

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-180

PROCEDURAL HISTORY

On December 15, 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 Richland 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 15, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on December 19, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On January 5, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on January 9, 2024. OSPI invited the Parent to reply.

On January 22, 2024, OSPI received the Parent's reply. OSPI forwarded that reply to the District on January 23, 2024.

On January 26, 2024, the OSPI complaint investigator interviewed the District's executive director of special education for elementary (executive director).

On February 1, 2024, the OSPI complaint investigator interviewed the Parent.

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

ISSUE

1. Since October 6, 2023, did the District implement the accommodation for a polycam in conformity with the Student's individualized education program (IEP) according to WAC 392-172A-03150?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. 34 CFR §300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher,

related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

The IEP meeting serves as the vehicle for making joint, informed decisions regarding the student's needs and appropriate goals; the extent to which the student will be involved in the general curriculum, in the regular education environment, and State and district-wide assessments; and the services needed to support that involvement and participation and to achieve agreed-upon goals. The IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs. 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).

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. It is not appropriate to make IEP decisions based upon a majority "vote" and no one team member has "veto power" over individual IEP provisions or the right to dictate a particular educational program. 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.)

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

Definition of Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

Program Modifications: An IEP must include a statement of the program modifications that will be provided to enable the student to: advance appropriately toward attaining his or her annual IEP goals; be educated and participate with other students, including nondisabled students in educational activities; and participate, if appropriate, in general education classroom, extracurricular, and nonacademic activities. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d).

Difference between Accommodations and Modifications: Accommodations: 1) do not fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; 2) provide equal access to learning and equal opportunity to demonstrate what is learned; and 3) grading and credit is the same as typical students. Modifications: 1) do fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; 2) provide a student with a meaningful and productive learning experiences

based on individual needs and abilities; and 3) grading and credit are different. OSPI, Evaluation and IEP Technical Assistance Module (April 2008).

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, 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.

FINDINGS OF FACT

1. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of autism, was in the third grade, attended a District elementary school, and his January 17, 2023 individualized education program (IEP) was in effect.
2. The January 2023 IEP noted the Student required specially designed instruction (SDI) in reading, written language, math, executive functioning, adaptive, social/emotional, occupational therapy/fine motor, and communication. It also stated:
[The Student] requires a 1:1 [registered behavior technician (RBT)] RBT to support him with learning, socialization, and adaptive needs at school in all environments at school. The support is needed to help [the Student] access his education, assist him with his social/emotional needs, toileting needs, and help him with his emotional regulation and adaptive needs. [The Student] attends a modified schedule from 8:40 a.m. - 2:00 p.m. M-Th, and 8:40 a.m. – 2:15 p.m. on Fridays.

The Student’s January 2023 IEP included thirty (30) annual goals,¹ including one adaptive annual goal related to general education participation that stated:

¹ The 30 annual goals relate to the following skills:

- Five Social/Emotional: (1) Appropriately Acknowledge Interactions Initiated by Others, (2) Conversation Turn Taking, (3) Problem Solving, (4) Interpreting Social Cues, and (5) Behavior Mapping.
- Three Adaptive: (1) Classroom Skills, (2) Step by Step Checklist, and (3) General Education Participation.
- Four Math: (1) Triple Digit Addition and Subtraction, (2) Word Problems, (3) Ordering Triple Digit Numbers, and (4) Measurement.
- Five Reading: (1) Phonics, (2) 4th 100 Sight Words, (3) Phonological Awareness, (4) Vocabulary-Compound Words, and (5) Grade Level Text.
- Four Written Expression: (1) Structuring a Paragraph, (2) Complete Sentence, (3) Structure, and (4) Spelling CVC Words
- Three Communication: (1) Phonological Awareness, (2) maintain topic, and (3) speaking succinctly
- Three Fine Motor: (1) Keyboarding, (2) Visual Fixation and Pursuits, and (3) Handwriting.
- Three Executive Functioning: (1) Conversational Repair, (2) Planning/Organizing, and (3) Functional Communication.

By 01/16/2024, when given general education opportunities [Student] will increase his daily time spent in the general education classroom during instructional time improving average time spent in the general education classroom from an average of 14 minutes per day to an average of 45 minutes per day as measured by data collection tool.

The Student's IEP also included 38 accommodations and the following six modifications:

- Other: "Reading Core Curriculum used is Amplify CKLA Core Curriculum".
- Other: "Team will reconvene to discuss reading curriculum once new curriculum is adopted".
- Other: "Student will be given modified grade level general education work daily (ex: provide student with word banks, reduce amount of problems presented to student)".
- Other: "Enlarging area the student writes on when practicing formation and words".
- Timing/Scheduling: "[The Student] will attend school on a modified schedule, leaving school 1 hour and 15 minutes earlier than his peers at 2:00 p.m. Monday through Thursday, and at early release time with his peers at 2:15 on Friday".
- Timing/Scheduling: "School bus will wait 10 minutes after arriving at [Student's] bus stop for [the Student] to board before leaving for school".

The IEP specified "Supports for School Personnel: CKLA Core Curriculum Training given to staff working with student."

The Student's special education and related services were described in the Student's January 17, 2023 IEP, which indicated he received 1,740 minutes of instructional time per week (348 minutes per day) and 1,110 of those were to be provided in a special education setting. The Student's IEP identified the following related services:

- Applied Behavioral Analysis (ABA) services that were to be provided concurrently by a board-certified behavior technician (BCBT)/RBT and monitored by a BCBA 245 minutes, 5 times a week in a special education setting.
- ABA services that were not to be provided concurrently were to be provided by a BCBT/RBT and monitored by a BCBA for two hours (120 minutes), 2 times a week in a special education setting.
- ABA services that were not to be provided concurrently to be provided by a BCBT/RBT and monitored by a BCBA for 45 minutes, 5 times a week in a special education setting.

The Student's IEP identified the following special education services:

- In each of six areas of executive function, math, reading, written expression, social/emotional, and adaptive specially designed instruction (SDI) to be provided by a special education teacher for 20 minutes, 5 times a week (for a combined total of 120 minutes of SDI per day) in a special education setting.
- Fine motor services to be provided by an occupational therapist (OT) for 30 minutes, 3 times monthly in a special education setting.
- Communication services to be provided by a speech language pathologist (SLP) for 30 minutes, 3 times monthly in a special education setting.

The Student's IEP identified that as a supplementary aid and service, the Student was to receive the services of a RBT one-on-one, monitored by the special education teacher, for 327 minutes, 5 times a week in a special education location.

The Student's January 2023 IEP further described the Student's IEP services in the "Service Matrix" as follows:

[The Student's] 1:1 RBT/CBT is with him 205 minutes per day in the General Education setting and 122 minutes per day in the SPED setting.

Related to [social emotional] Goals, a BCBA. The 2 hours 2 X weekly in Related Services is for the BCBA to train staff and supervise staff.

3. On August 23, 2023, the Student's IEP team met. The Parent, the third-grade general education teacher, the Student's special education teacher, the Student's assigned RBT, the District's BCBA, a private BCBA, the assistant principal, and the executive director attended the meeting, as did a notetaker. The OT and SLP did not attend this meeting. At the end of the meeting, it was noted that the assistant principal would talk with the team and the executive director "about how to provide core to the Student via poly cam/streaming."²
4. The District's 2023–24 school year began on August 29, 2023.
5. Between August 29 and September 19, 2023, the Parent emailed the special education teacher and the executive director about implementing a "Polycam." Ultimately, on September 19, 2023, the Parent requested another IEP meeting to discuss "accommodations" for the Student "to access direct instruction in the core curriculum from the general education teacher and discuss how SDI is being delivered."
6. An IEP meeting was scheduled for September 25, 2023, and the initial invitation referenced it as a "brainstorming" meeting, but the Parent objected to that term and said it was her understanding a decision would be made at the meeting.
7. The District provided data regarding the adaptive goal of increasing the daily time spent in the general education classroom during instruction time for the first three weeks of school, between September 1 and September 22, 2023. During that time, the Student was spending between 20 and 150 minutes per day in the general education classroom during instructional time with an average of 100 minutes per day during week one, a little over 80 minutes per day during week two, and just under 40 minutes per day during week three.
8. On September 25, 2023, the Student's IEP team met. The meeting was scheduled from 3:30 to 4:30 pm. The IEP team started with 11 participants: the Student's two parents, the special education coordinator for elementary (special education coordinator), the assistant principal, the special education teacher, the third-grade general education teacher, the OT, two school counselors for (for grades K–2 and grades 3–5, respectively), the District's BCBA, and a private BCBA who has worked with the Student for five years.

During the meeting, the IEP team discussed the Parent's specific concern about the Student not having sufficient access to three blocks in the third-grade general education class, "Core

² Throughout, the term "Polycam" is used to refer to a camera that provides livestreamed audio and video from one location to another via computer, such as at conferences and events.

Math Block 9:05-9:40 AM, Core Writing/Grammar/Vocabulary Block 10:30-11:05 AM, and Core ELA Block 12:05-1:30 PM.” The Parent shared data, indicating the days and times the Student was in the general education classroom during ELA, writing, and math.

The general education and special education teachers discussed their collaborative efforts to deliver some of the general education work to the Student in the general education and supplement classrooms, and flipping the times of quiet reading time (QRT) and writing. The special education teacher noted that she is still working through Student refusals, and that work production had been inconsistent. Team members shared observations about when the Student left the general education setting, and they discussed ways to make the general education environment more enticing to the Student.

The Parent proposed the District set up a Polycam and live stream the daily direct instruction from his general education teacher during the third-grade classroom’s core ELA and math to the supplemental support room (special education setting) for the Student to have as an “accommodation.” There was discussion of concerns that the Student shuts his laptop before assignments are completed and does not like headphones, so display of a live feed on a monitor in the supplemental classroom was discussed. The assistant principal discussed concerns about the Polycam reinforcing for the Student that he does not need to go to general education classroom and suggested getting him closer to the classroom to hear the instruction, but the Parent felt that would segregate the Student from his grade-level peers. It was also suggested that the team track when the Student needed sensory breaks and when he attended general education.

Before 4:45 pm., the special education coordinator, the third-grade general education teacher, the grade 3–5 counselor, and the OT (four of the eleven members of the initial members of the IEP team) left the IEP meeting because it had run past its scheduled time.

According to the Parent and subsequent District documentation developed by the executive director, who was not present at the meeting, a “decision” was made at 4:45 pm to implement the Polycam. At this point in the meeting, the meeting’s participants were the Parents, the assistant principal, the special education teacher, the K–2 counselor, and the District and private BCBA.

According to the Parent’s complaint, at 4:45 pm at the end of the meeting, the assistant principal stated, “consensus has been reached,” and the assistant principal said she would reach out to the executive director to get the Polycam materials ordered. The meeting adjourned at 4:52 pm.

9. On September 27, 2023, the District received a “cease and desist” letter, dated September 26, 2023, from the teacher’s union objecting to the use of a Polycam in the general education classroom and asserting that it violated the “electronic monitoring” provision of the contract and was a “change in working conditions” that would require further bargaining. The letter further argued that it violated School Board Policy 4311, which states, “Never video tape, audio

tape, or photograph without the permission of the principal or teacher.” It also argued that it violated Board Policy “RR2024” regarding the parameters for “online learning.”

10. On September 29, 2023, the executive director contacted the Parent to explain that concerns had been raised about the IEP team decision, and he asked to reconvene the team to discuss the concerns. (He did not inform the Parent about the “cease and desist” letter from the teacher’s union until later, on October 10, 2023.) The Parent responded that she was not willing to meet again if the purpose of the meeting was to reconsider the Polycam.
11. Between October 11 and 13, 2023, five members of the IEP team wrote letters and emails of “dissent” regarding the use of the Polycam. Their dissents that are specific to the Student are discussed below:³
 - The general education teacher’s dissent stated she was not in attendance when a decision was made to use a Polycam of livestream lessons from the general education classroom. She said she did “not believe that teaching, learning, and peer or instructor interactions can be sufficiently successful or replicated through digital learning or via video streamed lessons...[and she had] concern that the use of a streamed lesson could create a barrier to receiving General Education instruction with the class.”
 - The Student’s special education teacher said, “I do not agree with the decision to implement the Polycam. I do not believe that teaching and learning through a screen are best practices. Teaching, learning and interactions between peers and the teacher cannot be replicated through digital learning or streamed lessons.”
 - The K–2 school counselor said she stated in the meeting she was not comfortable making a decision and did not have sufficient information about the Polycam to express an opinion. But she had expressed concerns about moving too quickly not having a plan to monitor its effectiveness, and how the Student would access the instruction given his historical issues with devices and refusal to wear headphones.
 - The assistant principal stated, “a Polycam was agreed on by the team.” But, she said, she “shared concerns during this meeting that it potentially would cause a reverse effect and promote the student to not enter the gen-ed setting.” She also said she said in the meeting that “even though I disagreed with this option, I would go with what the team decided.”
 - The OT said, “I do not agree with the decision to trial the polycam. As of 10/10/2023, I have not received any information on what the polycam camera is and how it would work...In my opinion, we could still trial some other strategies to get the Student’s time in General Education increased before a polycam in a separate classroom would be the solution.”
12. On October 16, 2023, the IEP team met to add an accommodation to the Student’s IEP to allow him to use the toilet the first time he asks. The Polycam issue was not revisited.
13. On October 18, 2023, the executive director spoke to the Parent and explained that the Polycam would not be going into the Student’s classroom as his current IEP does not reflect core instruction in general education and recommended a facilitated IEP meeting. The Parent said she was not interested in a facilitated meeting at that time. The executive director said he

³ Concerns of a general nature or about the impact on other students’ educational or privacy rights are not included here as OSPI has determined that the other concerns are not relevant considerations for the Student’s IEP needs.

would write an IEP amendment to add the accommodation to reflect what was agreed upon at the September 25, 2023 IEP meeting.

14. Between October 31 and December 6, 2023, the Parent and the executive director worked on the IEP amendment language. The executive director emailed the Parent the IEP amendment on December 6, 2023. The amended IEP contained the same special education and related services as the January 17, 2023 IEP. The Student's adaptive annual goal for general education participation did not change. The only discernible difference in the Student's special education and related services was rather than having a start date of January 17, 2023, the new IEP had a start date of November 1, 2023. Both had an end date of January 16, 2024. However, two new IEP accommodations were added to the 38 accommodations from the January 2023 IEP:
 - From October 6, 2023 to January 16, 2024, "A Polycam live streamed from the Gen Ed class to the Supplemental Support Room on a monitor" with the frequency "Daily during Core Math, ELA, and Writing" with the location "General Education and Special Education Classrooms."
 - In all settings from November 1, 2023, to January 16, 2024, "When [the Student] requests to use the bathroom, that request is honored the first time."

15. Although the IEP meeting about the Polycam was on September 25, 2023, an IEP amendment and prior written notice (PWN) reflect the date of October 16, 2023. The IEP amendment indicated that the IEP team proposed to add an "accommodation" of the use of a Polycam, and when the Student requests to use the bathroom, that request is honored the first time. The PWN indicated that those actions would be initiated on November 1, 2023. The reason for the action was explained as follows:

Per the recent team meeting, the team agreed to a Polycam in the Gen. Ed classroom filtered to the Supplemental Support Room. The Polycam will be implemented with the intention that it will increase [Student's] access to core ELA and math when he isn't able to access the general education classroom during ELA and math...

16. The District's response to this complaint stated that the District did not implement the Polycam in conformity with the Student's IEP. The District's reply stated:

However, the [S]tudent's IEP minutes do not reflect core instruction for reading, writing, and math in the general education setting. The accommodation is to be used for live instruction for Core ELA and Math from the general education classroom to the special education classroom as reflected in the meeting notes.

The District's response also stated, regarding the Student's IEP services as written:

 - The IEP shows 1,110 minutes of 1,740 weekly minutes were for SDI in a special education setting.
 - The Student leaves 75 minutes early Monday–Thursday. The team has kept the minutes as a full-time student so that if/when they choose to stay a full day, the Student can.
 - The Student receives 50 minutes of general education specials 4 days per week.
 - The Student attends general education recess for 215 minutes per week.

17. In its response, as a recommended resolution, the District recommended developing a new IEP for the Student as the Student's IEP was due for renewal on January 15, 2024. The District also noted that facilitated IEP with Sound Options was scheduled for January 12, 2024. During

the interview, the District provided an update and said that a new IEP was in process, but had not yet been agreed upon.

18. As a recommended resolution, the Parents asked that OSPI require the District to provide training for all District staff regarding accommodations, and instruct the District that by or before March 1, 2024, the District will hold a meeting with all of the Student's service providers and IEP team members at the Student's school to review and implement the Student's November 1, 2023 IEP accommodations and ensure they are being implemented by March 19, 2024, and to do the same again prior to the 2024–25 school year. The Parent also suggested OSPI order the District to provide training to District staff about the IEP team decision making process, and the requirement to follow the IDEA over teacher's union contracts that are inconsistent with federal and state laws relating to serving students with disabilities.

CONCLUSIONS

Issue: Failure to implement accommodations – The Parent alleged that the District failed to implement the accommodation for a Polycam in conformity with the Student's IEP.

Here, the Parent's request and stated goal for the September 25, 2023 meeting was to discuss ways to allow the Student "to access direct instruction in the core curriculum from the general education teacher." The Parent's specific concern was that the Student did not have sufficient access to three blocks in the third-grade general education class: core math, writing, and ELA. She also stated a goal of having the Student increase his time with his general education peers during academic core content instruction, and provided data about the amount of time the Student spent in the general education classroom during instructional time.

Although OSPI opened this issue as a failure to implement an accommodation, upon investigation, although the Polycam was not implemented, OSPI is unable to conclude that the use of the Polycam as an "accommodation" was appropriate as that term is used in special education⁴ or that the Polycam was an appropriate avenue, based on the Student's specific disability-related needs to achieve the Parent's stated goal (access to academic core instruction and general education peers). Rather, the Parent's request to increase the Student's time in the general education classroom for core academic instruction should have triggered a much broader review of the Student's IEP and discussion of what FAPE is for the Student and how it was to be provided.

Here, the Student's IEP did not call for the Student's reading, writing, and math instruction to be provided using the general third-grade core curriculum, nor did it call for the Student's instruction to be provided by a third-grade general education teacher in the general education setting. The Student's IEP called for SDI—meaning adapting, as appropriate to the needs of a student, the

⁴ Accommodations are provisions made to general education to allow a student to access and demonstrate learning. Accommodations: (a) do not fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; (b) do provide equal access to learning and equal opportunity to demonstrate what is learned; and (c) grading and credit is the same as typical students.

content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students—in math, reading, and written expression (and other areas) to be provided by a special education teacher, in a special education setting, and the IEP required modifications of the core curriculum for the Student.

The IEP included SDI in math, reading, written expression, executive function, social/emotional, and adaptive, for 20 minutes, 5 times a week (for a combined total of 120 minutes of SDI per day) in a special education setting. The IEP also specified he was to receive ABA, OT, and SLP services. As written, the Student's IEP required 1,110 minutes of SDI in a special education setting out of 1,740 weekly minutes of total instruction. In addition, the Student was to be receiving 200 minutes per week of general education specials (50 minutes/4 days per week) and another 215 minutes per week of general education recess. Additionally, the Student generally missed 300 minutes per week of instruction time, because of a planned departure 75 minutes early Monday through Thursdays. The recess, specials, and early departures total 715 minutes per week in a week of 1,740 instructional minutes, which meant that the Student only had 1,025 minutes per week in which to receive 1,110 minutes of SDI. Thus, as an initial point increasing the Student's time in general education core content instruction would further prevent the District from being able to provide SDI instruction that the IEP team had previously determined was necessary.

In addition to SDI, the Student's IEP required modifications⁵ (not accommodations), such as use of a specific reading core curriculum, "Amplify CKLA Core Curriculum," and the use of modified grade level general education work daily for the Student, such as providing the Student with word banks and reducing the amount of problems presented to the Student.

Further, the Student's IEP had an adaptive annual goal "when given general education opportunities [The Student] will increase his daily time spent in the general education classroom during instructional time improving average time spent in the general education classroom from an average of 14 minutes per day to an average of 45 minutes per day as measured by data collection tool." Data considered at the September 25, 2023 meeting indicated the Student was at or near that goal.

Thus, given all the information about the Student, the Parent's request to increase the Student's time in the general education classroom for core academic instruction, for the instruction to be provided by the general education teacher, and for the Student to receive that instruction in the special education classroom via the Polycam live-stream should have triggered a much broader review of the Student's IEP. That review should have included considerations for: revising the adaptive annual goal; assessing the impact of increasing the Student's time in general education

⁵ Modifications means substantial changes in what a student is expected to learn and to demonstrate. Modifications: (a) fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; (b) provide a student with a meaningful and productive learning experiences based on individual needs and abilities; and (c) grading and credit are different. OSPI, Evaluation and IEP Technical Assistance Module (April 2008).

on the Student's SDI services; the appropriateness of the general education teacher instruction by for the Student's math, reading, and written expression needs; and, if appropriate, any additional curriculum modifications needed.

In this case, the team met, at least when properly constituted, and discussed whether to provide a live stream of the general education classroom's instruction as an "accommodation." But OSPI found no evidence that the team spent any meaningful time discussing "how SDI is being delivered" in the least restrictive environment at the IEP meeting. Students with disabilities must be educated with other nondisabled students to the maximum extent appropriate. Placement in a special education classroom only occurs if the severity of the disability is such that education in regular classes, with the use of supplemental aids and services, cannot be achieved satisfactorily. In addition, there was no discussion at the September 2023 IEP meeting whether attending the general education classroom remotely was appropriate to the maximum extent for the Student, although some District staff later provided dissents. Those dissents should have been addressed at the September 2023 IEP meeting. Likewise, there was no discussion regarding the special education teacher's or general education teacher's ability to deliver the Student's SDI and implement the "Amplify CKLA Core Curriculum" for the Student in the general education or supplemental support classroom.⁶ Further, there was no discussion or consideration of adjusting the amount, frequency, or location of the Student's SDI services for math, reading, and written expression. Nor did the team discuss or revise the number of minutes in the Student's existing annual adaptive goal to increase the Student's daily time spent in the general education classroom during instructional time as measured by data collection tool.

The Parent argues and the District appears to concede that a decision to implement the Polycam as an accommodation was made. And that it was inappropriate for the District to fail to implement the accommodation because the teachers' union objected to it. OSPI agrees with the Parent that the District's rationale for failing to implement the Polycam was inappropriate. Districts must implement IEPs as written, and IEPs should be based on student specific needs, not administrative concerns.

However, with respect to the facts in this case, OSPI is unable to conclude that the decision about the implementation of the Polycam was an appropriate decision that would necessitate implementation. First, there was not a full IEP team present because an essential member of the team, the general education teacher, had left that meeting before the decision was made. Further, given events after, it is not clear that the IEP team members there actually agreed with what was an appropriate addition to the IEP. And more critically, as described above, the District failed to ensure that the IEP team appropriately considered the request as a change in the provision of the Student's special education services, including how and where instruction would be provided, the impact on SDI, and whether different or additional accommodations and modifications are required. Thus, while OSPI acknowledged the Polycam was not implemented, OSPI finds a

⁶ The Parent did, however, express concerns that while the general education teacher and special education teacher were collaborating on implementing core academic instruction, "it is not being provided daily and isn't currently meaningful." And the Parent also expressed concerns that the special education teacher is not providing instruction daily to the Student, but is "slipping it in when she can."

violation based on the fact that the IEP team has not fully addressed the Parent's underlying request to have the Student access direct instruction in the core curriculum from the general education teacher. As corrective action, the IEP team will meet to discuss.

CORRECTIVE ACTION

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

STUDENT SPECIFIC:

IEP Meeting

By or before **March 8, 2024**, the Student's IEP team will meet. OSPI strongly recommends the IEP team consider holding a facilitated IEP meeting. At the meeting, the IEP team must:

- Discuss the differences between accommodations, modifications, and specially designed instruction;
- Review data regarding the amount of time the Student spends in general education academic instruction, and progress toward the annual goal regarding the amount of time the Student spends in general education academic instruction;
- Review and discuss the Student's current assessments and scores in reading, math, and written expression and progress toward the January 17, 2023 annual goals in those areas to determine the special education services necessary, including who should provide instruction, the duration of instruction, and any modifications needed in instruction or curriculum;
- Review of the Student's behaviors and conditions that prevent him from remaining in the general education classroom and other environments with his nondisabled peers, and the steps taken to address those behaviors and conditions in addition to assignment of the 1:1 RBT; and,
- A review of the Student's school day and special education service minutes to ensure that the Student's IEP can be effectively implemented.
- IEP team must ensure and document that its decisions and the reasons for those decisions are based on the Student-specific data and not the collective bargaining agreement.

By **March 15, 2024**, the District will provide OSPI with: i) a prior written notice, summarizing the group's discussion and decisions concerning the above matters; ii) a copy of the Student's IEP; iii) any relevant meeting invitations and prior written notices; and iv) any other relevant documentation.

DISTRICT SPECIFIC:

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 violations and will attach any other supporting documents or required information.

Dated this 8th 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.)