

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-172

PROCEDURAL HISTORY

On December 5, 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 Federal Way 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 December 5, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on December 7, 2023. OSPI asked the District to respond to the allegations made in the complaint and respond by December 22, 2023.

On December 19, 2023, OSPI received additional information from the Parent and sent it to the District on the same day.

On December 28, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on the same date. OSPI invited the Parent to reply by January 10, 2024.

On January 9, 2024, the OSPI complaint investigator consulted with the OSPI assistant director for dispute resolution.

On January 10, 2024, OSPI received the Parent's reply. OSPI forwarded the reply to the District on January 11, 2024.

On January 15, 2024, the complaint investigator requested that the District provide additional information, and the District provided the requested information on January 18, 2024. OSPI forwarded the information to the Parent on January 22, 2024.

On January 22, 2024, the complaint investigator requested clarification from the District and the clarification was provided on January 23, 2023.

OSPI considered all information provided by the Parent and the District as part of its investigation.¹

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on December 6, 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.

¹ The complaint investigator reached out to the Parent to offer an interview, though no response was received.

ISSUES

1. Did the District follow procedures in conducting the most recent evaluation of the Student according to WAC 392-172A-03020?
2. Did the District consider the use of positive behavior interventions with the Student according to WAC 392-172A-03110?
3. Did the District implement the special education services in conformity with the Student's individualized education program (IEP) according to WAC 392-172A-03105?
4. Did the District follow special education disciplinary procedures regarding the Student according to WAC 392-172A-05155 and 392-172A-05145?
5. Did the District review and revise the Student's IEP to address any lack of expected progress according to WAC 392-172A-03110?

LEGAL STANDARDS

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describes all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

Reevaluation – Review of Existing Data: As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. If the student's IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be eligible for special education services, and/or to determine the student's educational needs, the school district must notify the parents of that determination, the reasons for the determination, and the parents' right to request an assessment to determine whether the student continues to be eligible for special education and/or determine the student's educational needs. 34 CFR §300.305; WAC 392-172A-03025. The evaluation group's review does not need to be conducted through a meeting but if a meeting is held, parents must be provided

with notice and afforded an opportunity to participate. 34 CFR §§300.305(b) and 300.501(b); WACs 392-172A-03025(3) and 392-172A-05000(2). The school district must provide a copy of the evaluation report and documentation of determination of eligibility to the parent, and at no cost to the parent. 34 CFR §300.306; WAC 392-172A-03040(1)(b).

Positive Behavioral Interventions: Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior. WAC 392-172A-01142.

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

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. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or BIP. 34 CFR §300.530(e); WAC 392-172A-05146.

If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct a FBA, unless the district had conducted a FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or if a BIP already has been developed, review the BIP, and modify it, as necessary, to address the behavior; and except for special circumstances, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan. 34 CFR §300.530(f); WAC 392-172A-05147.

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

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

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

The student must make some reasonable progress from the special education instruction and services he or she receives. The district is not, however, required to maximize the student's educational opportunities or to ensure mastery of skills. *Gregory K. v. Longview School District*, 811 F.2d 1307, 1314 (9th Cir. 1987); *Adams v. State of Oregon*; *Douglas County Educational Services District; Child Development Center*, 195 F.3d 1141, 1150 (9th Cir. 1999).

FINDINGS OF FACT

Background Information

1. The Student was eligible for special education services under the category of emotional behavioral disability. The most recent reevaluation of the Student was completed December 3, 2020.
2. The District's reevaluation of December 3, 2020 indicated that the Student had a functional behavioral assessment (FBA) developed in 2019 that included positive behavior strategies, including the use of 'first-then' and 'if-then' language when explaining positive or corrective consequences, creating opportunities for positive peer interactions, and using space. Limiting language was a strategy to use when the Student was showing signs of escalation, as well as the identification of an 'anchor person' who makes the Student feel safe when stressed.
3. In February 2022, an outside agency developed a comprehensive positive behavior support plan for the Student, outlining their recommended positive strategies specifically for the Student. The plan developers were a board-certified behavior analyst (BCBA) and a registered BT. The plan included the following sections:
 - Definition of challenging behaviors
 - Behavior hypotheses
 - Replacement behaviors
 - Use of positive procedures
 - Antecedent strategies
 - Teaching and training supports
 - Consequence strategies
 - Preferred stimuli
 - Consistency of implementation
 - Decreasing level of support
 - School staff intervention
4. The Student's December 8, 2022 IEP included annual goals in social/emotional behavioral (participation), adaptive behavior (conceptual skill), communication (reading comprehension, vocabulary, narratives), reading (comprehension, vocabulary), written language (writing process, conventions), and math (multi-step equations). Progress was to be reported monthly for all goals, except for communication goals, which were to be reported weekly.

Progress was reported on the IEP on previous IEP (2021) goals, indicating whether the Student met/exceeded the goal, made substantial or partial progress or no progress on the goal. The Student met eight goals, made substantial progress on two goals, and partial progress on four goals. The Student's progress, as well as their present levels of performance as reported by teachers at that time, influenced the development of new goals to better support or extend the Student's skills.

The IEP provided the following specially designed instruction (SDI) in a *special education setting*:

- Communication: 30 minutes/week (to be provided by a speech language pathologist)

The IEP also provided the following SDI in a general education setting:

- Social/emotional behavioral: 30 minutes/5 times weekly (to be provided by a behavior technician (BT))
- Adaptive: 30 minutes/5 times weekly (to be provided by a BT)
- Reading: 30 minutes/2 times weekly (to be provided by a general education teacher)
- Written language: 20 minutes/2 times weekly (to be provided by a general education teacher)
- Math: 30 minutes/ 2 times weekly (to be provided by a general education teacher)

The Student's December 2022 IEP also included the related service of a 1:1 BT for 390 minutes, five times a weekly.

5. The District provided the Parent a prior written notice (PWN) on December 12, 2022, regarding the decisions made at the IEP meeting. The PWN noted the Student required the services listed on the IEP, with a plan to review in six weeks. In addition, the team agreed to consider a plan to fade the 1:1 BT support.

2023–24 School Year

6. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of emotional behavioral disability and their December 2022 IEP was in effect. The Student transitioned to a District high school at the beginning of the 2023–24 school year.
7. The District's 2023–24 school year began on August 30, 2023.
8. On September 26, 2023, the District convened an IEP meeting to collaborate on the Student's transfer to their neighborhood high school. This included a review of the positive behavior support plan developed by an outside agency. This document stated that the Student was assigned a 1:1 BT in the previous program they attended.

The IEP affirmed that the Student required the services listed on the IEP (reading, math, written language, social/emotional behavior, communication, and adaptive behavior), and that no significant changes were made to the goals. The team determined that the Student's behavior support would be transitioned from the positive behavior support plan developed by the outside agency to a BIP, and that the 1:1 BT support would convert to a 1:1 paraeducator.

The District developed a behavioral intervention plan (BIP) for the Student, incorporating information from an FBA. The team that developed the BIP included the Parent, the Student, a BCBA from the outside agency, as well as 16 other staff who helped support the Student.

Some of the positive behavior interventions included in the September 26, 2023 BIP were: 1) check-in/check-out; 2) shaping; 3) use of proximity; 4) re-direction; 5) reminder of options for preferred activity; 6) non-contingent positive attention; 7) social problem-solving; 8)

emotional regulation system with de-escalation; 9) requesting alternative work location; and 10) model different ways to cope with frustration. The BIP documented a review date to monitor Student progress on December 7, 2023.

9. The District provided the Parent a PWN on September 26, 2023, recapping the decisions made by the IEP team. The IEP affirmed that the Student required the services listed on the IEP (reading, math, written language, social/emotional behavior, communication, and adaptive behavior), and that no significant changes were made to the goals. The team determined that the Student's behavior support would be transitioned from the positive behavior support plan developed by an outside agency to a behavioral intervention plan (BIP), and the 1:1 BT support would convert to a 1:1 paraeducator. These team decisions were based on review of current evaluation data, progress monitoring data, District assessments, other classroom assessments, attendance, observations and input from teachers, the Parent, and Student. It was specifically noted that "data has shown that the Student's current supports no longer warrant a BT."
10. District documentation indicated that a 1:1 paraeducator was assigned and communicated regularly with the Student's case manager.
11. District documentation related to discipline between October 10 to December 19, 2023, indicated the Student was involved in incidents resulting in disciplinary actions. The violations included loitering, disruption, destruction, tobacco, failure to cooperate, technology misuse, defiance/non-compliance, possession of explosives, and leaving campus. The documentation also included information about Parent communication relative to the disciplinary actions.

These disciplinary incidents and actions included, in October 2023:

- On October 10, 2023, the Student received a one-day plus four-hours of short-term suspension.
 - The Student received a one-day of detention from an incident that occurred on October 16, 2023.
 - On October 20, 2023, the Student received two days plus one-hour of short-term suspension.
12. District documentation indicated that the Student received educational services throughout his three days of in-school suspension, with support provided by the 1:1 BT.
 13. On October 26, 2023, the Student's IEP team met again to discuss the Student's transition to the high school and proposed the following:
 - Assigning a BT to support the Student;
 - Assigning a 1:1 paraeducator for the Student until a BT can be provided by the outside agency (with radio access);
 - Changing the Student's schedule to add a social skills class; and,
 - That community restrooms would not be available to the Student due to unsafe events.
 14. On October 26, 2023, the District provided the Parent a PWN to document the decisions made at the IEP meeting of the same date. The PWN documented that the Student was struggling to attend classes, complete work, and make safe choices. The District noted that the team decided to assign a 1:1 BT to support the Student throughout the day, though a 1:1 paraeducator would be assigned until a BT could be secured. It was also decided by the team

to change the Student's schedule to include a social skills class. The decisions were based on a review of the Student's attendance, grades, teacher observations, discipline information, and daily check-in/check-out charts.

15. On November 17, 2023, the Student received a ten-day short-term suspension, which was shortened to four days of removal following a manifestation determination review for an incident that occurred that same day.
16. On November 25, 2023, the District held a manifestation determination meeting regarding the incident that occurred on November 17, 2023. The incident was related to throwing explosive firecrackers around campus, for which 10 days of suspension was imposed on the Student. The manifestation determination team included the Parent, a school administrator, the director of student support services, a program specialist, the school psychologist, a special education teacher, and the Student's paraeducator. The team determined that the conduct in question was directly and substantially related to the Student's disability, and that the Student would return to the placement from which the Student was removed, with only four days of suspension applied.
17. On November 28, 2023, the District, with Parent and Student participation, completed an FBA. The process involved reviewing the top three target behavior of the Student and included a review of the Student's records, including previous evaluations and the reevaluation currently in process at that time. The team also used observational information from case managers, the previous and current 1:1 paraeducator, and outside agency staff involved in the Student's program. The team determined that a new BIP was needed.
18. Also, on November 28, 2023, the District developed a BIP for the Student, incorporating information from the FBA to describe the goals and strategies to be used to modify the Student's behavior. The team who developed the FBA included the Parent and Student, the case manager, and special education program specialist, as well as a BCBA from the outside agency. The positive interventions to be implemented with the Student included: 1) assigning work at the Student's independent level; 2) check for understanding; 3) outline expectations; 3) find a compromise; 4) earning of extrinsic rewards; 5) positive adult attention; 6) daily check-in/check-out; 7) use of a positive reward system; 8) affirmation of positive peer interactions; 9) access to case manager upon request; 10) use of proximity to positive peers; and 11) alternate work location. The plan also outlined the specific teaching strategies to teach replacement behaviors and the positive strategies to use to reward the Student for displaying the desired behavior or replacement behavior. All members of the Student's IEP received a copy of the BIP and would be monitored by the case manager, with anecdotal notes provided by the 1:1 adult supporting the Student. The first progress monitoring of the BIP was scheduled for January 25, 2024.
19. On November 30, 2023, the District and Parent met to discuss the results of the District's reevaluation, as the Student's triennial reevaluation was due by December 3, 2023. The assessment findings indicated that the Student would continue to receive special education services under the category of emotional/behavioral disabilities and would receive SDI in

reading, mathematics, written language, social/emotional behavior, adaptive behavior, and communication. The Parent was not in agreement with the academic testing of the Student and agreed to extend the reevaluation to January 11, 2024, so the team could address her concerns.

20. The draft reevaluation included current assessment data of the Student in all areas of suspected disability (reading, math, written language, adaptive behavior, social/emotional behavior, and communication), as well as historical state and District testing results. Specifically, reading and math scores were included going back to 2021, which provided information as to the progress the Student has made. Current classroom assessment information was provided by six teachers covering behavioral and academic information. Report card information was presented for ninth and tenth grades, as well as current attendance and discipline information.

The school psychologist observed the Student in math class, and conducted assessments in reading, math, and written language, as well as a behavior assessment focusing on behavioral and school difficulties. The Student, Parent, 1:1 paraeducator, and one of the Student's teachers participated in this assessment process. An adaptive behavior assessment was conducted with the Parent, case manager, and two teachers participating in this assessment.

The Student completed a career cluster assessment as part of the vocational/transitional aspect of the reevaluation, including sharing about their plans after graduation and desire to attend either a two-year or four-year college.

The Parent provided information regarding the Student's medical/medication status and shared about the Student's social behavior, empathy, and caring about friends. The Parent shared her concerns about the Student's ability to take responsibility, follow the rules, and work harder on his goals.

The reevaluation summary highlighted the Student's difficulties with engaging in risky behavior and maintaining necessary levels of attention at school, as well as being at-risk for depression. In addition, externalizing behaviors, such as rule-breaking, hyperactivity, and aggression, were noted as areas of concern, as was the relationship with their Parent and self-reliance. The report noted the Student took longer to adapt to changes and has difficulty making appropriate suggestions for improvement. The Student also demonstrated poor expressive and receptive skills.

The Student's strengths included being social and helpful with peers, showing empathy towards others, being energetic and creative, and the reported noted the Student enjoyed drawing, animals, and sports.

The reevaluation report contained recommendations regarding appropriate adaptations for the curricular environment and assignments and stated that the Student could not successfully access the general education curriculum without changes to the delivery, content or methodology of instruction, including ensuring that their sensory needs are met when implementing behavioral strategies.

21. On December 5, 2023, the Student's IEP team met for the annual review of the Student's IEP. The team included the Parent, special education case manager, a District representative, two general education teachers, the speech language pathologist, and a special education teacher. The IEP included annual goals in social emotional/behavioral (relationship recognition, analyzing peer pressure), adaptive behavior (academic stamina, self-advocacy), communication (reading comprehension, vocabulary, narratives), reading (comprehension, vocabulary), written language (conventions), and mathematics (quadratic equations) with progress reporting monthly for all goals, except for the communication goals for which progress is to be reported weekly.

The IEP included information on their progress on the prior IEP goals. The IEP indicated the Student met three of their goals, made substantial progress on four goals, partial progress on three goals and no growth on two goals. The new annual goals (math, written language, reading, adaptive behavior, communication, social/emotional behavior) are reflective of changes to address the areas the Student needs more support and extends learning in those areas the Student met the goal or made substantial progress.

The IEP provided the Student with the following SDI in a *special education setting*:

- Social emotional/behavioral: 40 minutes, 10x/month (to be provided by special education staff)
- Adaptive behavior: 35 minutes, 10x/month (to be provided by special education staff)
- Communication: 30 minutes, 4x/month (to be provided by special education staff)
- Reading: 40 minutes, 10x/month (to be provided by special education staff)
- Written language: 35 minutes, 10x/month (to be provided by special education staff)
- Mathematics: 30 minutes, 10/month (to be provided by special education staff)

22. The District provided the Parent a PWN following the IEP meeting, on December 6, 2023. The document outlined the decisions made by the IEP team, including agreement on the new FBA and BIP, as well as agreement to change the Student's co-taught English class to a special education resource room English class. The science class was replaced with a physical education (PE) class on the Student's schedule, and the District representative was to bring a proposal for an increase in 1:1 supervision of the Student to include before and after school to the District level.

The PWN also included information about the decision made by the IEP team previously on October 26, 2023, to enroll the Student in a social skills class, as it had been successful. This change was made possible by switching the Student's general education English class to a smaller, special education setting. Also noted on the PWN was the fact that there has not been a 1:1 BT available to support the Student, though there has been temporary 1:1 paraeducator support until a BT became available. When this occurs, the Student's IEP will be amended.

Specifically, the PWN documented that the Parent was not in agreement with the academic testing conducted as part of the reevaluation of November 30, 2023, and that the District and Parent agreed to extend the evaluation period to January 11, 2024. As such, the IEP of December 5, 2023 was based on the most recent completed evaluation of the Student, dated December 3, 2020. The District stated that once the current reevaluation was completed, the Student's IEP team would convene and make any changes, as needed.

23. District documentation acknowledged that between October 26 and December 8, 2023, a BT was not available to provide the support as prescribed by the Student's IEP. A PWN documented that a BT would not be immediately available and that 1:1 paraeducator support for the Student would continue while staffing was obtained. A BT was assigned, and services provided as delineated in the IEP as of December 9, 2023.
24. On December 20, 2023, the Student received three days of in-school suspension for an incident that occurred on December 19, 2023.
25. Following the three days of in-school suspension, which was effective December 20, 2023, the Student had been removed for ten days and five hours from their special education placement, requiring the District to hold a manifestation determination meeting within ten school days, or by January 17, 2024.
26. The District acknowledged that the removals of the Student from their special education placement exceeded ten days, and they planned to hold a manifestation determination meeting by January 17, 2024.

CONCLUSIONS

Issue 1: Reevaluation Procedures – The Parent alleged that the District did not conduct the Student's reevaluation in accordance with the law.

A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related service needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary.

In this case, the District initiated a triennial reevaluation in accordance with the law and held the reevaluation meeting on November 30, 2023, after having completed a comprehensive reevaluation in all areas of suspected disability. The Parent participated in several aspects of the reevaluation, providing information about the Student's skills and behaviors, as well as providing updated medical information. The reevaluation process also included the involvement of six teachers and the Student's 1:1 paraeducator. The Student was observed by the school psychologist in class and participated in the assessments and survey processes. In addition, the reevaluation included existing data on the Student. The reevaluation confirmed the Student's eligibility for special education services in reading, math, written language, adaptive, social/emotional behavior, and communication. The report provided recommendations for adaptations/modifications for the Student and highlighted their sensory needs. At the meeting, the Parent indicated disagreement with the academic testing, so the team determined to address those concerns and scheduled a reevaluation meeting for January 11, 2024, review and approve the reevaluation. District information confirmed that the reevaluation meeting was held on that date with Parent involvement.

The reevaluation was conducted appropriately and according to law, and addressed all areas of suspected disability. The reevaluation was also extended at the request of the Parent and with Parent permission to address the academic assessment concerns of the Parent. OSPI finds no violation.

Issue 2: Use of Positive Behavior Intervention – The Parent alleged that the District did not consider the use of positive behavior strategies in the development of behavior intervention plans for the Student.

Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior.

In this case, the District provided the Student with behavioral support through the development of several BIPs that have included positive strategies. In September 2023, the District conducted an FBA, followed by the development of a BIP for the Student, incorporating the following positive strategies: 1) check-in/check-out; 2) shaping; 3) use of proximity; 4) re-direction; 5) reminder of options for preferred activity; 6) non-contingent positive attention; 7) social problem-solving; 8) emotional regulation system with de-escalation; 9) requesting alternative work location; and 10) model different ways to cope with frustration. In November 2023, the District determined it was necessary to conduct another FBA followed by the development of a BIP to address new behaviors. Several positive strategies were included in the plan, such as: 1) outline expectations; 2) find a compromise; 3) earning of extrinsic rewards; 4) positive adult attention; 5) daily check-in/check-out; 6) use of a positive reward system; 7) affirmation of positive peer interactions; and 8) access to case manager upon request.

The BIPs developed by the District have been developed by a team involved with the Student and include positive behavioral strategies to help teach the Student to manage behavior, as well as the consideration of triggering environmental factors. The District considered and used positive behavior interventions with the Student; therefore, OSPI finds no violation.

Issue 3: Special Education Services Implementation – The Parent alleged the District did not implement the IEP, specifically related to a social skills class and the assignment of a 1:1 BT.

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.

In this case, related to the social skills class, District documentation indicated that the decision to include the Student in a social skills class occurred at the October 26, 2023 IEP meeting and the Student's schedule was changed. Additional information regarding the social skills is reflected in the PWN provided to the Parent after the December 5, 2023 IEP meeting, and stated that the

social skills class has been successful for the Student. OSPI finds no violation related to the implementation of the social skills class.

Related to the assignment of a 1:1 BT to support the Student throughout the day, the IEP team met at the end of September (the Student transitioned at the beginning of the 2023–24 school to the District high school) to discuss the Student’s transition. The decisions made at that meeting included that the Student’s behavior support would be moved from the positive behavior support plan developed by an outside agency to a BIP, and that the 1:1 BT support would convert to a 1:1 paraeducator. A paraeducator was assigned to the Student and began providing support.

The IEP team met again at the end of October 2023, to discuss concerns regarding the Student’s program, and the team determined the Student did need 1:1 BT support. It was noted that the 1:1 paraeducator support would continue until a BT was identified and assigned. The decision to add BT support to the IEP illustrates that the IEP team believed that paraeducator support was insufficient and this is supported by the fact that the Student continued to have behavioral challenges and receive discipline throughout October 2023. The District acknowledged it had trouble finding a BT, and a BT was finally assigned December 9, 2023. The PWN provided to the Parent documented that a BT would not be immediately available and that 1:1 paraeducator support for the Student would continue while staffing was obtained. While the Student was first supported by a paraeducator and then by a BT, the Student’s IEP was not implemented as written when the support was changed to a BT on the IEP and then still provided by a paraeducator until a BT was hired. This also impacted the Student, given the continued behavioral challenges and discipline. Therefore, OSPI finds a violation as the IEP was not implemented as written and the Student’s IEP team will meet to discuss the impact on the Student.

Issue 4: Special Education Discipline Procedures – The Parent alleged that the District did not appropriately follow special education disciplinary procedures.

In this case, the Student was involved in several disciplinary actions from October through December 2023. The Student was subject to detention, conference with the Parent, community service, and short-term suspensions, with a 10-day suspension imposed on November 17, 2023. In conformity with special education disciplinary procedures, the District held a manifestation determination meeting, inclusive of the Parent, where it was determined that the conduct in question was directly and substantially related to the Student’s disability, and that the Student would return to the placement from which the Student was removed, with only four days of suspension applied. The District held a manifestation determination meeting following the imposition of the 10-day suspension, which was converted to a four-day suspension following the MD meeting where it was determined that the behavior was related to the Student’s disability.

Following the three-day in-house suspension imposed on the Student beginning December 20, 2023, the District acknowledged that the removals of the Student from their special education placement exceeded 10 days, and they held a manifestation determination meeting by January 17, 2024.

Documentation of the disciplinary procedures indicate that special education disciplinary procedures were appropriately followed; therefore, OSPI finds no violation.

Issue 5: Appropriate Educational Progress – The Parent alleged that the District did not review/revise the Student’s IEP to address any lack of expected progress.

A district is not required to provide the very best, potential-maximizing education for a student. Rather, it must provide specialized instruction and related services that are individually designed to provide educational benefit to the student. If a district has complied with IDEA’s procedural requirements, and if the IEP developed through those procedures is reasonably calculated to enable the student to receive educational benefit, then the district has satisfied the obligations imposed by Congress. The student must make some reasonable progress from the special education instruction and services he or she receives.

In this case, the District held several IEP meetings from September to December 2023, to address concerns related to the Student’s program and behavior. In addition, the Student’s behavior plan was revised twice, an FBA was conducted to inform a new BIP, and a triennial reevaluation was held, followed by the annual IEP meeting. All of the documents delineated the Student’s present levels of performance and outlined the issues to be addressed.

The Student’s annual IEP of December 12, 2022 addressed progress in each goal area from the previous IEP (2021), indicating whether they met/exceeded the goal or made substantial or partial progress. The Student met eight goals, made substantial progress on two goals and partial progress on four goals. The Student’s progress, as well as their present levels of performance as reported by teachers at that time, influenced the development of new goals to better support or extend the Student’s skills. Similarly, the Student’s IEP of December 5, 2023 also included information about the progress made on the prior IEP goals of December 2022. The Student met three of their goals, made substantial progress on four goals, partial progress on three goals and no growth on two goals. The new annual goals are reflective of changes to address the areas the Student needs more support and extends learning in those areas the Student met the goal or made substantial progress.

While the Student did not make substantial progress or master every IEP goal, the Student overall made reasonable progress from the special education services and instruction they received. Further, the IEP team continued to evaluate the Student’s needs and met through the fall to address concerns. Overall, OSPI finds no violation. However, given an IEP meeting is ordered above, OSPI recommends the IEP team continue to discuss the Student’s progress and whether the Parent has concerns about that progress; the IEP team is encouraged to review the annual goals, the criteria for progress, and the frequency of progress reporting periods.

CORRECTIVE ACTION

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

STUDENT SPECIFIC:

IEP Meeting

By or before **February 23, 2024**, the Student's IEP team will meet to discuss the impact of the identified violation on the Student's ability to progress on the Student's IEP goals, and whether compensatory education is warranted. If the IEP team determines compensatory education is warranted, the District will provide OSPI with the related prior written notice, documenting this specific determination, meaning how many hours in which service areas. The prior written notice will also detail the data the IEP reviewed when making its decision. OSPI will then review this documentation and determine additional corrective actions and deadlines for the same, as appropriate.

By **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:

None.

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

Dated this 2nd day of February, 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.)