel like I was just a free maid.

...

The only thing I learned in the class was that it was ok for adults to name-call, and have no responsibility for the kids. I also learned that it's ok for adults to not do their job, work hard and just hang out and relax. There were no adult role models to learn from in those classes.

I am able to teach myself geography, cities and history. I am self-studying. I learn by reading and writing. [Case manager] didn't support me on my natural abilities.

I know a lot more things that my non-disabled classmates know. Like in French class, I know more about the French language, the French Revolution over time, and old abbreviations no longer used in modern times.

In history class, I knew more history than all the kids, specific details about everything and fun facts.

26. The District provided in its response the Student's progress reporting, which included the following progress notes:

Math Goal

By 12/05/2023, when given use of a calculator and 5 two-step equations with positive and negative rational numbers in any form (whole numbers, fractions, and decimals) including equations whose solutions require expanding expressions using the distributive property and collecting like terms on one side of the equation such as: $3p-2=-29$; $-5(2m-1) = 25$ or $9x + 5(x + 4) = -34$ [Student] will solve the problems improving math skills from correctly solving problems with 20% accuracy to an average of 70% accuracy over 5 consecutive trials as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.

January 27, 2023: Sufficient progress. [Student] currently earns an average score of 25% on 2-step equations. He has a 75% average on 1-step equations. Since the implementation of

the IEP, [Student] has missed 10 days of school when parents took him on an extended vacation. There have been 15 days of instruction since the IEP was implemented.³

April 7, 2023: Sufficient progress. [Student] currently earns an average score of 62% on solving basic 2-step equations. These problems include integers but not fractions or decimals. He will continue to solve more complicated 2-step equations.

June 16, 2023: Sufficient progress. 6/23/23: [Student] currently earns an average score of 55% when solving 2-step equations with positive and negative whole numbers. His scores range from 40-83%. These problems are more complicated than those he completed 3rd quarter.

Written Expression Goal: Written Responses

By 12/05/2023, when given on demand prompt, with a graphic organizer and oral discussion, [Student] will write a response including claim/topic sentence, text-based evidence, and analysis/commentary improving written expression from average 2.2 points based on 11th/12th Common Core Standards to 2.5 points (average over five consecutive trials) as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.

February 3, 2023: Sufficient progress. 2.1 over the only data sample taken since the implementation of IEP...

April 7, 2023: Insufficient progress. 2.1 average over the last 3 data trials.

June 23, 2023: Mastered. 2.6 average on the last 5 trials.

Reading Goal: Comprehension

By 12/05/2023, when given short passages on a variety of topics written at an 8th grade level, [Student] will be able to draw conclusions improving reading comprehension from earning an average 33% accuracy to 65% accuracy average over five trials as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.

February 3, 2023: Insufficient progress. 33% average of over the last 3 trials...

SLP Note: The SLP supports [Student] with this goal during his English Foundations class. Results of treatment data indicates that [Student] responded verbally to comprehension questions asking him to draw a conclusion during discussion of the play Romeo and Juliet with an average of 57% accuracy across two data days.

April 7, 2023: Sufficient progress. [Student] has scored 80% over the last 5 trials.

SLP Note: This past quarter the SLP has supported [Student] with this goal by targeting his inferring skills, both making and explaining inferences. Probing data indicates that given a written cue (short written description), [Student] inferred a cause for a hypothetical event (i.e., thunderstorm, visit to the swimming pool, etc.) with 75% accuracy (3/4 trials) and

³ OSPI notes that all the progress notes for January or February 2023 included that the Student had missed 10 days of school and that there had been 15 days of instruction since the IEP was implemented.

explained how he knew by underlining the keywords that led him to his conclusion with 50% accuracy (2/4 trials.)

May 2023: (Goal) Met.

Social/Emotional Goal: Relationship Skills

By 12/05/2023, when given a list of conversation starters [Student] will initiate topics of conversation using relevant subjects improving topic initiation skills from using relevant subjects in 20% of opportunities to using relevant subjects in 80% of opportunities as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.

February 3, 2023: [Student] is using conversation starters with peers in resource class during group discussions 67% of opportunities when prompted. He is working on doing so unprompted...

April 7, 2023: Made progress, but did not meet goal. [Student] is using conversation starters with peers in resource class during group discussions 71% of measured opportunities.

6/17/2023: Sufficient progress. [Student] was able to use a list and start an appropriate conversation in 67% of measured conversations in resource class. There were 3 instances where data was not collected due to [Student]'s level of agitation.

Adaptive Goal: Friendship Skills

By 12/05/2023, when given a visual of the Friendship Peer-a-Mid...[Student] will identify a minimum of one peer at each level one through four (Friendly Greetings to Evolving Friendship) improving friendship skills from 0/3 opportunities to name a peer at each of the first four levels to 3/3 opportunities to name a peer at each of the first four levels across two separate academic quarters as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.

February 3, 2023: [Student] is working on identifying different levels of peers and in resource is able to identify levels 1/3 times...

April 7, 2023: [Student] is able to identify peers on 4 different levels of the pyramid in 1/4 of opportunities. He can often identify at least 1 peer in 2 levels.

6/17/2023: Sufficient progress. [Student] is able to identify people on 4 different levels of the pyramid in 2/4 opportunities. Data was not collected on 3 different points due to [Student]'s level of agitation on those days.

Social/Emotional Goal: Conversation Skills

By 12/05/2023, when given a topic of conversation initiated by a peer or school staff (teacher, para, etc.) and a written list of possible questions [Student] will ask a question to gain more information improving conversation skills from 0/5 opportunities to ask a follow-up question to 5/5 opportunities to ask a follow-up question across two separate academic quarters as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.

February 3, 2023

SLP Note: Probing data indicates [Student] asked follow-up questions during conversation with the SLP in the speech room with an average of 60% accuracy across three data days (3/5, 2/3, 4/7.).

April 7, 2023: Made progress, but did not meet goal.

SLP Note: [Student] asked follow-up questions given a written list of possible questions in 4/4; 3/5; and 4/5 trials across three data days.

6/13/2023: Sufficient progress. In the data collected [Student] was able to ask appropriate follow up questions in 75% of opportunities.

Reading (new goal as of May 2023): Drawing Conclusions

By 12/05/2023, when given a passage (200-400 words) written at the 9th grade level [Student] will be able to draw conclusions improving reading comprehension from an average of 67% accuracy to an average of 75% over three trials as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.

6.23.2023: Since the implementation of the goal we have made progress; however, during beginning of June, [Student] missed a data collection period, and then he graduated on June 13.

Reading (new goal as of May 2023): TRANSITION- Leisure Reading

By 12/05/2023, when given a current newspaper of choice [Student] will select an article of interest to read daily improving reading comprehension from 0 per week to 4 per week over 6 out of 8 consecutive weeks as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.

6/17/23: Recently implemented.

Reading (new goal as of May 2023)

By 12/05/2023, when given a passage (200-400 words) written at the 9th grade level [Student] will be able to draw conclusions improving reading comprehension from an average of 67% accuracy to an average of 75% over three trials as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.

June 2023: IEP recently implemented. There has been less than a month since IEP initiation.

Math (new goal as of May 2023)

Skill: TRANSITION-Recipes

By 12/05/2023, when given a recipe with measurements, [Student] will independently make the recipe improving math calculations and measurement from following a recipe with 0% accuracy to following a recipe with 100% accuracy over 3 data trials as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.

New goal to be implemented during the 23/24 school year.

6/23/23: [Student] finished the year solving two-step equations.

Written Expression: Writing a summary and opinion (new goal as of May 2023)

By 12/05/2023, when given an article from his weekly newspaper reading, [Student] will write a summary email to his teacher and SLP, discussing the main ideas and reason for interest improving written language from writing a conversational summary and opinion with 25% accuracy to writing a conversational summary and opinion with 80% accuracy over the 3 opportunities as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.

New goal to be implemented during the 23/24 school year.

CONCLUSIONS

Issue One: Recovery Services –The Parent alleged that the District failed to consider and determine recovery services for the Student using data related to the Student’s progress. The District responded that it properly considered and appropriately determined recovery services for Student since November 3, 2022.⁴

Recovery services are intended to mitigate the impact of COVID-19 school facility closures and COVID-19 pandemic generally. Recovery services should enable a student to make progress on IEP goals. Recovery services should be determined by IEP teams on a case-by-case basis. Districts should have examined the effect of COVID-19 and the special education and related services provided during school building closures and during the 2020–21 school year on the student’s overall progress and engagement, including progress toward their IEP goals.

According to the director of special services, the District owed the Student 11 hours of recovery services at the beginning of the 2022–23 school year. On December 16, 2022, the Parent’s advocate emailed the District, asking about the recovery services plan. The director of special services responded, “I have been working with the team on the Recovery Services plan for [Student’s] remaining 11 hours. The team will work with [the Student] after school on...Thursday’s.” Those hours were implemented from January through April 2023, and addressed the following three goals:

1. [Student] will make an inference given a verbal and/or written cue in 4/5 trials.
2. [Student] will explain an inference by providing the clues he read and/or his background knowledge in 4/5 trials.
3. When given a topic of conversation initiated by a peer or school staff (teacher, para, etc.) and a written list of possible questions [Student] will ask a question to gain more information improving conversation skills from 0/5 opportunities to ask a follow-up question to 5/5 opportunities to ask a follow-up question.

The data taken from January 12 through April 6, 2023 showed that for the first goal, the Student had “83/101 trials or correct answers about 82% of the time”; for the second goal, “49/70 trials or

⁴ OSPI notes that under the SECC process, OSPI can investigate an issue only as far back as one year from the date when the complaint was filed. The present case was filed on November 2, 2023, and so OSPI can only investigate the recovery services issue from November 3, 2022 to the present. Any actions the District may have taken regarding the Student’s recovery services prior to November 3, 2022, will not be addressed in this decision.

correct answers about 70% of the time"; and for the third goal, "26/32 trials or correct answers about 81% of the time." As stated above, recovery services should enable a student to make progress on IEP goals, but a student's goals do not have to be mastered before recovery services are deemed sufficient. In the present case, the Student met his first goal; as for his second goal, he was successful 70% of the time while the goal's target was 80%, and for his third goal, he was successful 82% of the time while the goal's target was 100%.

Although the Student did not master his second and third goals, based on the available data, he made progress so it was reasonable for the District to decide that additional recovery services were no longer needed because the Student had made sufficient progress on all his goals to mitigate the impact of the COVID-19 school closure. For this reason, OSPI does not find a violation.

Issue Two: Parent Input – The Parent alleged that the District did not include the Parent's concerns as part of the December 6, 2022 IEP. The District responded that it appropriately took the Parent's concerns into consideration regarding this IEP.

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in state and district-wide assessments, and what services the agency will provide to the child and in what setting. The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements.

In the present case, the District did appropriately take into consideration the Parent's concerns regarding the Student's December 6, 2022 IEP. The Parents and their advocate attended and participated in the IEP meeting. And specifically, a PWN, dated December 7, 2022, stated, "The IEP Team (which included the Parent) agrees the IEP is appropriate at this time." This statement is further supported by a December 16, 2022 email from the Parent's advocate, which stated, "When [Parent] and I reviewed the updated draft IEP we noticed that ESY was accidentally marked no. We want to make sure this error is correct before it is finalized...Everything else looks good on our end with the IEP." The December 7, 2022 PWN also stated, "Parent would like the team to consider ESY. The team will revisit this in March." Although the IEP team did not revisit the ESY issue in March, it did in April. An April 27, 2023 PWN stated, "The team considered and rejected parent request for: 1) Extended School Year."

Despite the Parent not agreeing with the decision regarding ESY, the record does show that the District did consider her request, and the applicable law does not require a district to comply with every request made by a parent. Additionally, as discussed for the previous issue, the District also

considered the Parent's request for recovery services. Thus, based on this present case's record, the District did consider the Parent's requests that were made in the Student's IEP meetings, the District considered input from the Parent, and the Parent actively participated in IEP meetings, and for those reasons, OSPI does not find a violation regarding this issue.

Issue Three: ESY – The Parent has alleged that the District failed to consider and determine ESY services for the Student. The District responded the District properly determined under WAC 392-172A-02020, that the Student did not need to receive ESY during the summer of 2023, because he did not show regression/recoupment or an emerging skill.

ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. The need for ESY services is based on the determinations of the IEP team, their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need.

For a student to be eligible for ESY, it must be shown that a present skill the student possesses will regress during the summer break and the skill cannot be re-established or recouped within a reasonable amount of time after the student returns to school, or that the student is working on an emerging skill that will be lost during the summer break. The present case's record, including the progress reports, do not show that either of these scenarios existed here. One of the Parent's claims is that the progress notes showed that the Student regressed in regard to his written expression goal from a baseline average of 2.2 points based on 11th/12th Common Core Standards to 2.1. A score that goes from 2.2 to 2.1 demonstrates a 5% drop, which is not significant enough to be considered a regression. Additionally, the Student ultimately mastered this goal by the end of the school year. Based on the present case's record and for the reasons provided above, OSPI does not find a violation regarding this issue.

Issue Four: IEP Implementation – the Parent alleged the District failed to provide appropriate instruction which impacted the Student's ability to measurable progress on IEP goals, and accommodations needed to access the general and special education instruction. The District responded that it properly implemented the Student's IEP, including his accommodations, since November 3, 2022.

Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. When a 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 child with a disability and those required by the IEP. For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity."

As stated just above, for there to be a violation of IEP services, the District must have materially failed to provide those services. In the present case, that did not occur.

Regarding the Parent's allegation that the District's instruction impacted the Student's ability to measurably progress on IEP goals, the data shows that from November 2022 until the June 2023, the Student met his written expression goal and reading goal. Additionally, his progress for his math, adaptive, and two social/emotional goals were evaluated as sufficient. Based on the Student's progress, new goals were drafted for the Student in May 2023 that are being implemented during this current school year. Thus, OSPI does not find a violation regarding the Parent's allegation that the District failed to provide instruction and impacted the Student's ability to make progress on IEP goals.

The Parents also raised concerns about the school jobs the Student was required to do in his Life Skills class. Parents expressed, "The period where they were supposed to be teaching life skills all they did for a full year was use him to do the work they were supposed to pay someone else to do. They used [Student] as free labor." The District responded to this allegation as follows:

Students in the Transition Skills focused classroom also developed and honed their skills within the context of a work environment. This included two days a week in the classroom and three days a week in the field. While in the classroom, Students collaborated to make decisions about jobs, who would perform each skill and how they would work together to complete each task. There were three main job sites that students utilized on their field work days: (a) the bus barn, (b) the cafeteria, and (c) the outside reader board. All students worked on appropriate IEP goals and transition services during this time.

In Student's case, the field work included focus on his Social/Emotional/Behavior Goal, in which he made sufficient progress on by the end of the school year, including initiating topics of conversation using relevant subjects.

The District's response shows that the work the Student was performing went beyond the physical labor and was tied to the Student's social/emotional goals. As such, the District's decisions regarding the Student's Life Skills class and how instruction was provided were reasonable under the circumstances.

Another point the Parents expressed in their complaint and interview was that the Student thrived when he received his accommodations as provided in his IEP, but struggled when he did not receive his accommodations. One of the Parent's allegations is that the Student's accommodations as written in the Student's IEP were not properly implemented because the Student received an F grade on 19 assignments because the French teacher and the case manager did not review missing assignments and teach the Student to organize as called for in the Student's IEP. Despite this unfortunate situation, the Student's final grade for this French class was a B, which demonstrates that he was performing adequately in French. Earning a B in French does not indicate there was a material failure to provide accommodations.

The Parent also alleged that the District did not properly abide by the Student's IEP in that it did not provide access to the use of an FM auditory system so that the Student could hear what was happening in class. The District responded that the Student's hearing aids provided the Student

adequate ability to hear what was happening in class and that the Student, who is an adult, made the voluntary choice to not use his hearing aids with the FM system. This fact, along with the Student's progress notes, show that the Student was capably accessing his education and making progress in his goal areas, and thus it cannot be said that the District materially failed to implement the Student's IEP because the Student did not use the FM auditory system.

Finally, as stated above, a district is not required to provide a "potential-maximizing" education to satisfy its FAPE responsibility to a student. In the present case, although there may have been times elements of the IEP were implemented imperfectly or when the Student was frustrated with his teachers, a review of the entire record shows that the Student progressed regarding his IEP goals, and was able to master two goals. This progress is based on the services the District successfully provided to the Student. Thus, the Student received FAPE from the District, and for this reason, OSPI does not find a violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

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.)