

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-169

PROCEDURAL HISTORY

On November 17, 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 North Kitsap 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 17, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on November 21, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On December 8, 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 December 20, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on December 21, 2023.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on November 18, 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. From November 18, 2022 until June 2023, did the District ensure that the Parent had the opportunity to provide input into the Student's individualized educational program (IEP) per WACs 392-172A-03110 and 392-172A-03100/05001?
2. From November 18, 2022 until June 2023, was the Student in their least restrictive environment (LRE) for instruction, lunch, and recess per WAC 392-172A-02050?
3. From November 18, 2022 until June 2023, was the Student's individualized education program (IEP) implemented properly per WAC 392-172A-03105?

LEGAL STANDARDS

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 individualized education program (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.)

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.

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.

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).

FINDINGS OF FACT

Background: 2021–22 School Year

1. On January 25, 2022, the Student’s IEP team met. The Student was a second grader, eligible for special education services under the category of developmental delay. The Student’s IEP included specially designed instruction (SDI), provided by special education staff, in a special education setting, from January 25, 2022 to January 24, 2023, as follows:
 - Reading: 120 minutes/weekly
 - Math: 120 minutes/weekly
 - Social, Emotional, and/or Behavioral: 120 minutes/weekly
 - Adaptive: 120 minutes/weekly
 - Speech/Language: 30 minutes/weekly (speech/language pathologist (SLP))

The IEP services matrix included the following weekly totals:

- Special Education Inside Gen Ed Classroom Minutes: 0
- Special Education Outside Gen Ed Classroom Minutes: 525
- Total Minutes of Special Education: 525
- Total Minutes in General Education: 1,225
- % (LRE) Inside General Education: 70
- The Student’s LRE was 40–79%
- LRE: 40-79% In General Class

The IEP also included “Social/Emotional and/or Behavioral: 60 minutes/monthly (occupational therapist (OT))” as a related service.

A prior written notice (PWN), dated January 24, 2022, stated, “The IEP team met to discuss and review an annual IEP, changes as discussed will be implemented. [Student] attends the [District online academy] program and receives Special Education services through her home school.”

2022–23 School Year

2. On August 31, 2022, the District held its first day of instruction for the 2022–23 school year. The Student was a third grader at a District elementary school. The Student’s January 2022 IEP was in effect.

3. A November 16, 2022 functional behavioral assessment (FBA) stated, in part:

Behaviors of Concern

[Student] engages in the following problem behaviors at school:

- Arguing with and provoking peers.
- Leaving her assigned area or refusing to go to her assigned area.
- Meltdowns, which include crying and yelling.
- Refusals, which includes not engaging in the expected behavior after being given a direction to do so, trying to negotiate after she has been asked to do something she doesn't want to do, and pretending to sleep.

At home, [Student's] father reported that the biggest behaviors he sees at home are the regression in emotion regulation (crying quickly and suddenly for small incidents) and her response to fairness. [Student's] dad reports that she has a strong sense of justice/injustice and if she feels she has received unfair treatment then she will often have a big reaction and want to seek revenge.

[Student's] mother reported that because of [Student's] ADHD, Autism, sensory and impulse issues, she doesn't understand that her reactions are disproportionate to the situation...Mother reports that she is prone to catastrophizing and can fixate on the worst outcome. [Student] can hold a grudge for a long time, if she feels she has been harmed or treated unfairly, but she can also be incredibly empathetic if she feels she has harmed someone else and will be very hard on herself.

...

Environmental: [Student's] father replied that the current custody schedule involves a week with dad and then a week with mom, with this schedule starting at the onset of the new school year. [Student's] father reported that adjusting to the schedule has been challenging at times and that it typically takes two days for [Student] to fully adjust...[Student's] father also reported that there has been a regression in [Student's] behavior since the beginning of the summer that may or may not have to do with the birth of her baby brother in May. Changes in [Student's] behavior have included an increase in crying uncontrollably for minor situations, such as getting bumped by a backpack. [Student's] dad reported that she is expressing a strong desire to be more in [teacher 2] class and that he understands that some of her behaviors prevent her spending more time there. He would like for [Student] to spend more time in general education as soon as that is appropriate. [Student's] father reported that as a family, there are frequent discussions with [Student] about what behaviors are appropriate and how her behaviors influence where she spends her time in regards to her classrooms...[Student's] mother reported that the current change in custody has impacted [Student]...[Student] has told her mother that she wants to go back to teacher 2's room and her mother is supportive of this happening in increments and wants [Student] to be aware that this is a possibility and of how it can happen.

...

Historical: [Student's] father reported that he believes her previous experience in schools has greatly affected [Student's] current experience in school. [Student's] father reported that [Student] had behaviors in school, such as elopements and escalation early on when she started school. [Student's] father believes that when remote learning went into effect, it had a significant impact on her education, specifically with social skills. [Student's] father reported that she has a hard time understanding the relationships between child and adult, peer to peer, and student to teacher. [Student's] father stated that online learning provided limited opportunities to practice skills as well as experience the enforcement of boundaries

for extreme behaviors. [Student's] father reported that some of [Student's] behaviors may have a genetic component, but that there are some that simply require social situations in which to practice. [Student's] mother also replied that [Student's] previous school experience had been challenging for [Student]...[Student's] mother replied that her school performance improved when she moved to online school with one-on-one support from her special education teacher.

4. A November 17, 2022 PWN stated, in part:

A functional behavior assessment was recently completed. The team met on 11/16/2022 to review the new FBA and to discuss a behavior intervention plan [BIP] based on the results of the FBA. Now the district proposes to implement the BIP...[Student's] parents reported that she really wants to spend time in her general education classroom and go to regular recess. Teacher shared that after the Thanksgiving break, some time in the general education class will be added to [Student's] schedule. The team discussed strategies for transitions after the time in general education- scheduling a preferred activity right after and the use of a timer.

November 18, 2022 Complaint Investigation Timeline Begins

5. On January 23, 2023, a re-evaluation of the Student was conducted and found the Student eligible for special education services under the category of autism.
6. On January 23, 2023, the Student's IEP team met and developed a new IEP. The Student's IEP provided SDI by a special education teacher, primarily in a special education setting, from January 23, 2023 to January 22, 2024, as follows:
 - Adaptive: 20 minutes/daily
 - Social, Emotional, and/or Behavioral: 30 minutes/daily
 - Math: 30 minutes/daily
 - Adaptive: 20 minutes/daily (in general education)

The IEP services matrix included the following weekly totals:

- Special Education Inside Gen Ed Classroom Minutes: 100
- Special Education Outside Gen Ed Classroom Minutes: 420
- Total Minutes of Special Education: 520
- Total Minutes in General Education: 1,330
- % (LRE) Inside General Education: 76
- The Student's LRE was 40-79%
- LRE: 40-79% In General Class

The IEP also included "Social/Emotional and/or Behavioral: 80 minutes/monthly (OT)" as a related service, and stated in part:

[Student] will participate in general education third grade for the 2022-2023 school year and fourth grade for the 2023-2024 school year with special education services provided by the district Intensive Support Program (ISP)...a self-contained program however, [Student] will participate with her typical peers in the general education classroom to the extent that she can benefit socially and/or academically. She will receive services in the ISP classroom program and general education program for her SDI instruction in the areas of math, adaptive and social.

The IEP included a BIP and FBA, dated November 16, 2022.

7. A February 16, 2023, PWN provided, in part, "We had a meeting today to address attendance with the...family in regarding to [Student]...Dad, is concerned that absences are adding up and he would like to discuss a plan to encourage [Student] to want to be at school when at Mom's."¹
8. A June 14, 2023 PWN provided, in part, "Today we discussed what the rest of the year will look like for [Student]. We are not having her go down to general education in teacher 2's class. We are starting the day with...[paraeducator] instead."

2023–24 School Year

9. On August 29, 2023, the District held its first day of instruction for the 2023–24 school year. The Student was a fourth grader at a District elementary school. The Student's January 23, 2023 IEP was in effect.
10. On November 17, 2023, the Parent filed this complaint with OSPI that alleged, in part, that the District did not:
 - Take into consideration Parent's input regarding the Student's education.
 - Allow the Student to participate in lunch and recess in her least restrictive environment.
 - Provide the Student IEP services during the 2022-23 school year.
11. On December 8, 2023, the District submitted its response to the Parent's complaint. Regarding the first allegation, IEP input, the District responded, in part, "The District ensured that Parents had the opportunity to provide input into the Student's" IEP. The evidence the District put forth to demonstrate the Parent's participation included information about meetings the Parents attended and noted the Parents provided input via a survey questionnaire for the FBA. Regarding the second allegation related to LRE, the District's response expressed:

The general education teacher, Teacher 2, provided a written statement describing Student's time spent in the classroom and the emotional outbursts and behavioral challenges that impacted her ability to access instruction in that environment.

...

[For the] general education third grade lunch time...Teacher 1 reports that the Student is 'sensitive to noise and it was thought it was better to have her eat lunch in a quieter environment as noise levels would set her off.'

Regarding recess...The opportunity to participate with general education peers is available however the Student demonstrated frequent running behaviors that create safety concerns. This behavior is documented in the [FBA]...and the [BIP]. Due to these safety concerns, the Student participated in recess at the smaller playground, which is a special education environment...

¹ Between November 18, 2022 and June 2023, the Student was absent 10 times and either arrived at school late or left school early 14 times. The team agreed to add transportation services to the Student's IEP to support attendance.

The District recognizes that the Student's schedule was fluid and flexible to accommodate behaviors that were impacting her ability to access general education curriculum in the general education environment as well as impacting the learning of other students on a daily basis. This fluidity created an inconsistency with her least restrictive environment as outlined in the IEP. Based on the evidence, the District admits to this allegation and proposes corrective action in the form of staff training related to IEP implementation.

Regarding the third allegation, IEP implementation, the District responded, in part, "The District denies the allegation that the Student's...IEP...was not implemented properly per WAC 392-172A-03105 with the exception of the least restrictive environment identified in issue two." The District in its response further expressed:

From November 18, 2022 until January 23, 2023, the IEP dated 1/25/22...guided services. According to that IEP and the Student's schedule...the Student received specially designed instruction in reading and math in the special education classroom per the IEP...The Student did master this goal according to the December 2022 progress report.

...Math is a challenge and avoidance behaviors impact progress in this area.

The Student's social emotional goal focused on using a productive strategy, i.e., requesting a break, implementing a calming strategy, when frustrated...Progress report data shows that skill is emerging but she continues to struggle and require a lot of support with selecting and implementing strategies.

The IEP indicates that the Student's adaptive goal focused on transitioning from a preferred activity to a less preferred activity...Goal progress indicates that skill is emerging however she continues to require prompting and direct support.

Speech Language services were provided 30 minutes per week...Occupational therapy services were provided as a related service 60 minutes monthly and supported the social emotional goal.

Evidence supports that the Student's [IEP] services were provided and implemented properly from the time period of November 18, 2022 to January 23, 2023.

From January 23, 2023 through end of school year June 2023, the IEP dated 1/23/23...guided services. According to that IEP and the Student's schedule...the Student received specially designed instruction in math in the special education classroom 30 minutes per day per the IEP...For both goals one and two, progress reports in March 2023 indicate limited progress however June progress reports show skills emerging. Math continues to be a significant challenge and avoidance behaviors impact this academic skill area.

The Student's previous social emotional goal focused on using a productive strategy, i.e., requesting a break, implementing a calming strategy, when frustrated. She continues to struggle with this daily...IEP goal progress in March 2023 indicates limited progress and June progress report is showing that this skill is emerging. The special education teacher has been progress monitoring regularly. Behavior goal weekly average progress monitoring from May 2, 2023 to June 13, 2023...shows a downward trend and prompted the June IEP team meeting.

The Student's previous adaptive goal focused on transitioning from a preferred activity to a less preferred activity. This skill continues to be a challenge with the transition involved in lining up to and from recess and specialists...IEP goal progress in March and June 2023 show skill emerging.

Occupational therapy services were provided as a related service 80 minutes monthly and supported the social emotional goal.

The evidence provided previously disputes the allegation that the District did not implement the Student's individualized education program (IEP) services properly.

12. On December 20, 2023, OSPI received the Parent's reply to the District's response. Regarding the first issue, parent input, the Parent replied, in part:

[T]he District acted unilaterally in denying [Student] from her LRE and bypassed any parent input in this decision to deviate from her IEP. As a result, [Student's] IEP meeting on January 23, 2023, formalized what the school was already doing by that point. The level of participation and input parents had in [Student's] IEP meeting on January 23, 2023, amounted to the input that a spectator has with their favorite sports team. There is a concerning trend of the District disregarding parental input. Opportunity to participate must mean more than being invited to spectate.

Regarding LRE, the Parent replied, in part, "From November 18, 2022 until June 2023, was the Student in their least restrictive environment (LRE) for instruction, lunch, and recess...? The answer is a definitive no...[Student] deserves to be made whole, she deserves to be educationally compensated for what was taken away from her." Further, regarding IEP implementation, the Parent replied:

Unfortunately, [Student] did not meet her goal for school year 2022-2023. [Student's] IEP was not implemented properly concerning LRE and she was denied access to her gen ed classroom. Consequently, [Student] was not able to function in the type of environment she was placed into...The district fails to address the fact that [Student] was not working on her IEP Math academic goals until April 10, 2022; this is supported in Complaint, Parent Exhibit 1 by the data table and respective chart under Goal #3, and in email communication in Complaint, Parent Exhibit 2. Most alarmingly, a review of District Exhibit 37 indicates that [Student] lost competency in her progress to achieve her IEP Math academic goals. This is totally unacceptable and positively demonstrates that [Student's] IEP was not implemented properly, and in turn, caused her to lose competency in at least one of her IEP goals.

13. According to an undated document titled "[Student] Summary – From Teacher 2 ([Student's] General Ed. Teacher)":

[Student] was in my third grade class during the school year of 2022-2023. She also spent time in our ISP program, due to struggling with emotional outbursts and behavioral challenges. During the first week or two of school, [Student] was in my classroom as much as possible with a paraeducator. However, during this time she had frequent outbursts that included her throwing items to the ground and running out of the classroom when she was overwhelmed. After seeing the way her behavior escalated in the general education classroom, we opted for [Student] to spend the majority of her day in ISP in order to help her with emotional regulation. In January 2023, [Student] began coming back to the general education classroom for our reading and writing time. During this time, she and one other

student had extra support provided from a paraeducator. I modified and scaffolded assignments for [Student] as well. [Student] was also offered frequent breaks in class and given choices as often as possible. [Student's] behavior in class during our literacy block was up and down. Some days she would cooperate and read and do the writing assignments (especially if drawing was involved). Other days she would put her head down and refuse to work or raise her voice at myself and the paraeducator in my classroom. When we could see that her behavior was starting to escalate, the paraeducator in my classroom would take her for a walk in the hallway to help her de-escalate. If during this walk she didn't de-escalate, we would as a last resort have her return to the ISP classroom. When [Student's] behavior escalated, finishing even modified assignments became difficult. She would talk back, put others down, and say unkind words to others (teachers and students alike) when she was not in a good mood.

14. Notes were created regarding the Student's behavior for her daily transitions to teacher 2's class. The notes provided 47 entries from January 30 through June 12, 2023. Those entries provided the following information:

- Three days when "good job" is the only feedback.
- 30 entries when there was a difficulty with the transition or in class.
- Six days of testing or field trip.

15. Below are the Student's progress notes related to the Student's IEP goals:

Reading (Pre-Primer sight words): 12/07/22 Mastered

Math (Addition problems, January 2022 goal)

12/07/22 Limited Progress

We have been working on addition and subtraction with Xtra math and on our last check-in, got 9 out of 20 correct.

1/22/23 Limited Progress

On the most recent testing, math continues to be a struggle for [Student]. She does not have a lot of confidence in her skills.

3/21/23 Limited Progress

On 3/9, she did 10, 2 digit addition problems without regrouping with 100% accuracy. We are still trying to get her to try the ones with regrouping. She hasn't Jumped at the chance yet.

6/9/23 Skill Emerging

[Student] has been scribbling these out when she comes across them independently. With prompts, she did it yesterday/believe she could do better with it since she had been...But getting a lot of push back on it lately.

Math (Addition coin problems, January 2023 goal)

3/21/23 Limited Progress

[Student] has refused to work with money and count it. We will continue to work on this with her.

6/14/23 Skill Emerging

[Student] has been working on money and what coins are worth.

Social, Emotional and/or Behavior (January 2022 goal)

November 2022

Since [Student]'s return to in-person instruction, she has made progress toward this goal. For the first few weeks, [Student] would become upset, refuse to work, hide in the corner and avoid work. [Student] is now able to sit at the table and start academic work. She often complains of being bored or states that the work is too hard which will typically lead to refusing to cooperate. She will often refuse to work if she is tired or frustrated, however given the time she is in school, she will typically return to work a little bit after refusing. If given breaks, she is more apt to work and return to task. Depending on the day, there can be task avoidance or full attention to task. Encouragement, breaks, and drawing help her manage her feelings more effectively and promote attention to tasks.

12/07/22 Skill Emerging

These goals were written when [Student] was only coming to school for 90 minutes. She has been fulltime and learning about expectations of a full day. She still struggles with calming strategies. She does make the choice to wear noise cancelling headphones which helps with her noise. We just did her FBA and BIP and are beginning her eval right now. We are beginning to also transition her into gen ed and to resource groups. We will continue to work on coping skills as this is a big part of what she struggles with.

OT Note: [Student] is still working on self-calming. She will take a break but also may run away. She has clear goals such as more time in general education, we are just working to help her connect working on her coping skills with meeting her goals. She is so creative and fun to talk to!

1/22/2023 Skill Emerging

[Student] will put on noise cancelling headphones when it is loud, most of the time. She does need reminders of this. We have been having her go over in the morning to the resource room to start her day and then transition to small group for 15 minutes before going down to [Teacher 2's] classroom to do reading. We are continuing to transition her to the general education classroom where she benefits from the time.

3/21/23 Limited Progress

[Student] has been taking headphones when I offer, but has not been using strategies independently. She refused to try taking deep breaths with an adult when another student upset her. It seems to be helping for her write about it, such as when a student threw a book at her computer. She does tend to write unkind things about classmates when she uses this strategy though, and will still yell at other students before using it.

OT Note: We have been working on awareness of what we are feeling and 'sifting' through our brains for the sensations, images, thoughts and feelings we have, stressing our ability to shift our thinking from being stuck on a negative thought to something else. Currently [Student] does not see the benefit of shifting if she is engaged in a negative thought, such as stewing on revenge towards a student that upset her. She is not yet convinced it is beneficial to try to move past or limit negative thinking patterns, particularly if she reports enjoying them. Without this base of understanding she has limited engagement in calming strategies meant to help her feel unstuck or move past some negative behaviors.

6/8/22 Skill Emerging

[Student] does get her headphones at times but sometimes she just continues to yell instead of going that route. She has asked me several times for a break which is new. Deep breaths are not one of her go to calming strategy though.

OT note: [Student] will yell at classmates to be quiet instead of leave the situation. She may engage with an activity beautifully then abruptly cease and refuse. She loves to be part of a group where she can show her skills. We are working on continuing our interoception work while trying to incorporate preferred activities like art.

Adaptive: Transitions

12/07/22 Skill Emerging

[Student] needs more prompts than two. She will procrastinate and takes her time in transitioning.

1/22/23 Skill Emerging

[Student] needs many prompts to transition. This is especially the case when transitioning from a preferred activity. We will continue to work on this on the next IEP.

3/21/23 Skill Emerging

Since January, [Student] continues to need more than two prompts to initiate a task.

6/8/23 Skill Emerging

[Student] still needs more than two prompts to follow directions. She tends to try to negotiate so that she can continue to work on what she wants to. She also gets stuck and it takes quite a few attempts to get her to move on.

CONCLUSIONS

Issue 1: IEP Parental Input – The Parent alleged the “District acted unilaterally in denying [Student] from her LRE and bypassed any parent input in this decision to deviate from her IEP. Participation and input parents had in [Student’s] IEP meeting on January 23, 2023, amounted to the input that a spectator has with their favorite sports team.” The District responded, in part, “The District ensured that Parents had the opportunity to provide input into the Student’s” IEP.

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.

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.

In the present case, the record shows that since November 18, 2022, the District ensured the Parent's participated in the Student's education planning in a variety of ways, as follows:

- Conducted a January 2023 re-evaluation to which the Parent contributed and held an IEP meeting in which the Parent participated.
- Held a February 2023 meeting at the behest of the Parent to address the Student's absenteeism.
- Held a June 2023 meeting involving the Parent to discuss ways to help the Student have a positive finish to the school year.

OSPI notes a district is not required to adopt or agree with every request made by a parent, nor does disagreement necessarily mean a parent was not able to participate. The district's failure to grant a parent's request regarding a student's placement does not mean that a violation exists. Further, deviations in the implementation of the IEP and implementation in the LRE, while a concern, do not mean the parent was prevented from participating in the IEP team and IEP development. As stated just above, "the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE."

It is unfortunate that the Parent felt that the District was not considering his views in regard to the Student's services, but based on the present case's record, the District did take into consideration the Parent's desires and thus, OSPI does not find a violation regarding this issue. OSPI does recommend that if the Parent continues to have concerns, the District and IEP team continue to be responsive and consider whether an IEP meeting is needed to discuss and address concerns.

Issues 2: Least Restrictive Environment (LRE) – In the present case, the Parent alleged that the District has not served the Student in her LRE and the Student "deserves to be made whole, she deserves to be educationally compensated for what was taken away from her." The Parent informed the District that he objected to the Student spending the majority of her day in ISP. To address a student's LRE, 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.

The January 2022 IEP provided the Student with 525 minutes per week of SDI outside the general education classroom, and the January 2023 IEP provided for 100 minutes of SDI in the general education classroom and 420 minutes of SDI outside the general education classroom. Despite the IEPs, teacher 2's note stated:

After seeing the way her behavior escalated in the general education classroom, we opted for [Student] to spend the majority of her day in ISP in order to help her with emotional regulation. In January 2023, [Student] began coming back to the general education

classroom for our reading and writing time...When we could see that her behavior was starting to escalate, the paraeducator in my classroom would take her for a walk in the hallway to help her de-escalate. If during this walk she didn't de-escalate, we would as a last resort have her return to the ISP classroom.

Additionally, the District responded, "Student's schedule impact[ed] her ability to access...the general education environment...[and] created an inconsistency with her least restrictive environment as outlined in the IEP...District admits to this allegation", and "proposes corrective action in the form of staff training related to IEP implementation."

Based on the record, OSPI finds a violation has been established as to the present case's second issue. The District acknowledged the violation, and has suggested the following, "corrective action in the form of staff training related to IEP implementation." OSPI accepts the District's suggestion.

Compensatory education will not be ordered for the Student for the following reasons. First, the January 2022 IEP did not provide for SDI in a general education setting. Second, the January 2023 IEP provided for 20 minutes a day of SDI in a general education setting to work on the Student's adaptive goal of transitions. Based on the present case's record, it appears that staff worked on the transitions goal every day in ISP and in the third grade classroom when the Student attended that setting, so while the IEP was not implemented in the setting specified, as discussed below, the IEP was materially implemented, and thus compensatory education is not an appropriate remedy. Finally, the place where the violation appeared to impact the Student the most was in regard to lunch and recess, for which compensatory education is not an appropriate remedy either. However, the Student's IEP team will be required to meet and discuss the Student's BIP and IEP and whether either need to be amended with additional or different strategies and supports to work toward ensuring that the Student's IEP is implemented in the LRE and setting written in the IEP.

Issues 3: IEP Implementation – The Parent alleged that the "[Student's] IEP was not implemented properly...[Student] was not working on her IEP Math academic goals until April 10, 2022;...[Student] lost competency in her progress to achieve her IEP Math academic goals...and positively demonstrates that [Student]'s IEP was not implemented properly." The District responded that since November 18, 2022, the Student's IEP has been "implemented properly per WAC 392-172A-03105 with the exception of the least restrictive environment identified in issue two."

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.

Aside from this case's LRE issue, which is discussed above, the present case's record shows that the District has not materially failed to implement the Student's IEP. The progress notes and other documentation show that the Student was receiving SDI in all the necessary areas, and the failure to meet a goal, or even skills regression, does not automatically indicate that an IEP is not being

implemented. Further, the progress reports describe how instruction was provided while also indicated areas where the Student continued to struggle. While the IEP team should address areas where the Student was not making progress, a lack of progress does not necessarily mean that SDI was not provided.

The Parent specifically mentions that the District did not work on the Student's math goals between January and April 2023, and although that may be true, the progress notes clearly state "[Student] has refused to work with money and count it." The Student refusing to work on some goals also does not indicate a material failure to implement the IEP; although again, it may indicate the IEP team should discuss whether the Student has needs related to work initiation and work refusal that can be address with additional or different strategies and supports. Overall, OSPI does not find a violation regarding the present case's third issue.

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 23, 2024**, the Student's IEP team, including the Parent, will meet. At the meeting, the IEP team must address the following topics:

- The Student's BIP and IEP and whether either need to be amended with additional or different strategies and supports to work toward ensuring that the Student's IEP is implemented in the LRE and setting written in the IEP.
- Areas where the Student made little progress or exhibited work refusal behaviors and whether the Student's IEP needs to be amended with additional or different strategies and supports to address these needs.

By or before **March 1, 2024**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) a list of people, including their roles, who attended the meeting; d) the IEP if amended; and e) any other relevant documentation.

DISTRICT SPECIFIC:

Training

The District will develop and conduct a training on least restrictive environment as provided in WAC 392-172A-02050, including determining a student's LRE and implementing the IEP in the LRE. A District or non-District employee (e.g., the ESD or other trainer) may conduct the training. The District will provide the trainer with a copy of this decision, SECC 23-169.

The District's staff at the Student's school, including the principal, assistant principal, counselor, and special education certified staff (teachers), will receive the training.

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 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 12th 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.)