

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-188**

### **PROCEDURAL HISTORY**

On December 19, 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 19, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on December 20, 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 17, 2024, OSPI requested additional information from the Parent. The Parent provided that information on January 17 and 18, 2024, and OSPI forwarded that information to the District on January 19, 2024.

On January 18, 2024, OSPI interviewed the District's special education coordinator and the executive director of special education.

On January 18, 2024, OSPI received additional information from the District, and OSPI forwarded that information to the Parent on January 19, 2024.

On January 23, 2024, OSPI requested additional information from the District. On January 24, 2024, the District provided that information and on January 25, 2024, OSPI forwarded the information to the Parent.

On January 30, 2024, OSPI interviewed the Parent.

On February 13, 2024, OSPI requested additional information from the Parent. The Parent provided that information on the same day, and OSPI forwarded that information to the District on February 14, 2024.

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 December 20, 2022. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

## ISSUES

1. Per WAC 392-172A-03005, since December 20, 2022, did the District evaluate the Student in a timely manner?
2. Per WAC 392-172A-03105, since December 20, 2022, has the Student's individualized education program (IEP) been implemented properly?
3. Per WAC 392-172A-03095, since December 20, 2022, have all required IEP team members attended IEP meetings, or were they properly excused?
4. Per WAC 392-172A-03090, since December 20, 2022, has the District provided the Parent progress reports in a timely manner?

## LEGAL STANDARDS

Referral and Evaluation Timeline: Within twenty-five school days after receipt of the request for an initial evaluation, a school district must make a determination whether or not to evaluate the student. When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, attempt without unnecessary delay to obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent. A school district must assess a student in all areas related to his suspected disability. The timeline can be extended if agreed to by the parent and documented by the district, including specifying the reasons for extending the timeline. WAC 392-172A-03005.

IEP Implementation: "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).

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).

IEP Meeting-Attendance Excused. A school district member of the IEP team is not required to attend a meeting, in whole or in part, if the parent of a student eligible for special education services and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified

or discussed in the meeting. A member of the IEP team described in (a) of this subsection may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if: (i) The parent, in writing, and the public agency consent to the excusal; and (ii) The member submits written input into the development of the IEP prior to the meeting and provides the input to the parent and other IEP team members. WAC 392-172A-03095 (5)(a) and (5)(b).

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9<sup>th</sup> Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

## **FINDINGS OF FACT**

### **2022–23 School Year**

1. On August 30, 2022, the District held its first day of instruction for the 2022–23 school year. The Student was a first grader at a District elementary and at this time, the Student had not yet been evaluated for special education services.
2. In their complaint, the Parent stated they referred the Student for a special education evaluation on November 28, 2022. The Parent stated that the evaluation was not completed until March 2023, which they alleged was improper.
3. The complaint investigation timeline for this complaint began on December 20, 2022.
4. A January 13, 2023 prior written notice (PWN) stated, "The team determined at the referral review meeting on 1/5/23 that based on parent and teacher report, review of existing data, and current academic progress, [Student] would benefit from an evaluation for special education to determine if specially designed instruction in reading is appropriate."
5. On January 24, 2023, the District received the "Consent for Initial Evaluation" form for the Student that was signed by the Parent on January 13, 2023. There was a hand-written note at the top of the form, stating that the form was received by the District on January 24, 2023.<sup>1</sup> The evaluation recommended the following areas:

---

<sup>1</sup> On February 13, 2024, OSPI asked the Parent about the hand-written note on the consent evaluation form. The same day the Parent responded in two separate emails as follows, "I believe the day I signed it January 13 I would have gotten it in immediately but It was so long ago I just don't remember. I thought that was

- Medical-Physical
- Cognitive
- General Education
- Academic
- Executive Functioning
- Observations

- The Student was found eligible for special education and a March 9, 2023 evaluation summary provided, "The team agreed at the 3/9/23 evaluation meeting that [Student] qualifies for special education services under the Specific Learning Disability (sic)." The evaluation reported included recommendations that the Student receive special education services in reading, writing, and math.
- On January 5, 2024, the District submitted its response. Regarding the first issue, related to completing the Student's evaluation in a timely manner, the District responded:
 

Based on the district 2022-2023 calendar, the evaluation was completed within appropriate timelines. The request for a special education referral was sent on November 22<sup>nd</sup> 2022, through an email for the second-grade general education teacher. The team, including the parent, met on January 5<sup>th</sup>, 2023, to determine an evaluation was warranted. Consent for the evaluation was received by the district on January 24<sup>th</sup>, 2023. The evaluation was completed on March 9<sup>th</sup>, 2023.
- A March 15, 2023 PWN documented that the:
 

[Student] recently became eligible to receive special education services in the academic areas of reading and written expression as part of the initial evaluation that was conducted with the approval of her parents, due to staff and parent concerns.

...

Data from the assessments did not show a need to provide specially designed instruction in the areas of academic math and executive functioning skills.
- On March 30, 2023, the Student's IEP team met. The Student's IEP included specially designed instruction (SDI), provided by a special education staff, from March 31, 2023 until March 30, 2024, and in a special education setting, as follows:
  - Reading: 20 minutes/4 times weekly
  - Writing: 20 minutes/4 times weekly

The Student received 1,740 minutes per week of building instructional time, with 160 minutes per week served in the special education setting. The percent of time in a general education setting was 90.8%.

Progress reports for reading, and writing goals were to be provided every trimester. And the Student's goals were as follows:

---

odd seeing that written on there but I don't know what to make of it," and "I did find a prior written notice from 1/13 attached below so I do believe that was the date. We had a meeting on 1/5 I actually agreed to it that day but I guess they didn't give me the consent form that day? Not really sure."

- Reading Goal 1: "By 03/30/2024, when given a word list of (20) regularly spelled, one-syllable words with digraphs (e.g., ship, path) and words with the doubling rule (e.g., hall, ruff, buzz), [Student] will will [sic] verbally decode each phoneme and then blend to read words, improving her phonics and word recognition skills, from 0/20 to 18/20 words on 3 out of 4 progress monitoring assessments, as measured by teacher and para observations, and data collection."
- Reading Goal 2: "By 03/30/2024, when given a leveled reader or decodable text [Student] will use her knowledge of high frequency sight words and decoding strategies to fluently read and comprehend the text, improving her reading fluency and comprehension, from fluently reading and comprehending a level A (Kindergarten 4th month) text with less than 2 errors and 80 percent comprehension to fluently reading and comprehending a level F (1st grade 5th month) text with less than 2 errors and 80 percent comprehension, as measured by teacher and para observations, and curriculum based assessments."
- Writing Goal 1: "By 03/30/2024, when given a writing prompt [Student] will write one or more sentences that are on topic, have correct letter formation and spacing between letters and words, correct ending punctuation, and phonetic spelling of unfamiliar words, improving her written expression skills, from 0/5 to 4/5 on 3/4 progressing monitoring days, as measured by teacher and para observations, student work samples, and data collection."
- Writing Goal 2: "By 03/30/2024, when given grade-level, one-syllable spelling word containing a consonant digraph (e.g., -ch, -sh, -th, -ck, -wh) and an example sentence containing the word, and a prompt to write the word, [Student] will spell the word by writing it, improving her encoding skills, from 0/10 to 8/10 on 4 out of 5 progress monitoring assessments, as measured by teacher and para observations, student work samples, and data collection."

### **2023–24 School Year**

10. On August 29, 2023, the District held its first day of instruction for the 2023–24 school year. The Student was a second grader at a District elementary and the Student's March 2023 IEP was in effect. The Student was eligible for special education services under the category of specific learning disabilities.
11. On September 11, 2023, the Parent emailed the Student's special education teacher (teacher 1), "[Student] has said you haven't been getting her from class. When will this start? Her iep says 40 minutes a day."
12. On September 12, 2023, teacher 1 emailed the Parent, "We started pulling students for groups this week. The last two weeks I was pulling individual students for testing (new to resource room) and I am now testing everyone to see where they are."
13. On September 13, 2023, teacher 1 emailed the Parent:  
 The plan was to start this week, but some of the classes were...testing during groups, so I did not pull...[Student] will be in tomorrow for groups, and starting Monday, we will be running all groups at their scheduled times. [Student's] scheduled groups are:  
 Writing 2:20 – 2:40 Monday through Thursday  
 Reading 2:40 – 3:00 Monday through Thursday  
  
 I also hope to pull her on Friday to make up some minutes this week.
14. On October 12, 2023, the Parent sent the District the following:

Hi I'm writing with concerns about [the Student] not receiving her iep services. Since starting her iep in April she has made no progress...When her iep started I would ask did you read the answer was usually no we just did worksheets. Starting this year she did not start services until the 3<sup>rd</sup> week of September I would message [teacher 1] and she would say she was testing other kids. The beginning of this week I was made aware that [the Student] was sent back early to class that even her teacher [2] (general education teacher) was surprised to see her. I confirmed this with [teacher 2] and she said that she doesn't know why she was sent back but that she just knows [the Student] was not in trouble. While she is with [teacher 1] I am concerned if she is actually getting any help. My daughter says that she is on a computer. I don't think that's an appropriate intervention for someone that is 2 years behind in reading. When talking to [teacher 1] about it she said the other 2 people in [Student's] group are at totally different reading levels so she has to work with them separately so to me that means she is not getting the full 40 minutes that is in her IEP...At our last meeting I asked for tutoring.

15. On October 30, 2023, the Student's IEP team met. The Student's IEP included SDI, provided by a paraeducator, from November 17, 2023 until March 30, 2024, and in a general education setting, as follows:

- Reading: 20 minutes/4 times weekly
- Writing: 20 minutes/4 times weekly
- Math: 20 minutes/4 times weekly
- Executive Functioning: 20 minutes/5 times weekly (general education teacher)

The Student received 1,740 minutes per week of building instructional time, with zero minutes per week served in the special education setting. The percent of time in a general education setting was 100%.

Progress reports for math, reading, and writing goals were to be provided every trimester, and quarterly for the executive functioning goal.

16. On October 30, 2023, the IEP team completed an evaluation for the Student.

17. A November 2, 2023, PWN stated:

The district has completed [Student's] re-evaluation. The team met, including parent, to review the data and agreed that [Student] demonstrates a need for services in these areas: reading, written expression, math, and executive function. Due to [Student's] diagnosis of attention deficit hyperactivity disorder, the team agreed that changing her eligibility category to Other Health Impairment, was appropriate.

18. On November 16, 2023, the IEP team met, and a PWN from that date stated:

The team discussed increasing the rigor of the goals and providing monthly progress monitoring...

The team believes that [Student] needs to be successful in meeting her goals, and since IEPs are a living document, once [Student] meets a goal an amendment will be done to change the goal(s). The team determined that by providing data collections records at the end of each school month would allow [Parent] to see where [Student] is at in working toward her goals.

Per the November 16, 2023 PWN, the District provided the December 2023 monthly progress report to the Parent on January 5, 2024.

19. Per the Student's March 2023 IEP, the District provided progress reports on June 14 and November 17, 2023. Those progress reports provided the following information:

Reading Goal 1

6/14/2023 – [Emerging Skill]. In May, when [Student] was assessed on her phonics skills, she was able to identify 22/26 letters (still working on c, d, j, v), and 21/26 letter sounds (still working on d, j, qu, u, v). She was also only able to decode and read 25 percent of the regularly spelled consonant-vowel-consonant (CVC) words. Will move her to working with words with digraphs and doubled consonant as soon as she masters her CVC words.

11/17/2023 – [Emerging Skill]. When [Student] willingly engages, she makes progress towards meeting this goal. However, when she does not want to engage, she will claim that the words are too hard, and not willingly try to decode the words.

Reading Goal 2

6/14/2023 – [Sufficient Progress]. When last assessed in May, [Student] was independently fluently reading and comprehending a level A text (Kindergarten 4th month). She is close to independently reading a level B, but she did not comprehend what she read.

11/17/2023 – [Sufficient Progress]. When last assessed in September, [Student] was independently fluently reading and comprehending a level B text (Kindergarten 6th month).

Writing Goal 1

6/14/2023 – [Sufficient Progress]. [Student] prefers to draw pictures instead of writing sentences. She struggles with letter formation, but does well with spacing. She does know the difference between a period and a question mark and will use them correctly. She is a hard worker when she wants to be.

11/17/2023 – [Sufficient Progress]. [Student] continues to prefer drawing over writing. She continues to struggle with letter formation, proper spacing of words, and punctuation. When she is willing to write, she will orally tell what her story is about. If you ask her what all sentences start with and end with, she will tell you a capital letter is at the beginning of all sentences, and all sentences have a period at the end but does continue to need reminders to apply this knowledge when writing.

Writing Goal 2

6/14/2023 – [Emerging Skill]. [Student] struggles with spelling words due to her struggle with letter to letter sound correspondence. Even when phonetically sounding out the word with emphasis on each letter sound, she will not correctly spell the word. Will be working on relearning the letter sounds while spelling CVC words.

11/17/2023 – [Sufficient Progress]. [Student] has seen some improvement with spelling words when she is given the support of circling the letters she hears in the word(s) and then writing out the words while sounding them out. She continues to struggle with letter-to-letter sound correspondence. She has been successful in spelling CVC words with 85 percent accuracy, and have started introducing one-syllable spelling word containing a consonant digraph (e.g., -ch, -sh, -th, -ck, -wh).

20. On December 19, 2023, the Parent filed a complaint that alleged in part:

- For the 2022–23 and 2023–24 school years, the Student has not received all the SDI minutes as outlined in her IEP.
- At IEP meetings, required IEP team members are not always present or leave early.
- For the 2022–23 and 2023–24 school years, the Student has not received progress monitoring of goals as outlined in her IEP.

21. On January 5, 2024, the District submitted its response. Regarding the second issue, IEP implementation, the District responded:

The district admits there is not sufficient evidence to support the delivery of specially designed instruction outlined in the most current IEP (dated October 30<sup>th</sup>, 2023). The delivery of special education services was changed from special education setting to general education setting and a change in case manager/resource room teacher was made during parent/teacher conference (November 20–22, 2023).

- The initial IEP was signed on March 30<sup>th</sup>, 2023. The Student began receiving specially designed instruction on April 10<sup>th</sup>, 2023...The team determined the Student would receive 20 minutes, 4 times a week of specially designed instruction in the areas of reading and written expression. Services were provided in the special education setting (resource room). Lesson plans and progress monitoring data provided by the resource room teacher and case manager...demonstrate services were provided.

The district will offer 20 total hours of compensatory education in the areas of reading, math, written expression, and executive functioning.

- 5 hours in reading.
- 5 hours in math.
- 5 hours in written expression.
- 5 hours in executive functioning.

The district will provide district wide communication to all special education staff re-emphasizing the importance of signing documents and accurately documenting attendees at IEP team meetings.

The district is already providing mentorship to [teacher 1], the former case manager/resource room teacher. This mentorship will continue as long as needed.

The district will provide a guidance document outlining how to properly document inclusion services to all special education staff.

Regarding the third issue, attendance at IEP meetings, the District responded:

The district found little evidence that required team members were not present in IEP team meetings. There are meetings where required IEP team members were noted as participating in the discussion; however, they were not listed as a participant. Also, there are meetings where required IEP team members did not sign documents but were noted as participants in the meetings notes.

Regarding the fourth issue, timely progress reports, the District responded:

The district did provide the parent with progress reports in a timely manner. The district provided the parent a hard copy of a progress report in June 2023 and November 2023. In



June 2023, a hard copy of the trimester progress report was sent home with the Student. A hard copy of the trimester report was given to the parent during the parent/teacher conference held on November 20<sup>th</sup>, 2023. December's progress monitoring data was sent to parents on Friday, January 5<sup>th</sup>.

22. On January 17, 2024, OSPI emailed the Parent the following questions:

1. For the 2022–23 and 2023–24 school years, Student has not received all the SDI minutes as outlined in her IEP. When did the student miss her IEP services? Please provide dates or a time frame if possible.
2. For the 2022–23 and 2023–24 school years, Student has not received progress monitoring of goals as outlined in her IEP. When were progress reports not provided in a timely manner?

On the same day, the Parent responded:

1. For the 2022-2023 school year I don't have actual dates. In the schedule I did find on page 228 of the district's response that [Student] was receiving her reading and writing [SDI] during part of her Core Math and Math intervention. She made no progress that year and I believe that the same things were happening that I will be documenting for the 2023-2024 school year I didn't document because I just believed that they were doing what they said.

2023-2024 school year-The first day of school was August 29, 2023. [Student] did not receive services for writing until 9/18/2023 and reading 9/19/23 as per the district's response...During the time leading up to that I was messaging with [teacher 1] asking when she would be pulled these messages start on page 15 of the districts response. When she did start getting pulled for services I would ask my daughter what she did and she would say things like decorate the room because it is not set up. She could say that she would go on the computer and do IXL so I went on the IXL and noticed she was doing math on it. At that time she did not qualify for math until 10/30/23. She was only in the resource room for writing and reading. Attached below is the usage details for IXL math the dates and times match up with her times in the resource room.<sup>2</sup> On October 11,2023 I sent a concern to the teacher that [Student] had been sent back almost immediately after going to the resource room, she confirmed. I attached that message below. That same night [Student] informed me that she was not pulled that day at all. I then wrote an email on October 12, 2023 to voice my concerns (attached below). I don't believe she was given the services on a regular basis or that it was actual meaningful [SDI]. [Student] also told me they would sometimes play a dinosaur game. I asked what kind of game that was and she said it was a math game. She was in for reading and writing. None of this instruction sounds evidence based to meet [Student's] individual needs.

2. So for progress reports I did receive them. I don't believe my progress reports gave any meaningful information on the progress of my daughter. There was no data or anything just statements like 'she would rather draw than write' I have since put in my IEP accommodations to get Data collection at the end of every month so hopefully that fixes

---

<sup>2</sup> An attachment to the email showed that the Student was working on IXL on September 26 & 27, 2023, and October 10 & 11, 2023, and all the sessions took place between 2:25 and 2:59 pm.

that issue. I do think they should have data in the progress report so the parent actually knows if there is progress being made.

23. On January 17, 2024, OSPI emailed the Parent the following question, "In your complaint you also alleged that some faculty members left meetings early. Can you tell me when that happened and who it was?" The Parent responded:

Any of the 8am meetings the gen ed teacher always has to leave early to get to class. Sometimes others will leave because they have something to do when school starts. The meeting starting on page 283 of the district's response says that myself, [teacher 2], and [assistant principal] attended. That is not true...the reading specialist took notes. At the beginning of the meeting it was [teacher 1], myself and [reading specialist]. [Teacher 1] and I discussed almost everything and [assistant principal] came in the last 10 minutes and we discussed IXL at home and she gave me my daughters log in information. The Gen ed teacher [teacher 2] was not at that meeting.

24. On January 18, 2024, OSPI interviewed the District's special education coordinator and the executive director of special education. In this interview, the District stated, in part, that the attendance sheet for IEP meetings were not always consistent with District staff who attended the meeting. Additionally, for the morning meetings, certain staff members, such as teachers, needed to leave the meetings early to begin the school day.

25. On January 18, 2024, the District's special education coordinator sent OSPI the following email:  
[Student] has been receiving tutoring services twice a week for 60 minutes in the area of reading since November 7th, 2023. The parent requested these services and the district agreed to provide them. The school team informed me [Student] has attended these after school tutoring services on a consistent basis.

26. On January 23, 2024, OSPI asked the District to respond to the following question, "Please provide your position on the Parent's allegation, and has the district provided the parent with progress information in other ways (like meetings, emails, etc.). If you feel the position in your response is sufficient, please let me know." The District responded:

The progress reports contain data; however, the data could be more robust. The progress reports could have contained more quantitative data to demonstrate progress. Corrective action has been taken with the new case manager in order to provide more detailed progress monitoring data. We will continue to mentor the previous case manager on progress monitoring and data collection.

27. On January 30, 2024, OSPI interviewed the Parent. She expressed that she had doubts about the mentoring that teacher 1 is receiving from the District.

## CONCLUSIONS

**Issue 1: Timely Evaluation** – Regarding the first issue, timeliness of the Student's evaluation, the Parent alleged the Student's referral was initiated on November 28, 2022, but the evaluation was not completed until March 2023. The District responded that the referral was sent by a teacher on November 22, 2022, and based on the district 2022–23 calendar, the evaluation was completed in a timely manner.

Within 25 school days after receipt of the request for an initial evaluation, a school district must make a determination whether or not to evaluate the student. When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, attempt without unnecessary delay to obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent.

In this case, the parties did not provide the same date as to when the Student's initial referral for a special education evaluation was made. The District provided in its response that the referral occurred on November 22, 2022, and the Parent alleged it occurred on November 28, 2022. For this analysis, November 22, 2022 will be used to determine if the District satisfied its time requirements for deciding whether to conducting an initial evaluation on the Student.

As for the timeline regarding whether an evaluation should have been conducted, according to the January 13, 2023 PWN, the District determined on January 5, 2023, to conduct an initial evaluation on the Student. From November 22, 2022 to January 5, 2023, there were 16 school days, and thus, the District decided within 25 school days after receipt of the request for the initial evaluation whether to evaluate the Student as required by the applicable regulations.

As for the timeline for conducting the evaluation, although the Parent may have signed the consent to conduct the evaluation on January 13, 2023, a hand-written note on the form stated that the District received the Parent's signed form on January 24, 2023.<sup>3</sup> The completed evaluation is dated March 9, 2023, which is the 30th-school day after January 24, 2023, when the consent was received by the District. Thus, the evaluation was completed within 35 school days of the District receiving the Parent's consent to conduct the evaluation as required by the applicable regulations. Therefore, OSPI does not find a violation as to the first issue.

**Issue 2: IEP Implementation** – Regarding the second issue, IEP implementation, for the 2022–23 and 2023–24 school years, the Parent alleged that the Student has not received all the SDI minutes as outlined in her IEP. The District responded that it provided the necessary services in the March 2023 IEP, but admitted that it did not provide all the necessary services in the October 2023 IEP.

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.

Regarding the Student's March 2023 IEP, the Parent has alleged that the District was inconsistent in providing the Student her SDI, especially during the beginning of the 2023–24 school year. When the Parent was asked "When did the student miss her IEP services?", she responded, "For the 2022-2023 school year I don't have actual dates...She made no progress that year." However,

---

<sup>3</sup> As provided above in footnote 1, the Parent was not sure what day the District received the consent form.

OSPI notes the Student's IEP was not implemented until April 2023 and therefore it is not unreasonable that the Student made little progress in the remaining months of the school year.

Regarding the 2023–24 school year, the Parent stated:

[Student] did not receive services for writing until 9/18/2023 and reading 9/19/23 as per the districts response...During the time leading up to that I was messaging with [teacher 1] asking when she would be pulled...When she did start getting pulled for services I would ask my daughter what she did and she would say things like decorate the room because it is not set up. She could say that she would go on the computer and do IXL so I went on the IXL and noticed she was doing math on it. At that time she did not qualify for math until 10/30/23. She was only in the resource room for writing and reading. Attached below is the usage details for IXL math the dates and times match up with her times in the resource room.<sup>4</sup> On October 11, 2023 I sent a concern to the teacher that [Student] had been sent back almost immediately after going to the resource room, she confirmed...That same night [Student] informed me that she was not pulled that day at all. I then wrote an email on October 12, 2023 to voice my concerns...I don't believe she was given the services on a regular basis or that it was actual meaningful sdi. [Student] also told me they would sometimes play a dinosaur game. I asked what kind of game that was and she said it was a math game. She was in for reading and writing. None of this instruction sounds evidence based to meet [Student's] individual needs.

Based on the present case's record, it is clear that the District was inconsistent in providing the Student her March 2023 IEP services during the 2023–24 school year. For example, the Student did not receive her IEP services regularly until the fourth week after the 2023–24 school year began because of testing. Additionally, the Parent has provided evidence that on at least four occasions in September and October 2023, during the Student's SDI time, the Student was on a computer working on math, which was not part of her SDI (at that time), instead of her reading and writing goals, which was part of her SDI. Other instances of concern raised by the Parent include the Student informing the Parent that she was decorating the classroom during her SDI time and the Student being sent back to her general education classroom early for no reason. These facts establish that the District materially failed to implement the Student's March 2023 IEP during the first two months of the 2023–24 school year.

Regarding the Student's October 2023 IEP, the District in its response admitted that "there is not sufficient evidence to support the delivery of specially designed instruction outlined in the most current IEP." Based on OSPI's finding regarding the March 2023 IEP and the District's admission regarding the October 2023 IEP, OSPI finds a violation regarding the second issue and accepts the District's proposal of 20 hours of compensatory education based on the Student's October 2023 IEP.

---

<sup>4</sup> An attachment to the email showed that the Student was working on IXL on September 26 & 27, 2023, and October 10 & 11, 2023, and all the sessions took place during the time the Student was scheduled to receive her SDI.

**Issue 3: IEP Attendance/Excusals** – Regarding the third issue, attendance and excusals for IEP team meetings, the Parent alleged that at IEP meetings, required IEP team members were not always present or left early.

The District response provided, in part, “There are meetings where required IEP team members were noted as participating in the discussion; however, they were not listed as a participant. Also, there are meetings where required IEP team members did not sign documents but were noted as participants in the meetings notes.” During an interview with OSPI, the District admitted “that the attendance sheet for IEP meetings were not always consistent with District staff who attended the meeting. Additionally, for the morning meetings certain staff members such as teachers needed to leave the meetings early to begin the school day.”

A member of the IEP team may be excused from attending an IEP team meeting, in whole or in part, if: (i) The parent, in writing, and the public agency consent to the excusal; and (ii) The member submits written input into the development of the IEP prior to the meeting and provides the input to the parent and other IEP team members.

In the present case, OSPI finds a violation regarding the third issue based on: (1) The District’s admission in its response and during its interview regarding its staff attendance at IEP meetings; and (2) lack of written consent signed by the Parent that allowed District staff to be excused in whole or part from IEP meetings. As a corrective action, the District will be required to provide staff training on meeting attendance and excusal procedures for IEP team members.

**Issue 4: Progress Monitoring** – Regarding the fourth issue, progress reports, the Parent alleged that for the 2022–23 and 2023–24 school years, the Student has not received progress monitoring of goals as outlined in her IEP. The District responded:

The progress reports contain data; however, the data could be more robust. The progress reports could have contained more quantitative data to demonstrate progress. Corrective action has been taken with the new case manager in order to provide more detailed progress monitoring data. We will continue to mentor the previous case manager on progress monitoring and data collection.

The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child’s progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals.

In March 2023, the Student’s IEP team developed her initial IEP, which included two reading goals and two writing goals. Progress for each one of these goals was reported twice (June and November 2023). All four goals referred to measuring the Student’s success quantitatively; three out of the four goals referred to measuring the Student’s success as something such as “3 out of 5 accuracy”; and the fourth goal (second reading goal) referenced measuring success based on percentages.

A general qualitative statement was provided for each report. As for quantitative data, percent of success was mentioned once for the second reading goal and once for the second writing goal, but other than this quantitative data, no additional quantitative data was provided. Without quantitative data, it is very difficult for a parent to determine how well a student is working towards mastering a goal, especially when the goal specifically mentions that it will be measured using quantitative data. Based on these facts, OSPI finds a violation regarding the fourth issue. A corrective action of training on progress reports will be ordered.

### **CORRECTIVE ACTIONS**

By or before **March 29, 2024, May 1, 2024, June 28, 2024, September 13, 2024, and October 14, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Compensatory Education**

By or before **March 15, 2024**, the District will meet with the Parent to establish a schedule for the compensatory education. The compensatory education is awarded as follows:

- 5 hours in reading
- 5 hours in math
- 5 hours in written expression
- 5 hours in executive functioning

Unless otherwise agreed to by the District and Parent, services will be provided by a certified teacher or paraeducator. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program, if that program will provide specially designed instruction in the Student's areas of service. The District will provide OSPI with documentation of the schedule for services by or before **March 29, 2024**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. By or before **August 30, 2024**, the compensatory education must be completed.

By or before **September 13, 2024**, the District will provide documentation to OSPI that it has completed the corrective actions.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **September 13, 2024**.

## **DISTRICT SPECIFIC:**

### **Training**

The training will be provided to the Student's special education case managers, and subsequently the District should provide the training materials to all case managers. The training will include the following training topic:

- IEP meeting attendance and excusal per WAC 392-172A-03095
- Progress reporting per WAC 392-172A-03090

By or before **May 1, 2024**, the District will notify OSPI of the name of the trainers and provide documentation that the District has provided the trainers with a copy of this decision for use in preparing the training materials.

By or before **June 28, 2024**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by July 9, 2024.

By or before **September 30, 2024**, the District will conduct the trainings regarding the topics raised in this complaint decision.

By or before **October 14, 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 15th 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.)