

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-165

PROCEDURAL HISTORY

On November 14, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parents (Parents) of a student (Student) attending the Puyallup School District (District). The Parents 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 14, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on November 16, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On December 6, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on December 6 and 7, 2023. OSPI invited the Parent to reply.

On December 14, 2023, the Parents requested an extension for the time to file their reply to the District response. On December 15, 2023, OSPI granted that extension until December 27, 2023.

On December 20, 2023 and January 10, 2024, the OSPI investigator collaborated with an OSPI special education program supervisor who has expertise in transition services.

On December 22, 2023, OSPI received the Parents' reply to the District's response. OSPI forwarded the reply to the District on December 26, 2023.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on November 15, 2022. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Per WAC 392-172A-03105, has the Student's individualized education program (IEP) been implemented properly, since November 15, 2022?
2. Since November 15, 2022, per WAC 392-172A-02050, was the Student educated in his least restrictive environment (LRE)?
3. Based on WACs 392-172A-03110 and 392-172A-03100/05001, has the District inappropriately excluded the Parent from providing input into the Student's IEP since November 15, 2022?
4. Did the District develop an appropriate transition plan for the Student's 18-21 transition services?"

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. 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.

For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Bd. Of Educ. Of Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176, 200-01 (1982). "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).

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students, which shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

Educational placement decisions must be determined annually, or sooner if appropriate, and be made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options that provide a reasonably high probability of assisting the student to attain his or her annual goals, and a consideration of any potential harmful effect on the student or on the quality of services the student needs, based on the student's IEP and LRE requirements. 34 CFR §300.116; WAC 392-172A-02060.

Parent Participation in Meetings: The parents of a student eligible for special education services must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of a free appropriate public education (FAPE) to the student. WAC 392-172A-05001. IEP teams must consider the parents' concerns and the information that parents provide regarding their child in developing and reviewing their child's IEP. 34 CFR §300.324; WAC 392-172A-03110(1)(b).

Parent participation is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child

will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

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.)

Transition Requirements for IEPs: Beginning not later than with the first IEP to be in effect when a student eligible for special education turns 16, or younger if determined appropriate by the IEP team, the student's IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services including courses of study needed to assist the student in reaching those goals. Beginning no later than one year before the student reaches the age of majority under state law (18), the IEP must include a statement that the district has informed the student of the rights under IDEA Part B that will transfer to him or her on reaching the age of majority, unless an exception applies. 34 CFR §300.320; WAC 392-172A-03090.

FINDINGS OF FACT

2022–23 School Year

1. On September 7, 2022, the District held its first day of instruction for the 2022–23 school year. The Student was a twelfth grader in a District high school and was eligible for special education services under the category of multiple disabilities.
2. On October 10, 2022, the Student's IEP team met. The Student's IEP provided specially designed instruction (SDI), provided by a special education teacher, from October 15, 2022 until October 14, 2023, in a special education setting, as follows:
 - Social-emotional: 19 minutes/5 times weekly
 - Behavior: 18 minutes/5 times weekly
 - Adaptive Behavior: 18 minutes/5 times weekly

The Student received 1,740 minutes per week of building instructional time, with 275 minutes served in the special education setting. The percent of time in a general education setting was 84.2%. The Student's LRE was 80–100%.

This IEP included a "Secondary Transition Plan". Under the "Course of Study" section, it stated in part, "...on track to graduate this June 2023; however, his family is looking for [Student] to return next year for additional classes in the CTE tech courses...has a doctor's note stating...he would benefit from an additional year to support his daily living and employment skills."

3. An October 10, 2022 prior written notice (PWN) stated:

[Student] has expressed interest to return to [the school] after graduation to gain more knowledge in the CTE (career and technical education) field with welding and ACE¹...We discussed maybe a blended day with him returning to [the school] for a half day and work experience for the other half.

...

[D]ecision will be made at the end of the year to determine if [the Student] will return for an additional year upon graduation.

4. On November 15, 2022, this complaint investigation timeline began.

5. A May 30, 2023 PWN stated:

A meeting was held on Tuesday 5/30/23 to discuss [Student's] options for returning to [the school] for additional support...He has the option to return to public education until his 21st birthday. [Student] wanted to continue to take other elective classes and social skills class to support his transition plan of furthering his education in welding and gaining employment. His case manager explained that the Student has a right to return to [the school] for social skills class, but he cannot take other elective classes that other students need to meet graduation requirements...His guardians feel he needs a job coach to help support him in the interview process and also support him for the first few weeks once he gains employment...We also encouraged him to look at [local technical college] for the welding program...

...

[Student] continues to qualify in the area of Social Emotional and feel he needs additional support to become more independent and be successful as he transitions into full time employment and furthering his education at [technical college]. He has the right to return to public education until his 21st birthday.

...

Returning and taking electives is not an option. He can come back for Social Skills class to support his deficit areas and work on things he feels he needs additional support in. He can create a schedule that will work with his [technical college] and work schedule.

...

He has met all his graduation requirements.

6. On June 15, 2023, the Parents sent the District the following email:

After review of existing documents and the most recent PWN dated 5/30/2023, [Parents] object to the plan outlined in the PWN (received via email on 6/7/2023). We are requesting a meeting to discuss the proposed plan for the following reasons:

- District has been provided with documentation from two medical providers stating [the Student] should remain in high school.

¹ Architecture, Construction and Engineering (ACE) Academy.

- Parents and [the Student] discussed remaining in high school and taking Welding and ACE with [case manager] fall and spring conferences. That option was not declined.
- PWN dated 10/10/2022 discusses Welding, ACE, and possibly a blended day with [the Student] returning to [the school] for a half day and work experience for the other half.
- At meeting on 5/30/2023 [case manager] stated [the Student] can return for Social Skills but '[the school] does not have the staff to support [the Student] taking electives next year'. Exposure to 'typically developing peers' is essential to students with [Student's] diagnoses.
- Parents and [the Student] should have been notified in a timely manner if [the District] was planning to deny additional electives, so [the Student] could apply for grants/scholarships/funding for continuing education.

Due to the above, we believe the following:

- ...District failed to appropriately consider recommendations by independent/private evaluators.
- ...District made educational recommendations based on the availability of services at [the school] and not the individual needs of [the Student].
- ...District failed to provide parents with sufficient information in order to make informed decisions as to services in order to be a meaningful Individualized Education Program (IEP) team participant in regard to transition plans.
- ...District did not act in good faith in planning for [the Student's] success.

Please schedule a meeting to resolve this matter. Please note we are not available the week of June 26th.

7. A June 23, 2023 PWN stated, in part:

There are a few options that [the Student] can access for his transition plan to best support the additional soft skills and employability skills he and the family are looking for. One option is returning to [the school] and doing jobs around campus plus attending a social skills class to get the additional support [the Student] is needing. Another option is to attend the Advance program which does support all areas of soft skills and employability skills that [the Student] is needing.

...

No decisions need to be made at this meeting. We will meet again in late August or early September to make final decisions on [the Student's] transition plan.

8. On August 29, 2023, the Parents sent the District the following email:

Thank you for meeting with us yesterday to discuss the Advance program. After receiving information on the program goals, we are happy it was determined that it would not be an appropriate placement for [the Student].

[The Student's] internship will be complete September 11th or 12th. It is our understanding that the following items will receive follow up:

- [The Student's] schedule will be put in the system so he will not be dropped as a student.
- [Education specialist] will check into electives that might be of interest to [the Student] (not only for further skill development, but to provide opportunities for social interaction).

- [Director of Special Education] will notify [the school] that he will be absent the first week of school. Please let us know if we need to do anything on this end.
- [The Student] will start attending social skills after his internship is complete. We will need confirmation of his schedule.
- A meeting will be scheduled the week of September 18th to develop a plan going forward. An Advance teacher will attend. A representative from DVR will also participate (most likely via video conference).
- We will start working with [the Student] on his FAFSA.

2023–24 School Year

9. On September 6, 2023, the District held its first day of instruction for the 2023–24 school year. The Student was receiving transition services and was eligible for special education services under the category of multiple disabilities.
10. On September 18, 2023, the Parents sent the District the following email, “Can Social Skills and Transition be together in one class or does it have to be separate? Remove [the Student] from Acting as he has no interest in this elective what so ever. Please do whatever can be done to provide him with ACE 3rd or 5th period?”
11. On September 21, 2023, the Parents and District met. Notes from the meeting provided:
We met again on September 21st to discuss [the Student’s] return to [the school]. At his time, [the Student] was completing a paid internship...At this meeting it was determined that [the Student] would complete his internship and return to [the school] as soon as he was done. [Student’s] schedule was given to family, and they decided to drop Acting/Drama because it was not in his wheelhouse. They also dropped his Transition class because they felt this could be covered in the Social Skills class. With the Transition class [the Student] would be working 1:1 with a para to prepare him for independent living, college classes, and employment. An example of some the topics we would have covered in this class is transportation, reading bus routes, making appoints and how to keep track of them, Health and safety, getting ahead at work, and community resources. [Student] decided that he was going to [the school] for Social Skills only.
12. On October 16, 2023, the Parent emailed the District regarding whether the Student could participate in “Running Start”.
13. On October 17, 2023, the Student’s IEP team met and developed a new IEP for the Student. The Student’s IEP provided SDI, provided by a special education teacher, in a special education setting, from October 15, 2023 until October 16, 2024, as follows:
 - Social-emotional: 25 minutes/4 times weekly
 - Behavior: 10 minutes/4 times weekly
 - Adaptive Behavior: 20 minutes/4 times weekly

The Student received 220 minutes per week of building instructional time, with 220 minutes served in the special education setting. The percent of time in a general education setting was 0%. The Student’s LRE was 0–39%.

Under the "Course of Study" section in the secondary transition plan, it stated, in part, "[Student] is returning to [the school] to continue working on his social skills so that he feels more confident when he is working with peers, staff and future employers. [Student] has completed all his graduation requirements that the [District] requires."

An October 17, 2023 PWN stated, in part, "...[Student] is returning to [the school] for additional support in social skills to help with his confidence and work on his communication and perspective skills to support his transition plan in continuing his education and entering the workforce."

14. On October 17, 2023, the Parents sent the following email.

Thank you for meeting with us today. Please add the following to parent concerns:

Parents are concerned that...District does not offer any programs or classes for [the Student] that would allow him access and interaction with typically developing peers. He is currently being served in the...autism classroom and receives no general education services. It is important that he be exposed to and communicate with students other than those in the autism classroom to provide him with practical real life experiences.

Thank you for following up with [school counselor] in regard to documentation and parameters for Running Start.

15. Undated meeting notes, entitled "Time Sensitive Notes," provide:

It was explained to [the Student] and his family at this meeting that [the Student] could take a Social Skills class but not other elective classes that other students need to meet graduation requirements. My Administration explained to me that a returning student with 27 credits who participated in commencement ceremonies cannot take additional CTE general education classes away from students that are completing their pathway as these are the CTE elective classes that fill up first. [The Student] at this time completed all the CTE pathway classes for Manufacturing, Robotics and CAD (computer aided design).

With [the Student's] return to [the school] for the 2023-2024 school year a schedule was created. His schedule time was Social Skills 4th Transition 5th and Drama 6th. His case manager worked with his counselor to find an elective that was open for him to work on his social skills that the guardians felt was important for [the Student]. The classes that had availability on August 30, 2023 were AP World History, World Geography, Drama, Teachers for Tomorrow, Swimming, Plant Science and Physics. Since [the Student] had met all his core classes to meet graduation requirements. The class that [the Student] could work on his social skills with other students than those in the Autism classroom was Acting/Drama. As [the Student] has goals established to further his social skills, this elective was selected as it would allow for him to interact with typically developing general education peers, as well as help him communicate and build confidence.

Guardians also emailed regarding Running start and if [the Student] could attend. His case manager reached out to the counseling office and [the Student's] counselor found some information on the OSPI RS FAQ. This was sent to family on October 18, 2023.

16. On November 14, 2023, the Parent filed this complaint with OSPI that alleged, in part, that the District did not provide Student:
- "Appropriate educational services this school year (2023–24). Services provided are based on school staffing and not the needs of the Student."
 - "Services in the least restrictive environment."
 - "General education needs resulting in Parents paying for those services."

Additionally, the Parents alleged that they were not provided the necessary information to allow them to make informed IEP development decisions.

The complaint's "Facts about your allegations" section provided the following information:

Based on meetings, conversations, and Prior Written Notice, parents and student believed [the Student] would be attending another year of high school to take Social Skills...during the 2023-24 school year. Parents were notified at a meeting on 5/30/23 that [the school] did not have staff to accommodate any general education classes and he would only be taking Social Skills in the autism class...District strongly encouraged [the Student] to enroll in...Technical College Welding program...Parents emailed district on 6/15/23 expressing dissatisfaction due to prior conversations and agreements...Another meeting was held on 9/21/23 to discuss to discuss [the Student's] schedule. Parents again requested general education classes. An IEP meeting was held on 10/17/23 wherein general education classes were again discussed. Currently [the Student] is attending Social Skills in the...(autism) classroom and has no access to general education peers, as the District cannot accommodate him in general education. Numerous requests have been made to provide him with general education class but [the school] is unable to accommodate that request. [The Student's] general education needs are being met at [technical college] at parent expense.

17. On December 6, 2023, the District submitted its response to the Parent's complaint. The District denied all the allegations. Regarding the first allegation, related to IEP implementation, the District responded, in part:

At the end of the school year, Student walked in his high school graduation ceremony, as he had met the applicable credit requirements for his regular diploma and returned to high school only as part of his transition plan to continue to work on his social skills and perspective taking skills through continued receipt of SDI...This SDI is implemented in the special education setting four days a week.

Regarding the second allegation, related to LRE, the District responded, in part:

Student returned to the high school for the 2023-24 school year to work only on SDI related to his social skills and transition goals. His 220 minutes of SDI in Social/Emotional, Behavior and Adaptive Behavior are in the special education setting...The District attempted to enroll Student in an available elective class, Acting, which would have placed him in a general education setting as requested by Parents; however, Parents requested to have him removed from the class due to his lack of interest in the subject matter...As no other general education electives were available, Parents' choice cause Student to not participate in any general education classes at the high school. However, Student has been attending [college] in the fall of 2023, which is a general education setting with typical peers that Student has been able to access due to the success he achieved in high school with the District.

Regarding the third allegation, related to the Parents' input into IEP decisions, the District responded, in part:

[T]he District properly included Parents' input in Student's IEP because Parents participated in every IEP team meeting and their input and concerns were taken into consideration...Chief among these concerns was that despite Student having met applicable graduation requirements, the IEP team agreed to Parents' request that Student continue receiving transition services at the high school during the 2023-24 school year.

...For example, Student's doctor's note indicated that, due to processing speed and his deficit areas, he would benefit from an additional year to support his daily living and employment skills...the District met that concern and the medical provider's specific direction by providing Student with continued SDI in Social/Emotional, Behavior and Adaptive Behavior in the 2023-2024 school year...Further, during the May 30, 2023 IEP meeting, Parents agreed that Student needed support for the interview process and support during the first few weeks of employment through the District's proposed SDI addressing his continued social skills development.

Additionally, when Parents expressed that they wanted Student to take welding electives, ACE and possibly take a blended day of classes during the 2023-2024 school year, this was memorialized in the October 20, 2022 PWN...Parents allege that they should have been notified if the District did not plan to allow Student to take additional electives...However, the October 20, 2022 PWN stated that the IEP team would make the decision about whether Student would return for an additional year at the end of the 2022-2023 school year...This was done when the team met again in May and June of 2023...And ultimately, the District agreed to Parents' request that Student return to the high school for the 2023-24 school year despite have (sic) met all applicable regular diploma requirements.

Further, when the District listened to Parent's concerns and scheduled Student into the only available elective class for the 2023-2024 school year, Parents requested to have him removed from the Acting class due to his alleged lack of interest in the subject matter...In scheduling Student for the elective class, the District was listening to Parents' concerns about Student wanting to take an elective and being exposed to typically developing peers. The District further deferred to Parents' input when they granted Parents' request to have Student removed from the high school's offered elective class, Acting.

Regarding the allegation related to the Student's transition plan, the District responded, in part:

The District properly developed Student's transition plan because it began including appropriate postsecondary goals prior to the age of 16, during the 2020-2021 school year...These goals included education/training, employment and independent living, along with the courses of study Student would need for his graduation requirements and to assist him to reach his transition goals...This included skills that would support his goals of working in the technology manufacturing field, volunteer work, seeking and maintaining employment, including the interview process, and being a mentor.

18. On December 22, 2023, OSPI received the Parent's reply to the District's response. It expressed, in part:

- "The student, parents and medical provider were very specific in stating that [the Student] needed to remain in high school. It was the team members employed at...School who were determined that he was ready to graduate and move forward."
- "[T]here are at least 2 students...who were enrolled in, completed and passed Robotics last year (2022-2023 school year) and are currently enrolled in that class. Their class schedule lists that class as 'Peer Tutoring' for the 2023-2024 school year. Why are some students put into classes 'which other students needed to meet their remaining graduation requirements' but [the Student] was not afforded the same opportunity?"
- "Parents asked if Social Skills and Transition could be combined...Parents received no response to that question, nor did they receive further information from the District."
- "General education requests could have been made on June 23rd, when he was added to the social skills class. Other electives were to be considered per the August 29th email. And on August 30th, when there were seven available classes, Student and Parents were not contacted by District in regard to which class to enroll him in."
- "An invitation to a meeting does not constitute 'meaningful participation in the formulation of the IEPs.'"
- "Informing Student and Parents that general education classes weren't going to be offered at the May meeting put Student at a disadvantage. That information should have been imparted at the October 10, 2023² IEP meeting. If Parents had been provided that information, Parents would have advocated for a more robust transition plan, rather than the standard language that is put into the majority of IEPs. Students and Parents cannot make informed decisions and have 'meaningful participation' if they are not fully advised."
- "Standard transition language was inserted in the 10/24/20 IEP and never updated. The IEPs dated 10/25/21, 10/15/22, and Draft IEP dated 10/17/23 all have the same language carried forward. No updates were provided, except in regard to number of credits needed to graduate. No college project was completed, as listed in the transition plan. The District was not concerned with the college project, as their focus was employment. Completing a CTE Pathway does not mean that Student will move from high school to employment. Transition plan was only updated when parents pointed it out at the October 2023 IEP meeting."

19. Below are the Student's progress notes for his October 10, 2022 IEP goals, with progress reported on February 3 and June 26, 2023, as follows:

- Social Emotional (Self-regulation strategies): Sufficient progress (SP)³
- Adaptive Behavior (Positive Peer Interactions): Mastered (M)⁴
- Social Emotional (Independent initiation, sustaining and completion of tasks): M
- Behavior (Positive interactions with staff): SP
- Social Emotional (Self-Advocacy): SP
- Social Emotional (4 steps of communication to express his ideas and thoughts): SP
- Social Emotional (4 steps of perspective taking to communicate his thoughts and ideas): SP

20. The Student's progress notes for his October 17, 2023 IEP goals were not available at the time this investigation was completed.

² Based on the present case's IEPs, it appears the Parent intended to refer to the October 10, 2022 meeting.

³ "SP" means "Progress made/Goal not yet met."

⁴ "M" means "Goal met".

CONCLUSIONS

Issues 1 and 2: IEP Implementation and Least Restrictive Environment – The present case’s first and second issues were initially opened separately, but upon investigation are inherently linked and will be addressed together. The Parents have alleged that the District has not provided the Student:

- SDI services based on his needs, but instead based on school staffing.
- SDI services in his least restrictive environment.

The District responded that since November 15, 2022, it has appropriately implemented the Student’s IEP in his LRE.

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.

Education in a student’s least restrictive environment means districts shall ensure that the provision of services to each student eligible for special education, including preschool students, which shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Going into the 2023–24 school year, the Student’s October 10, 2022 IEP was in effect and called for SDI as follows: 19 minutes/5 times per week of social-emotional, 18 minutes/5 times per week of behavior, and 18 minutes/5 times per week of adaptive behavior. This IEP included a secondary transition plan, including a “Course of Study” section, which stated the Student was “...on track to graduate this June 2023; however, his family is looking for [Student] to return next year for additional classes in the CTE tech courses...has a doctor’s note stating...he would benefit from an additional year to support his daily living and employment skills.”

On October 17, 2023, the Student’s annual IEP was developed, and this IEP called for: 25 minutes/4 times per week of social-emotional, 10 minutes/4 times per week of behavior, and 20 minutes/4 times per week of adaptive behavior. The October 2023 IEP included a secondary transition plan, and under the “Course of Study” section, it stated, in part, “[Student] is returning to [the school] to continue working on his social skills so that he feels more confident when he is working with peers, staff and future employers. [Student] has completed all his graduation requirements that the [District] requires.” Both the October 2022 and 2023 IEPs provided that this SDI was to take place in a special education setting.

It appears from the Parents’ complaint, that their main concern is that “[n]umerous requests have been made to provide him with general education class but [the school] is unable to

accommodate that request.” In their June 15, 2023 email to the District, the Parents objected to the school “not having the staff to support the [the Student] taking electives next year (2023-24)”.

OSPI notes that the Student’s SDI was to be implemented in a special education setting and the transition plan does not specifically include elective classes. Instead, at the start of the 2023–24 school year, the District attempted to accommodate the Parents’ request by enrolling the Student in a general education acting class, but according to September 21, 2023 meeting notes, the Parents rejected this class because it was not in the Student’s “wheelhouse”. It appears, based on the Parents’ complaint, that they want the District to offer different and additional opportunities for the Student to participate in general education classes.

At the same time, based on the present case’s record, since November 15, 2022, the District has implemented the Student’s IEP and provided the Student his SDI minutes in a special education setting as required in the Student’s October 2022 and October 2023 IEPs through the social skills class at the District high school. OSPI also notes the Student was also enrolled in a transition class where he would have received additional instruction, but the Parents and Student asked that the Student be withdrawn from that class. The District’s delivery of SDI services may not have been in the particular class the Parents desired, but based on the present case’s record, the District did not materially fail to provide these services. OSPI notes that the legal standard for finding a violation regarding the implementation of an IEP looks at whether the IEP, as written, has been materially implemented or not, and here it has. For this reason, OSPI does not find a violation regarding the first issue, IEP implementation.

Regarding least restrictive environment, the IEP called for the Student’s SDI services to be provided in a special education setting, and that is where those services occurred. It is true that the parties attempted to address the Parents’ desire that the Student attend general education elective classes and that the Student receive some of his services in general education classes, despite this not being outlined in the October 2023 IEP. As discussed above, the District offered and enrolled the Student in a general education elective, but the Student declined to participate in that class. Based on the present case’s facts, OSPI does not find a violation concerning the second issue.

Issue 3: IEP Parental Input – The Parents alleged that they were not provided the necessary information to allow them to make informed IEP development decisions. The District responded that it has appropriately included the Parents’ input into the Student’s IEP since November 15, 2022.

The parents of a student eligible for special education services must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and FAPE to the student. IEP teams must consider the parents’ concerns and the information that parents provide regarding their child in developing and reviewing their child’s IEP. Parent participation is an active role in which the parents provide critical information regarding the strengths of their child, and express their concerns for enhancing their child’s educational program; participate in discussions about their child’s need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child

will be involved and progress in the general curriculum and participate in state and district-wide assessments, and what services the agency will provide to the child and in what setting.

As discussed above, the Parents' main concern is that the Student was not enrolled in a general education class during the current 2023–24 school year. And, as stated above, the District met with the Parents in May, August, and September 2023, to discuss the Student's education for the 2023–24 school year.

At the May 2023 meeting, the Parents were informed that the District would limit the electives the Student could take because he was graduating and based on District policy, a District graduate "cannot take other elective classes that other students need to meet graduation requirements." In June 2023, the Parents emailed the District that they "should have been notified in a timely manner if [the District] was planning to deny additional electives, so [the Student] could apply for grants/scholarships/funding for continuing education," and asked for a meeting. The parties met in June, and a PWN from that meeting stated:

There are a few options that [the Student] can access for his transition plan to best support the additional soft skills and employability skills he and the family are looking for...No decisions need to be made at this meeting. We will meet again in late August or early September to make final decisions on [the Student's] transition plan.

The parties then met again in August and September 2023, to discuss the Student's 2023–24 school year. Notes from the September meeting provide, in part, as follows, "[Student's] schedule was given to family, and they decided to drop Acting/Drama because it was not in his wheelhouse. They also dropped his Transition class because they felt this could be covered in the Social Skills class."

In the Parents' December 2023 reply to the District's response, the Parents mentioned that they should have been notified about the electives in October 2022. Although it is unfortunate that the Student could not enroll in a general education elective he preferred this school year, the notice that the Parents were seeking was not necessarily required at the October 2022 IEP meeting. The October 2022 IEP does not refer to the Student being offered SDI in the District's general education classes⁵ and the October 2022 PWN noted that planning for the following school year had not yet been completed. The PWN specifically stated that the "decision will be made at the end of the year to determine if [the Student] will return for an additional year upon graduation." Given this, it is not a violation or necessarily a limit on parent participation that the District did not provide information about the availability of elective classes for the following school year in October 2022.

Here, the District offered the Parents an opportunity to participate in several IEP meetings to discuss and plan for transition services, and the Parents provided written feedback in emails, that was noted in PWNs and discussed in later IEP meetings. The record shows that the District did

⁵ Despite the October 2022 IEP, the record shows that the District attempted to satisfy the Parents' request for a general education elective by enrolling the Student in an acting class, but unfortunately, it was not the right class for the Student.

consider the Parents' request for general education classes and that the Parents had an opportunity to participate in educational planning for the Student. Thus, OSPI does not find a violation regarding this issue.

Issues 4: Transition Plan – The Parents have alleged that the District has not provided the Student an appropriate transition plan for his 18–21 transition services. The District responded that since November 15, 2022, it has created an appropriate transition plan.

Regarding the transition plans, beginning not later than with the first IEP to be in effect when a student eligible for special education turns 16, or younger if determined appropriate by the IEP team, the student's IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services, including courses of study, needed to assist the student in reaching those goals.

On October 17, 2023, the Student's annual IEP was developed, and this IEP called for: 25 minutes/4 times per week of social-emotional, 10 minutes/4 times per week of behavior, and 20 minutes/4 times per week of adaptive behavior. The October 2023 IEP included a secondary transition plan, and under the "Course of Study" section, it stated, in part, "[Student] is returning to [the school] to continue working on his social skills so that he feels more confident when he is working with peers, staff and future employers. [Student] has completed all his graduation requirements that the [District] requires." The October 2023 IEP provided that this SDI was to take place in a special education setting.

As stated above, the Parents' main concern is that "[n]umerous requests have been made to provide him with general education class but [the school] is unable to accommodate that request." The District's position on this request was expressed in a May 30, 2023 PWN, which stated, "His case manager explained that the Student has a right to return to [the school] for social skills class, but he cannot take other elective classes that other students need to meet graduation requirements."⁶ Despite this position, a June 23, 2023 PWN provided, "There are a few options that [the Student] can access for his transition plan to best support the additional soft skills and employability skills he and the family are looking for."

These two PWNs reflect an inconsistent District position on the transition services the Student required, because if the IEP team believed that the Student's transition plan needed to include general education social/emotional learning electives to improve the Student's soft skills, then the District improperly limited the IEP team's discussion of electives and access to those electives because the Student has met graduation requirements. Further, this had the effect of improperly limiting the IEP team's consideration of whether further CTE courses of some kind should be part

⁶ OSPI notes that the Student's SDI was to be implemented in a special education setting and the transition plan does not specifically include elective classes. Instead, at the start of the 2023–24 school year, the District attempted to accommodate the Parents' request by enrolling the Student in a general education acting class, but according to September 21, 2023 meeting notes, the Parents rejected this class because it was not in the Student's "wheelhouse".

of the transition services. OSPI notes that just because a student has completed a graduation pathway, if the IEP team determines transition services are needed, then the team could consider further course work in an area of interest like CTE. Under the present case's circumstances, the Student is entitled to continued special education services as an adult and the IEP team determined the Student required transition services. Further, it is not clear the IEP team considered the Student's postsecondary goals and interests when determining transition services in the October 2023 IEP, what courses the Student would receive instruction, and whether the Student should have received transition services in a general education setting to receive FAPE. OSPI notes the IEP team should have determined what the Student's transition services needs were, then determined how those needs would be met without limiting the IEP team's consideration of certain elective courses.

Currently, the Student's transition plan does not include general education electives, but the District has not produced a PWN that stated that the District considered the Parents' general education electives request and rejected it based on the Student's needs rather than on class space. For this reason, OSPI finds a violation as to the fourth issue. Based on this violation, the parties will have an IEP meeting to address whether general education electives need to be part of the Student's transition plan and the reasons for that decision. The PWN from that meeting should clearly state what is the District's FAPE offer. Additionally, District special education personnel will participate in training on transition plans.

CORRECTIVE ACTIONS

By or before **March 1, 2024** and **May 15, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Team Meeting

By or before **February 15, 2024**, the Student's IEP team will meet to discuss the Student's transition services needs and address whether general education electives need to be part of the Student's transition plan and the reasons for that decision. The PWN from that meeting should clearly state what is the District's FAPE offer.

By **March 1, 2024**, the District will provide OSPI with i) a prior written notice, summarizing the group's discussion and decisions concerning the above matters; ii) a copy of the Student's IEP; iii) any relevant meeting invitations and prior written notices; and iv) any other relevant documentation.

DISTRICT SPECIFIC:

Training

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will develop and conduct a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 23-165.

District staff responsible for drafting IEPs and transition plans at the Student's high school will receive training covering transition plans as provided in WAC 392-172A-03090, including developing transition plans and determining transition services based on student need. The training should also cover District best practices for how transition services are provided.

By or before **March 1, 2024**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by March 15, 2024.

By or before **May 1, 2024**, the District will conduct the transition plan training.

By or before **May 15, 2024**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix, documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this 11th day of January, 2024

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.)