

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-10**

### **PROCEDURAL HISTORY**

On January 18, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from an attorney (Complainant) representing the parents (Parents) of a student (Student) attending the Bellevue School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On January 18, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on January 23, 2024. OSPI asked the District to respond to the allegations made in the complaint.

Between January 30 and February 14, 2024, OSPI received the District's response documentation to the complaint and forwarded it to the Complainant on February 15, 2024. OSPI invited the Complainant to reply.

On February 28, 2024, OSPI received the Complainant's reply. OSPI forwarded that reply to the District the same day.

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

### **ISSUE**

1. Whether, during the 2023–24 school year, the District appropriately and timely responded to the Parents' request for an individualized education program (IEP) meeting and addressed Parent concerns regarding medical concerns and school refusal behaviors?
2. Whether, during the 2023–24 school year, the District made decisions outside of the IEP team and without Parent participation, as allegedly documented in prior written notices?
3. Whether the District implemented the Student's IEP during the 2023–24 school year, including considering the Student's need for services in her home or a homebound placement?

### **LEGAL STANDARDS**

IEP Team Meetings: Team meetings must be held periodically, but not less than annually to develop the IEP, and to revise or review it as necessary. 34 CFR §300.324; WAC 392-172A-03110. A student's parents and school personnel will develop, review, and revise an individualized education program (IEP) for the student. Parents must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student. 34 CFR §300.501; WAC 392-172A-050005.

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999)

(Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

Parent Participation in IEP Meetings: Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. IDEA, 64 Fed. Reg. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

IDEA specifically provides that parents of children with disabilities have an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to their child. Parents must be part of the groups that determine what additional data is needed as part of an evaluation of their child, their child's eligibility, and educational placement. 34 CFR §§300.304, 300.306(1), 300.501; WAC 392-172A-03020; WAC 392-172A-03040; WAC 392-172A-05000(3)(c).

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. Generally speaking, an IEP team's decisions must be based on a student's needs resulting from that student's disability. *See generally* WAC 392-172A-03090(1); *see also* WAC 392-172A-03110. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability. *See, e.g.,* WAC 392-172A-03020(g); *see also, generally,* WAC 392-172A-03090.

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. It documents that full consideration has been given to input provided regarding the student's educational needs,

and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. 34 CFR 300.503; WAC 392-172A-05010.

After a meeting, the district must provide prior written notice to the parent of the decisions made as a result of the meeting. This is particularly important when there is disagreement between the parent and the district regarding IEP content. If the IEP content reflects a district decision that it will refuse to provide certain services to the student, or if the district refuses to make changes to the IEP as a result of the parent's requests, the district must likewise provide prior written notice to the parent of those decisions. 34 CFR §300.503; WAC 392-172A-05010.

The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 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. 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).

Continuum of Alternative Placement Options: Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must: include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement. 34 CFR §300.115; WAC 392-172A-02055.

Home-Hospital Instruction: Home or hospital instruction shall be provided to students eligible for special education and other students who are unable to attend school for an estimated period of four weeks or more because of disability or illness. As a condition to such services, the parent of a student shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks. Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to students eligible for special education in a homebound placement pursuant to a student's individualized education program. Home/hospital instruction shall be limited to services necessary to provide temporary intervention as a result of a physical disability or illness. A student eligible for special education who qualifies for home/hospital instruction must continue to receive educational services that provide a FAPE, so as 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. The IEP team determines the appropriate services. WAC 392-172A-02100.

### **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 fifth grade, and her April 2023 individualized education program (IEP) was in effect.
2. The Student's April 2023 IEP indicated the Student showed work avoidance behaviors at times and that in addition to many strengths, the Parents were concerned the Student's behavior, including school refusal, had escalated over the last few years and that the Student's behavior was not being adequately supported.

The IEP included annual goals in social/emotional, study skills, math, reading, and written expression, with progress reporting at the semester. The Student's IEP included numerous accommodations, an occupational therapy consultation as a support for school personnel, and provided the Student with the following specially designed instruction and related services:

- Social Emotional: 40 minutes a week (to be provided by special education and general education teacher, in the special education setting)
- Reading: 200 minutes a week (to be provided by special education teacher in a special education setting)
- Math: 200 minutes a week (to be provided by special education teacher in a special education setting)
- Written Expression (concurrent): 200 minutes a week (to be provided by special education teacher in a special education setting)
- Study Skills: 30 minutes daily (to be provided by a paraeducator in a general education setting)
- Speech Language Pathology (related services): 20 minutes a week (provided by a speech language pathologist (SLP) in the special education setting)

The IEP included additional adult support provided by a paraeducator in a general education setting for 250 minutes per week as a supplementary aid and service. The IEP indicated the Student would spend 460 minutes per week in a special education setting and 72.8% of her time in a general education setting.

3. The Student also had a behavioral intervention plan (BIP) that was developed in February 2023 and that targeted work avoidance/off task behavior.
4. On September 19, 2023, according to the complaint, the Student began a "medical ABA treatment program" that required her to miss the first part of the school day each morning. The complaint noted the Student arrived at school each morning at 10:15 rather than the school's start time of 9 and left early on Fridays at 2:10 for a medical appointment.

According to the complaint:

The Parents told the school team these are medical appointments for medical services and are not educational services. The school district refused to excuse these absences and continues to claim the Student is truant. Further, the District stated the Parents must fill out a form for part-time enrollment, claiming the medical appointments actually mean the Student is being educated in either a private-school program or the Parents are Home Schooling the Student. The Parents have repeatedly stated neither is true: the Student is not attending school for the first hour each day for medical appointments.

5. According to the complaint, in mid-September 2023, the Parents began requesting that the IEP team meet. The complaint noted that the District "repeatedly stated it was concerned the Student would be missing school but refused to meet with the Parents to discuss this." The emails in the complaint included the Parent requesting, on September 9, 2023, that an IEP meeting be scheduled for the last week of September.
6. An email thread from September 2023 indicated that on:
  - September 9, the Parents informed the District that the Student would come to school at 10:15 am Monday through Friday and leave at 2:10 pm on Friday for medical appointments.
  - The District counsel responded on September 11 (and later on October 2) to the Parents' attorney (the Complainant in this complaint) that "it appears that your clients are seeking part-time enrollment with the [District] for [Student]" and provided information about part-time enrollment. Regarding an IEP meeting, the District counsel stated, "Can you share specifically what the family is seeking that the IEP team discuss? This will help the [District] determine who needs to be at the IEP team meeting."
  - September 16, the District counsel emailed that they had set aside time for an IEP meeting and requested more information about what the Parents wanted to discuss at the meeting. The District counsel further requested the Parents complete the part-time enrollment paperwork before they reduce the Student's school day and stated, "There's no need for the IEP team to meet to discuss part-time enrollment. That's a choice of the parents get to make [sic] entirely on their own."
  - September 21, the Complainant emailed and stated that part-time enrollment did not apply and that the Student would only be coming to school an hour late each day "to receive home ABA and then on Fridays she will leave one hour early to attend her SLP session." The Complainant stated the Parents did not want to amend the IEP, they were not homeschooling the Student, and the Student was not enrolling in a private school program. The Complainant stated the Parents wanted to have an IEP team meeting to "discuss the Student's program this year with the new team as she has changed schools."

- The District counsel responded, expressing concern about the amount of time the Student would miss with the Parents' proposed schedule and stated this "is in fact part-time enrollment" and that the District did not agree with the Student missing that much instruction. District counsel stated the District would not be excusing the Student's absences. Regarding an IEP meeting, the District's counsel stated that the Student's IEP had not changed even though the building location has, and that current staff were familiar with the Student. The email stated that the District "is declining the Parents' request to hold an IEP team meeting at this time." The email noted though that the Student's IEP included "Monthly 30-minute meeting between the special ed teacher and mom for the purpose of going over concerns and updates" and that these could be resumed.
7. On October 2, 2023, a 30-minute monthly check in meeting with the Student's teacher was held.
  8. In early October 2023, according to the complaint, the Student started refusing to attend school on an increasing number of days and her "mental health started to deteriorate." The complaint included emails from the Parent to the District that indicated the Student was refusing to come to school and sharing social emotional/mental health challenges, dated October 5, 10, 12, 20, 23, 24, 27, and 30, 2023. Generally, the emails stated the Student was refusing to go to school. This pattern continued, with emails documenting the Student refusing to attend school in November and December 2023. The Parents also expressed that they felt the Student was not being supported at school—for example—raising concerns about band and recess.
  9. On October 11, 2023, the District emailed the Parents and sent prior written notices. Regarding prior written notices, the complaint included the following:
    - ...The IEP team is always to include the parents and an IEP team cannot take or refuse actions when no IEP meeting occurs. Without a meeting, parents are denied their ability to discuss their concerns and hear the IEP team's concerns and work towards a solution. [District attorney]...emailed the Parents' counsel [Complainant] decisions in both emails and in [prior written notices] that the IEP team should be making. These emails in essence take the form of a Prior Written Notice, as they explain the action the District will take, but deny the Parents their ability to discuss their requests with the IEP team...Then, [District attorney] sent the Parents Prior Written Notices via [Complainant] regarding decisions allegedly made by the IEP team when no IEP team meeting occurred and with no ability of the Parents to participate in this process.

The referenced email related to the Parents' request to have their ABA provider observe in the classroom a second time and stated:

The [District] is denying the below request to have an additional set of observations done. The reasons for that is that are [sic] as follows:

- School staff report that the presence of the BCBA did not have any impact [Student's] behavior. The private BCBA observed [Student] during her time in her special education classroom, general education classroom, and recess was consistent with what staff see every day - high levels of engagement and appropriate school behaviors.

- There have been a large number of observations done by parent private providers and private providers retained by the District of [Student] over the last three years. At this time, the school staff believe that additional observations are only going to be disruptive of the operations of the school...
- Further, staff are concerned that having additional adults present to observe [Student] is going to negatively impact her, as she may eventually realize that there will continue to be adults sent to observe her until she demonstrates some form of challenging behavior that is not typical for her school day simply to get the observations to stop. [sic]

....

The District made this decision based upon thier [sic] knowledge of [Student's] performance and behavior at school both academically and non-academically, recognizing the consistency of the behavior the BCBA observed with what they see every day.

A second email on October 11, 2023, stated:

The [District] is refusing [Parent's] request to change the frequency and method of reporting progress for [Student].

The reason for this is that [Student's] IEP team has determined the frequency and method of reporting progress towards IEP goals. [Student's] parents are provided a monthly meeting with her IEP case manager to discuss progress and concerns, are in frequent email communication with [Student's] special education and general education teacher about her progress and receive assessments scores on a regular basis. The Parents also have access to the same methods for monitoring student progress that are available to families of general education students, including upcoming quarterly conferences for elementary school students and access to ParentVUE.

The District considered and rejected agreeing to this request because it is not reasonable or feasible for school staff to take screenshots of daily work, as has been requested.

The District based this decision on communications from the parents and [Student's] current IEP...

A third October 11, 2023 email sent by the District counsel to the Complainant included two attached prior written notices. The first stated that the District was "proposing" a "part time enrollment", documenting:

The District is documenting that [Student's] parents have elected to have her attend [School] on a part-time basis.

...

The Parents have indicated that [Student] will miss 460 minutes/7.67 hours of instruction each week, which will result in her missing more than 30 hours of instruction each month and 1,225 hours of instruction over the duration of a school year, primarily so that [Student] can access private services in the home. This will result in [Student] missing content area instruction in multiple subjects and will result in her not being able to participate in PE or Band. This is part-time enrollment.

...

This District offers part-time enrollment for students whose parents are forgoing services being offered at school for services being offered elsewhere, including serviced being provided in the home. To date, [Student's] parents have refused to complete the paperwork

associated with part-time enrollment. The decision to have [Student] enrolled on a part-time basis needs to be documented formally.

...

The District cannot offer [Student] a free appropriate public education with her part-time schedule. The District stands ready to fully implement [Student's] IEP should her parents elect to return to having her attend on a full-time basis.

The second prior written notice documented the same information as the email related to progress reporting.

10. Emails from the District indicated that the special education teacher drafted both October 11, 2023 prior written notices and that the District counsel emailed them to the Complainant.
11. In the reply to the District's response, the Complainant emphasized that regardless of who drafted or sent the prior written notice, the decisions were made outside the IEP team and without Parent participation.
12. Also, on October 11, 2023, the Complainant emailed the District counsel and stated, in part:  
School refusal and home behavior...School refusal and extreme behavior at home are not new in the slightest. The Parents have been reporting on school refusal and escalating behavior at home with this Student for years. All last year the Parents sent emails on this and there were meetings to try to resolve what the Student finds as an extremely stressful school environment. [Private provider], the neuropsychologist who the [District] hired to evaluate the Student, discussed the Student's anxiety and stress in her Evaluation Report dated 04/25/2022. [Private provider] further diagnosed the Student with Social Anxiety Disorder and detailed how this, along with the Student's Autism Spectrum Disorder, 'results in withdrawal, tantruming, severe emotional distress, and even verbal aggression'. The school district has so far refused to properly address this and instead your email now blames the Parents for addressing what the [District] evaluator diagnosed and recommended the school district address. The Parents are using medical insurance to pay for medically necessary ABA services to address what the [District] refuses to address. This is not new and not 'caused' by the Student missing school for medical services.  
...  
IEP Meeting. The Parents have been asking for assistance for years and thought with [private providers] report this would finally happen. The Parents would be interesting [sic] in having an IEP meeting to discuss how to reduce the pressures at school and have the Student's ABA services occur at school in the morning so she did not need to miss school to access those services. Please let me know if this can be set up.
13. On October 28, 2023, the Parents emailed and requested an IEP meeting be scheduled to discuss recommendations from the Student's ABA therapist.
14. In November 2023 a general education parent-teacher conference was held, which the Parents and the Student's special education teacher attended.
15. On November 3, 2023, the Parent emailed the District, explaining further about the Student's school refusal. The Parent noted that the Student "is working with ABA in the morning. They



are working with her from 8 am until around 10 am” and then preparing the Student to go to school, giving “consistent reminders of the expectation for when it is time to leave for school.” The Parent noted the ABA therapists usually calls her if they are “unable to get her to go to school.” The Parents also explained they had taken steps to not incentivize staying home like shutting of the internet and ensuring the Student did not have access to electronics. The Parent further stated:

the school environment is not allowing her to function. That is why she is refusing. If it was then she would be able to go. She has been able to successfully participate in her speech therapy, her social skills therapy, as well as with ABA therapy. Kids do not refuse to go to school for no reason. It is the lack of the right type of support.

Subsequent emails from the Parent indicated they believed it was a mental health issue.

16. Also, on November 3, 2023, the District counsel and staff emailed regarding the Student at school, with staff noting that the Student “does really well, she comes in quiet and doesn’t talk much and seems like embarrassed about coming in late” and that “She has only been coming in around 11 on a Wednesday and then leaves at 1:20. That has been consistent the last 2 weeks at least.”
17. In response to the Parents’ November 3, 2023 email, District counsel emailed the Complainant and requested the Complainant clarify if the Parents were requesting an IEP meeting or whether they were “just seeking to share their perspective?” The email further stated:

The [District] stands ready to have [Student] to full-time enrollment, where she can receive all the special education services called for in her IEP...including the provision of social and study skills coaching, social emotional learning check-ins in the mornings and the afternoons, and support from the SLP in the general education setting. The District members of [Student’s] IEP team remain concerned that the longer she attends part-time and does not access all of the services that the IEP team believed she needed, the more she will be negatively impacted.
18. On November 8, 2023, the Parents met with the elementary special education director (elementary director). According to the complaint, the Parents explained their concerns and asked for an IEP meeting. The complaint stated that the request was denied, and the elementary director stated the Student was part-time enrolled and her absences were considered truancy.
19. On November 9, 2023, the Parents spoke with the director and in mid-November with the superintendent.
20. On November 15, 2023, the Parent emailed the elementary director and director, stating in part that the Student refused to go to school that Monday and that they were getting truancy notices.<sup>1</sup> The Parent stated, “We have not even started to schedule that IEP meeting, that we originally asked for back in September.”

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<sup>1</sup> The District provided OSPI with documentation, including truancy letters dated November 1, 8, and 22, 2023, December 13, 2023, and January 18, 2024, and letters warning the Student would be withdrawn from the District on January 3 and 18 2024.

21. On November 16, 2023, the District's legal counsel emailed the Complainant, "I am following back up on the below to find out if your clients are requesting an IEP team meeting" and expressed concerned about the Student's part-time schedule and the Student missing instruction. The District counsel stated that the District offered supports for families who are reporting school refusal behaviors, including a support group for parents and noted that the IEP team could discuss whether there was a need for parent counseling and training as a related service.
22. On November 19, 2023, the Parents emailed the director and elementary director and asked about holding an IEP meeting, noting they had requested an IEP meeting in September.
23. Also, on November 19, 2023, the Parents emailed the Student's school's co-principal regarding whether the Student's absences would be excused and the Student's school refusal behaviors, and the fact that they had received a truancy notice.

The co-principal responded, providing information about part-time enrollment and homeschooling and stated that if the Parents did not complete the part-time enrollment and intent to homeschool forms, the District would continue marking the Student absent (unexcused absences). The co-principal further stated:

We are going to be holding an IEP team meeting to talk about the challenges you are experiencing at home and how those are impacting [Student's] attendance outside of her part-time enrollment. We just need to know if you plan to have your attorney present...

The Parents responded, stating that the District was "focusing on her ABA therapy as a surrogate for homeschooling (it is not) and are refusing to address her school refusal." The Parents stated they had requested an IEP meeting several times and stated they would always have their attorney with them at IEP meetings.

In response to the Parents' email, the District counsel emailed the Complainant, noting in part that she had been emailing "all month to see if your clients [Parents] wanted an IEP team meeting." The Complainant replied, requesting that District staff communicate with the Parents regarding setting up an IEP meeting.

The District counsel further replied, "I am emailing you because the Parents have identified that you will be attending the IEP team meeting. As such, the [District] needs to plan to have me there...As such, I communicate with you on behalf of my clients..." and proposed several possible IEP meeting dates.

24. On November 20, 2023, the District counsel emailed the Complainant, reiterating the District's position that the Student was part-time enrolled and that the Parents needed to fill out the paperwork and/or complete a declaration of intent to homeschool, stating the Parents were "electing to have [Student] receive ABA services in their home for two hours each moving instead of having her attend school during that same time prior. That is exactly the type of home-based services that need to be accounted for through a Declaration of Intent to Home

School." The District counsel stated the Student would continue to be marked absent and that the District would be scheduling an IEP meeting.

25. Also, on November 20, 2023, the Parents stated in emails that the Student was not part time enrolled or homeschooled, and that the Student was "receiving mental health care." The Parents noted, "The district and [District] council [sic] disagreed with this and filed a [prior written notice regarding this]." The Parents asked that the Student be excused when she was receiving therapy and on days she refused to go to school and stated that they were "very clear about the request for the IEP meeting."
26. On November 21 and 22, 2023, the Parents emailed the director and elementary director again about scheduling an IEP meeting.
27. In November 2023, according to the complaint, the Student's attendance was sporadic, and the Parents received truancy notices "that stated the Parents needed to meet with the school team, but no meetings were ever arranged." The complaint noted that by December 2023, the Student's "mental health deteriorated" and the Student was unable to attend school at all and "became suicidal requiring increased medical appointments."
28. Emails from the end of November 2023 indicted the following related to scheduling a meeting:
  - The Complainant was only available Thursdays and Fridays
  - The SLP did not work on Fridays but could join remotely on a Friday if needed.
  - The District stated the Parents rejected a meeting date they had previously proposed. An email from the Complainant indicated the Parents had a medical issue arise and therefore could not meet the date they had proposed.
  - Numerous emails were sent between District counsel and Complainant regarding scheduling.
  - On November 30, the Complainant proposed several dates in December and January for an IEP meeting.
  - The Parents requested the meeting be facilitated and the District declined.<sup>2</sup>
29. On December 4 and 12, 2023, the Parents emailed the superintendent, thanking the superintendent for meeting with them. In part, the Parents requested the District bring in outside legal counsel as it had done in the past as they felt the District's counsel was presenting barriers to communication and the team's ability to schedule an IEP meeting.
30. On December 6, 2023, in an email to the elementary director, the Parents stated:

My understanding is that the school is saying that [Student] is doing ok with all the support provided when she is at school...The current meeting was denied being facilitated. I met with [superintendent] on Friday 12/1 and reiterated my request again, even though I had already met with you twice and [director] once. I am just having a hard time understanding why you are asking us to have our daughter be evaluated by a doctor when you have refused to meet with [us] in any IEP setting to discuss anything around our daughter's challenges.

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<sup>2</sup> The District stated that it would agree to a facilitated meeting if the facilitated meeting occurred without legal counsel.

31. On December 7, 2023, the Parents provided the District with letters from the Student's doctors. In the email, the Parents asked, "when should we expect homebound instruction to begin?" The letters included:

- A pediatrician letter, indicating the Student had diagnoses of autism spectrum disorder, ADHD, and generalized anxiety disorder, and was being treated with medication and monitored by a psychiatrist. The letter noted the Student "has had recent worsening of her behavioral symptoms, and is not able to attend school in person until further notice. She will need to attend school from home with special education services, but does not need home hospital services."
- A psychiatrist letter added that the Student was under treatment for ADHD, depression, anxiety, autism, and mood disorder. The letter noted, "The [Student] is currently in crisis and experiencing worsening symptoms that require an inpatient stay. The [Student] will be unable to attend school until she is stable and her functional performance has improved." The psychiatrist stated, "based upon our clinical assessment, the [Student's] needs would best be served by establishing home schooling...this would allow for [Student] to continue to receive education and school resources whilst in the safe environment of her home."

32. On December 11, 2023, the District sent the Parents a letter regarding the Student.<sup>3</sup> The letter summarized that the Student was receiving ABA services at home and that the Parents indicated in September 2023 that the Student would be "absent from school for more than 7 hours per week/30 hours per month." The District reiterated its position that the Parents were effectively part-time enrolling the Student and noted the Parents had declined to either homeschool the Student or enroll her part time. The letter noted that in September 2023:

The District had no indication that [Student] was physically or mentally unable to attend school at that time and excusing [Student]'s absences to access private services in your home instead of having her attend school was one that we believe would cause a serious adverse effect upon educational progress for any student. Specific to [Student], staff were also very concerned about her missing instruction in entire subject areas of general education instruction as a large amount of special education services.

The letter stated the District believed the doctors' letters either did not indicate that the Student was "physically or mentally unable to attend school" or that the letters presented conflicting recommendations.

The District stated it needed more information, that home/hospital instruction may be an option, or if the Parents wanted the Student to be educated in the home, the Parents would need to fill out a declaration of intent to homeschool the Student or part time enroll the Student. The letter ended with:

If you are asking for a home-based educational placement under the [IDEA] as amended, that is an IEP team decision. Moving a special education student to a home-based educational placement not one that is taken lightly by the District, because it is a move to the most restrictive educational setting. The District members of [Student's] IEP team will

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<sup>3</sup> Prior to the letter, on December 7, 2023, the District's counsel emailed the Complainant in response to the Parents sending the doctors' letters. The email and December 11, 2023 District letter contained very similar information and language regarding the District's analysis of the doctors' letters. The Complainant responded that the Parents were requesting a "homebound" placement.

be prepared to discuss this with you at the upcoming IEP team meeting that has been scheduled for January if this is a request you are making. If you are willing and able to meet sooner than the date that has been confirmed, please provide the dates and times of your availability to the District through your attorney, as we understand that her schedule has been a limiting factor in holding this meeting sooner.

33. An additional doctor letter was written on December 13, 2023, stating the Student needed "instruction at home. She needs special education instruction at home. Due to her mental status she is not able to attend school" and that the Student was being evaluated for possible inpatient treatment.
34. On December 17, 2023, the Complainant emailed the District counsel regarding the December 11, 2023 letter from the District. In part, the Complainant stated the Parents had additional medical letters to share and stated the Parents "are continuing to request IDEA services for the Student in the homebound setting as the Student is still accessing out-patient treatment and is home."
35. On December 18, 2023, the Parents emailed the District a letter from another psychiatrist and requested the District provide the Student instruction in her home. The Parents stated they had been asking to meet with the IEP team since September to discuss these concerns.

The psychiatrist's letter, dated December 15, 2023, stated they had evaluated the Student on December 12, 2023, and added a diagnosis of disruptive behavior disorder. The letter further detailed the Student's "serious behavioral and emotional symptoms", stating in part:

...behaviors are reported to be most evident at home, but her parents report that she has exhibited milder disruptive behaviors in her various school settings. During the current academic school year...she has been very easily overwhelmed and frustrated by her experience there, and has subsequently exhibited escalating disruptive behaviors at home. She has missed 30 days of school already this academic year. Consequently, parents have kept her home from school to try to reduce her overall level of distress and agitation.

...

I will be involved in managing her psychiatric medications. She is also receiving ABA therapy...She will need intensive coordination of care to help manage her condition. As for school placement, [Student] will not be able to function in a comprehensive school setting given the current severity of symptoms. I do not foresee that even 1:1 supervision would be adequate in maintaining behavioral control, in regular education or special education classes. If she is subjected to placement in a comprehensive school, she may be able to contain her agitation initially and wait to vent the majority of her frustrations and behaviors at home, but it is highly likely that her behaviors at school will soon degenerate into severe agitation. Currently, her level of sensitivity and agitation are such that a home-based school program will likely be necessary, with a great deal of the focus placed on behavioral management and improvement in compliance (through ABA). Short of such accommodations at this time, a residential treatment center placement may be necessary.

36. In response to the Parents' December 18, 2023 email, the District counsel emailed the Complainant, summarizing the District's understanding of what had occurred:

- The Parents' statements about an IEP meeting were inaccurate, noting that when the District counsel contacted the Complainant in the fall, the Complainant responded, "The meeting the Parents are requesting is to discuss the Student's program this year with the new team as she has changed schools. The Parents are calling it an 'IEP meeting' because the IEP will be discussed, and maybe changed if the team believes that is necessary, but the Parents purpose is to have a discussion about the program."
- The District interpreted the Complainant's response to mean the Parents did not want an IEP meeting, rather they wanted to meet with school staff to discuss the Student's program and the District offered the "meetings with the IEP case manager called for in her IEP."
- In November 2023, the District counsel "explicitly asked you [Complainant] if the Parents were requesting IEP team meeting to discuss what is occurring during the mornings they have elected to remove [Student] from school or if they were just seeking to share their perspective with school staff...You did not respond to this email." District counsel stated she followed up again on November 16 and 20, 2023.
- District counsel stated "The simplest way to get this meeting scheduled is for you to tell me all the dates and times your clients are available and then I can cross check that against the schedule of staff and me. I am again asking that you do that if your clients have any desire to meet sooner than January 18, 2024."

The Complainant responded on December 28, 2023, that the Parents could meet January 11, 2024.

37. On January 3, 2024, the Complainant indicated the Parents still wanted to meet and would do a remote meeting on January 11, 2024 in order to meet sooner. The District responded that the meeting would be hybrid in-person and remote, if the Complainant would attend remotely.<sup>4</sup>

38. On January 4, 2024, the District counsel emailed the Complainant an agenda for the IEP meeting and stated as follows:

As your clients are asking the IEP team to substantially and materially alter [Student's] educational program (as reflected in her attached April 20, 2023 IEP) and specifically to change her educational placement from one of the least restrictive placements...to the most restrictive placement (a home-based placement where [Student] will not participate with nondisabled students in the general education classroom or in nonacademic and extracurricular activities at all), the [District] asks them to please submit whatever existing data (if any) is available to support that [Student] has made any progress in either her part-time or full-time home-based ABA program...As you know, the District has the attached letters that make inconsistent recommendations, including some that make internally inconsistent.

...

Based upon attendance data and progress before and after the last week of September, it appears that the cause of the present circumstances was the Parents' unilateral determination to remove [Student] from school to access home-based ABA services and

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<sup>4</sup> Other emails about scheduling referenced challenges scheduling due to work schedules, thus the meeting would need to be a hybrid meeting (in person and remote). The District counsel stated in an email that if the Parents wanted "a fully in-person meeting, that can always be set up for a Monday or Tuesday and without counsel."

attend school only on a part-time basis starting at the end of September. This speaks against the District supporting the placement [psychiatrist] has recommended, as the District would be endorse what appears to have been the cause of the present circumstances and thus not a viable solution. However, the District members of the IEP team are would [sic] love to have and consider any other data (including data from the ABA provider who is delivering the home-based services) that the Parents have to support their request. To that end, please find attached a blank Authorization for Release for any provider or providers that the Parents would like the District to speak with or obtain information from in advance of next week's IEP team meeting.

...As part of the discussion of truancy and reasons for the absences at next week's IEP team meeting, we anticipate the IEP team discussing if [Student]'s attached Behavior Intervention Plan needs to be modified from a focus on Work Avoidance/Off Task behaviors and/or if a new Functional Behavior Assessment needs to be done to draft a new BIP.

39. Regarding scheduling the January 2024 IEP meeting, the Complainant summarized:

The school district then offered two dates for the meeting in December the Parents could not attend. The Parents offered three other dates in December, all of which were declined by the school district...Parents had agreed on January 12th but that needed to be changed due to an unexpected medical issue for the family. Then January 18th was agreed to, as an in-person meeting, but [District counsel] asked if there were any other dates. On behalf of the Parents I offered January 11th asking again for the meeting to be in-person. [District counsel] then changed the meeting to January 11th and stated it had to be virtual and the January 18th date was no longer available...The IEP meeting requested in September was not held until January 11, 2024.

40. Regarding the January 11, 2024 IEP meeting, the Complainant acknowledged that the IEP team met, but stated "by that point the Student had so significantly decompensated that her medical providers believed she was unable to attend school." According to the complaint, at the meeting, the Parents attempted to explain their concerns and the IEP team stated the Student was truant and to receive services, they would need to "apply for Home Hospital services." According to the complaint, the District stated it could not consider a homebound placement without a reevaluation and proposed to reevaluate, which the Parents agreed to. The complaint noted the Parents' concern that while the reevaluation was underway, the District stated that the Student could either attend school or receive "Home Hospital" services until the IEP team could meet to consider homebound placement.

41. The District provided OSPI an undated consent form, proposing a reevaluation of the Student. The consent form stated, "The [school] IEP team met on 1/11/24 to discuss truancy and reasons for significant absences. The team also discussed Parents' request for a change in educational placement to a home-based educational placement. The team decided a reevaluation was required to consider educational placement to a home-based educational placement..."

A January 12, 2024 prior written notice also documented this, noting in part:

The [school] IEP team proposes to initiate consent for a reevaluation, inclusive of the following areas: Social-Emotional, Cognition, Academics (Math, Reading and Written

Expression), Fine Motor, Communication, Medical-Physical, Student Observation, General Education input, and a File Review to consider background information and existing data, results of the private neuro-psychology evaluations completed by [private provider] and [private provider 2] during the 21-22 school year and any additional private evaluation reports submitted to the [school] IEP team.

42. On January 16, 2024, the school psychologist emailed the Parents a prior written notice, "explaining the proposal to initiate consent for a reevaluation" and stated a consent form would be provided shortly.

The Parents responded on January 17 and 28, 2024, asking follow-up questions about the evaluation and asked for the consent form.

In reply, the District counsel emailed the Complainant, in part:

As was shared at the IEP team meeting, the District is not yet in a position to know where the administration of additional assessments are warranted. Once consent to reevaluate is provided, District staff will undertake a review of existing evaluation data, including the District's prior evaluations and reevaluations; any evaluations and information provided by the Parents; current classroom and service provider records; classroom-based observations; and observations by teachers and related services providers.<sup>5</sup> To that end, please find attached a release form that the District is asking the Parents to complete for all medical/mental health providers...as well as the private ABA team and SLP...Once that review has been completed, using their professional judgment, staff will determine what else is needed in order to ensure that the reevaluation is sufficiently comprehensive to identify all of the student's special education and related services needs. As was also shared at the IEP team meeting, the professional staff who are part of the reevaluation team will determine what direct and indirect measurements, such as standardized testing, rating scales, and other assessments are needed as part of this reevaluation...The selection of assessment tools, whether direct or indirect, will be guided by an ongoing assessment of the student's strengths and challenges, ensuring a comprehensive understanding. The professional staff will of course use assessment tools and strategies to provide relevant information that directly assists persons in determining the educational needs of the Student. The reevaluation process dynamic and may be subject to adjustments as staff gather more information. The reevaluation is designed to be flexible and responsive to the Student's evolving needs.

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<sup>5</sup> OSPI notes this explanation from the District represents a misunderstanding of the evaluation process. WAC 392-172A-03000 provides that "Parental consent for an initial or a reevaluation is not required before...Reviewing existing data as part of an evaluation or a reevaluation" and in fact the regulations contemplate the review of existing data happening first to determine whether additional assessments are needed and thus allow the team to plan the reevaluation. WAC 392-172A-03025. Here, the evaluation group could have reviewed existing data and provided the Parents further information and answers to their questions in order to allow the Parents to provide informed consent for new assessments. While this specific issue was not raised in the complaint, it appears here there was delay around obtaining Parent consent and it is unclear whether the Parents were afforded the opportunity to provide written, informed consent given the description of how the reevaluation would be conduct. OSPI strongly recommends the District conduct training in this area.



If your clients wish to meet again to discuss the District's proposed reevaluation further in order to be able to provide knowing consent, please let us know and we will get that scheduled.

43. On January 18, 2024, OSPI received and opened this complaint.
44. On January 30 and 31, 2024, the District counsel emailed the Complainant and asked when the Parents would be available for an IEP meeting, "to discuss the provision of special education services while the Student is receiving Home Hospital Instruction...as well as to discuss whatever questions your clients may have about the [District's] proposed reevaluation?"
45. On February 1, 2024, the Student was approved for "2 hours per week of general education instruction" via "home/hospital." In an email from the director of special education, the director stated the Student's IEP team would need to meet to discuss how to support the Student's progress toward IEP goals during the period the Student was receiving instruction via "home/hospital."
46. The District stated the Parents provided consent for the reevaluation prior to a February 8, 2024 meeting.
47. On February 8, 2024, the Student's IEP team met via "Teams." The agenda for the meeting indicated the team discussed what special education services the Student could benefit from and tolerate during the time she received instruction via "home/hospital" and discussed the proposed reevaluation of the Student.

A February 13, 2024 prior written notice documented the meeting and indicated the District proposed to provide the Student special education services while the Student was receiving general education instruction through "home/hospital". The notice stated the District would provide the Student with 150 minutes per week of "tutoring" and "30 minutes per week of specially designed instruction in math." The prior written notice also stated:

The District also offered 60 minutes of specially designed instruction in social skills by the Student's Special Education teacher with the Student participating in the same remotely with the support of the Home/Hospital Instruction teacher (who is both a certificated general education and certificated special education teacher). The Mother identified that the Student would not be likely to engage in any form of remote instruction. The IEP team will revisit this topic once the instructor gains rapport with the Student and it is better known how much instruction the Student can tolerate at home at this time.

The notice stated this would be initiated on February 19, 2024.

48. In an email from the District to OSPI regarding the February 8, 2024 IEP meeting, the District stated, in part:  
Ultimately, the IEP team determined that it made the most sense to have [general education and special education teacher for home/hospital (teacher)] start by providing specially designed instruction in math and written expression concurrent to [teacher's] provision of general education tutoring and to revisit the provision of social emotional instruction once

[teacher] has had the chance to build rapport with [Student] and the team can strategize on how to provide social emotional instruction in a setting where [Student] will not be interacting with peers. The most recent probe of [Student's] reading progress reflected 100% reading fluency and accuracy at grade level, so the IEP team determined that [teacher's] focus should be on supporting [Student] in accessing academic content-area reading as it does not appear that any specially designed instruction in reading is warranted at this time. The SLP will be working with [teacher] and [Student's] IEP case manager on the development of social skills related content to work with [Student] on in the future. If [teacher] encounters any challenged related to sensory processing/regulation and fine motor skills associated with writing, the OT remains available to [teacher] for consultation just as the OT was providing that support to staff at [schools] in the past.

The specific schedule is being worked on, with efforts to provide continuity regarding the time period where instruction is provided, recognizing that the District's school day is shorter on Wednesdays, which may impact when [teacher] is able to meet with [Student]. [Teacher] can serve [Student] between noon and 2:30 pm, and the Parents will need to ensure that there is an adult present during the times that she is providing services to [Student]. [Parent] identified that because of the nature of the jobs she and her husband hold, that person will be [ABA therapist], who works for...the private ABA company that the family has had working with [Student] in the home.

The IEP case manager is still working on completing the IEP Amendment.

49. On February 26, 2024, the District counsel emailed the Complainant regarding scheduling an evaluation review meeting on either March 21, 27, or 29, 2024—based on the District counsel and Complainant's availability.

The Complainant responded that all the proposed dates worked and requested an in-person meeting. District counsel responded that the meeting would be held remotely.

In her reply to the District's response, the Complainant requested as a remedy in this complaint that OSPI "state it is a parents' right to request an in-person meeting so that they can have the ability to fully participate in the meeting and the decision-making process" and:

compensatory education for the Student for the 18 school days the Student refused to attend school up until December 7th when her physician placed her on a medical leave and then all school days up to February 12th when educational services began, which is 37 school days. This is a total of 55 school days that were denied to the Student due to the District's failure to provide a FAPE.

## CONCLUSIONS

**Issue One: IEP Meeting Requests** – The Complainant alleged the District failed to appropriately and timely respond to the Parents' request for an IEP meeting to address concerns regarding the Student's medical/mental health needs and school refusal behaviors. The Parents indicated they had been requesting an IEP meeting since September 2023 and that a meeting was not held until January 2024, after many requests. The District disagreed, maintaining that it had proposed an IEP meeting and that the Parents and Complainant's schedule were the barriers.

Team meetings must be held periodically, but not less than annually to develop the IEP, and to revise or review it as necessary. Parents must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE) to the student.

First, on September 9, 2023, the Parents requested that an IEP meeting be scheduled for the end of September. At the same time, the Parents notified the District that the Student would begin ABA therapy at home and thus would be missing the first hour of school daily and additional time on Fridays for a medical appointment. At first, the District sought to clarify what the Parents wanted to discuss at an IEP meeting. Then the District stated that the Parents appeared to be part-time enrolling the Student—which the Parents disagreed with and declined to do—and that an IEP meeting was not needed and declined to meet.<sup>6</sup> Later, the District stated that the September 2023 request for an IEP meeting was really a request to “have a discussion about the program” and thus the District did not interpret this as a request for an IEP meeting.

When a parent or district believes that a required component of a student’s IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. The district must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE.

Here, while the District later provided the Parents a prior written notice regarding part-time enrollment, the District did not provide the parents prior written notice of its refusal to hold an IEP meeting or provide explanation of why the District determined that a meeting was not necessary to ensure the provision of FAPE to the Student. Further, the District’s reasoning for why it declined to have an IEP meeting does not entirely make sense; the District stated, “The Parents are calling it an ‘IEP meeting’ because the IEP will be discussed, and maybe changed if the team believes that is necessary, but the Parents purpose is to [discuss] the program.” This seems to outline a reason to have an IEP meeting, not decline a meeting. Further, at this point, the District knew the Parents were planning to have the Student miss school for ABA services, which would have been a key topic for the IEP team to discuss how this would impact the implementation of the IEP. OSPI finds that the District should have scheduled an IEP meeting following the September request or provided prior written notice of its refusal to hold an IEP meeting.

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<sup>6</sup> Although the District stated the Parents could resume a “Monthly 30-minute meeting between the special ed teacher and mom for the purpose of going over concerns and updates”, which was outlined in the IEP. OSPI notes the Parents could have and likely, in retrospect should have, availed itself of this meeting more frequently, although it appears a check in meeting with the teacher occurred in October and parent teacher conferences were held in November. However, the fact remains that this appears to be a check in with the teacher and not a full IEP team meeting, which is what the Parents’ requested.

Following this, the investigation shows that moving into October, it was clear the Student was struggling with school refusal behaviors and social emotional/mental health needs as evidenced by the increasing amount of school the Student was missing and the Parents' emails to the District, documenting the Student refusing to come to school October through December 2023.

After the September meeting request, the email documentation in this complaint indicated there was back and forth regarding an IEP meeting October through December 2023, including in part:

- Requests from the Parents (and Complainant stating the Parents were requesting) an IEP meeting on October 11, 28, 2023 and November 8, 9, 15, 19, 20, 21, 22, 30, 2023.
- Communications from the District, asking if the Parents were requesting an IEP meeting or "just seeking to share their perspective" on November 3, 2023.
- Emails from the District, stating an IEP meeting would be held and communications regarding scheduling the IEP meeting on throughout November, including on November 16 and 20, 2023.

The investigation shows there were challenges with scheduling based on the schedules of various IEP participants and challenges related to the lines of communication.<sup>7</sup> For example, there were numerous occasions where the Parents would email school staff or the director of special education regarding scheduling an IEP meeting, and the District's legal counsel would respond to the Parents' email by emailing the Complainant. On this point, OSPI notes that while the Parents have a right to an attorney and the District thus will have its attorney involved, communication through attorneys is not an adequate substitute for the IEP process.<sup>8</sup> And here, unfortunately, the degree of attorney involvement in the communication appears to have delayed scheduling an IEP meeting.

Ultimately, an IEP meet was held on January 11, 2024, and since then, additional IEP meetings have occurred. While OSPI acknowledges the reality of navigating schedules and that at times, some amount of email discussion is needed to clarify requests and get meetings scheduled, in this case, the fact that it took until January 2024 to get an IEP meeting scheduled for a Student whom everyone was growing increasingly concerned about is unreasonable. It is clear the Parents had concerns and, throughout the communications in the fall, the District also expressed concern about the amount of school and instruction the Student was missing.

Overall, OSPI finds a violation. The District failed to properly respond to the Parents' September IEP meeting request and did not timely schedule an IEP meeting as requests continued in the fall. As corrective action, the Student's IEP team will receive training on IEP meeting scheduling

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<sup>7</sup> There were also emails back and forth regarding a request by the Parents to hold a facilitated meeting and discussions of whether the IEP meeting would be remote, hybrid, or in-person.

<sup>8</sup> While not controlling in Washington, a California case provides an illustrative example where it was found that "By choosing to communicate through its attorney, the district denied the parents their right to present information to an IEP team and participate in decision making." *Soquel Union Elementary. Sch. List.*, 22 IDELR 646 (SEA CA 1995). OSPI notes that the plain language of the IDEA and special education regulations require districts to communicate with parents and gives parents the right to participate in special education processes, having an attorney on retainer or on staff in a non-legal proceeding does not change that.

requirements and the District will develop or update its policy/procedures on responding to parent requests for IEP meetings.

**Issue Two: Parent Participation and Prior Written Notice** – The Complainant alleged the District made decisions outside of IEP team meetings and without Parent participation, and thus improperly documented these decisions in prior written notices. The investigation showed that this concern primarily arose related to emails and prior written notice sent on October 11, 2023.

Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. Generally, IEP team decisions must be based on a student's needs resulting from that student's disability and parents are part of the IEP team. Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent and should clearly describe what the district proposes or refuses to initiate.

ABA Provider Observation: Here, the Parents' request that their ABA provider do a second observation of the Student was addressed in an email rather than a prior written notice; however, the email contained the essential elements of a prior written notice.<sup>9</sup> The email indicated the District was declining to allow another private provider evaluation and explained the reasons why.

While a prior written notice is usually going to follow decisions made at an IEP meeting (or meetings about identification and evaluation); more generally though, prior written notice must be provided before a district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. Here, it does not appear the Parents' request implicated the Student's educational placement or provision of FAPE; rather, the request was to have a private provider observe the Student for the purpose of informing the private provider's work in the home with the Student—in other words, the private provider was not observing to inform the Student's IEP or educational services. This was an instance where the District could make a decision even without an IEP meeting. The Parents

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<sup>9</sup> The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal.

also had the opportunity to provide input via the email requesting the observation and it was appropriate for the District to issue a prior written notice in the format of an email, declining the request. OSPI finds no violation.

Progress Reporting: The Parents also made a request around work samples that the District interpreted as a request to change the frequency/method of progress reporting. While the District may have disagreed with the request—as it expressed in an email and attached prior written notice—this request related to the provision of FAPE for the Student and thus should have been an IEP team discussion with any decision made by the IEP team. On this issue, it is not clear that the Parents had an opportunity to participate in the decision-making process beyond making their request. The Parents did not have an opportunity to discuss with the IEP team why they felt the change was needed. Thus, OSPI finds that the District should've considered the request within the context of the IEP team. OSPI finds a violation that the District made this decision outside the IEP team and thus the Parents' participation was limited. As corrective action, the Student's IEP team will receive training on facilitating parent participation and prior written notice requirements.

Part-Time Enrollment: Finally, with the prior written notice regarding part-time enrollment, OSPI finds that the District did not need to document this in a prior written notice as the District was not proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the Student. Rather, the District stated it was documenting its interpretation of what the Parents were choosing. The District stated that it "cannot offer [Student] a free appropriate public education with her part-time schedule" and that it "stands ready to fully implement [Student's] IEP should her parents elect to return to having her attend on a full-time basis"; again, as the District was not proposing or refusing an action, there is no requirement that this be a prior written notice.

However, as discussed above, given this indicated the District was concerned about the circumstances surrounding the Student missing school and about the implementation of the IEP, this should have triggered an IEP team meeting much sooner in order for the IEP team, which includes the Parents, to discuss all of the concerns around the Student's program, attendance, provision of FAPE, and potential options and avenues for next steps. Notably, the Complainant responded to the October 11, 2023 prior written notice emails that the school refusal behaviors were not new and stated the Parents had been trying to engage with the District to discuss and address the concerns. As OSPI noted above, it found a violation related to the scheduling of the IEP meeting and notes this delayed the Parents' ability to participate in the special education process.

**Issue Three: IEP Implementation** – The Complainant alleged the District failed to provide the Student with special education services in the Student's home or in a homebound placement.

A school district must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Additionally, a district must have a continuum of alternative placements available to meet the special education and related services needs of

students. The continuum includes, among other placements, home instruction. OSPI notes that “home instruction” often referred to as a “homebound placement.”<sup>10</sup>

Here, it is clear the Student was missing an increasing amount of school during the 2023–24 school year and so the Student’s IEP was not fully implemented. Thus, the question becomes whether the District appropriately addressed the reasons underlying why the Student’s IEP was not being implemented, especially given that the Parents ultimately requested the IEP team consider a homebound placement.

Initially though, the Parents were not asking for District special education services in the home, instead, they notified the District that the Student would be missing about an hour of school each morning to receive ABA services in the home and then coming to school. The District indicated concern about the amount of time the Student would be missing; however, as discussed above, the District did not schedule an IEP meeting to address this in the fall and took the position that the Parents were part-time enrolling the Student and/or that the Parents needed to fill out a declaration to homeschool the Student. The Parents stated they were not homeschooling the Student nor were they seeking part-time enrollment; the Parents stated these were medical and mental health related services and the Parents asked the District to excuse these absences.<sup>11</sup> While there was disagreement as to the cause of the Student’s school refusal behaviors, the fact remains that the Parents, raised concerns and requested IEP meetings throughout the fall and the District also raised concerns regarding the Student missing instruction. Yet, the District continued into December to take the position that the Parents should part-time enroll the Student and that the Parents needed to fill out the paperwork and/or complete a declaration of intent to homeschool. While functionally the Student may have been attending part time, OSPI notes that the Parents clearly responded that part-time enrollment and homeschooling was not what they were attempting to do. This further supports the need to have an IEP team earlier and clarify, discuss concerns, and determine appropriate next steps.

In December 2023, the Parents provided the District several letters from the Student’s doctors and psychiatrists that included diagnoses, information that the Student was struggling with behavioral and mental health symptoms, and that the Student could not attend school in person and needed

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<sup>10</sup> This is different than “home/hospital instruction” (see footnote 12) and homeschooling, also referred to as “home-based instruction”, which is regulated in RCW 28A.200 and is not a special education placement or process.

<sup>11</sup> Concerns also arose around attendance procedures (marking absences as unexcused) and the use of truancy procedures, which are outside the scope of OSPI’s special education division’s authority in a special education community complaint as attendance and truancy are not addressed with specific special education regulations. OSPI does want to remind the District though, that WAC 392-401-020 states, “(1) Absences due to the following reasons must be excused: (a) Physical health or *mental health symptoms*, illness, health condition or medical appointment for the student or person for whom the student is legally responsible. Examples of symptoms, illness, health conditions, or *medical appointments include*, but are not limited to, medical, counseling, *mental health wellness*, dental, optometry, pregnancy, and *behavioral health treatment* (which can include in-patient or out-patient treatment for chemical dependency or mental health)” OSPI strongly recommends the District review this WAC and whether it applies to the Student’s situation here.

instruction in the home. On December 7, 2023, the Parents, in an email, asked “when should we expect homebound instruction to begin?” The District took the position that the doctors’ letters either did not indicate that the Student was “physically or mentally unable to attend school” or that the letters presented conflicting recommendations; and the District stated it needed more information and that “home/hospital instruction”<sup>12</sup> may be an option, or if the Parents wanted the Student to be educated in the home, the Parents would need to fill out a declaration of intent to homeschool the Student or part time enroll the Student. However, the District also acknowledged in a December 11, 2023 letter that if the Parents were asking for a homebound special education placement, this would need to be an IEP team decision.

Ultimately, in January 2024, the District and Complainant, via email, and the Student’s IEP team discussed that the Parents were requesting a homebound placement and that a reevaluation would be needed to assess whether such a change in placement was warranted. The Parents signed consent for a reevaluation on or around February 8, 2024, and the reevaluation is underway. The District began providing some instruction via “home/hospital” while the reevaluation was in progress and agreed to provide some special education services in the home during this period, starting on February 19, 2024. The District and Complainant have emailed regarding scheduling an evaluation review meeting on either March 21, 27, or 29, 2024.

Overall, OSPI finds that the District ultimately addressed the Parents’ request for a homebound placement with the appropriate next steps: IEP team discussion and a reevaluation, which is in progress. However, given the increasing concern throughout the fall and the letters from the Student’s medical providers, OSPI finds that the District did not timely consider whether a homebound placement was appropriate for the Student. As discussed throughout the conclusions in this complaint, even acknowledging the difficulties scheduling, the Student’s IEP team should have met sooner than January 2024 to consider the Student’s needs, IEP implementation, and given the circumstances, placement. While the Student’s circumstances and needs may be complicated, the delay in having the IEP team meet and discuss meant the Student has not received special education services for several months. OSPI finds a violation.

The Complainant requested 55 school days of compensatory education, which would amount to approximately 111 hours of specially designed instruction and related services. OSPI finds that compensatory education is likely an appropriate remedy; however, given that an evaluation is in process and the Student’s placement uncertain, OSPI will not order a specific amount of compensatory education now. Instead, the IEP team will first be required to meet following the completion of the reevaluation to discuss the reevaluation and the Student’s needs, determine placement, amend the Student’s IEP as appropriate, and propose a compensatory education plan.

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<sup>12</sup> OSPI notes that “home/hospital instruction” is a funding mechanism to provide instruction to any student who is unable to attend school for an estimated period of four weeks or more because of disability or illness. “Home/hospital instruction” is not intended to be used for the delivery of special education services, and a student eligible for special education receiving “home/hospital instruction” must also continue to receive educational services that provide a FAPE, so as 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.



## CORRECTIVE ACTIONS

By or before **April 5, 2024, April 26, 2024, and May 24, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

### STUDENT SPECIFIC:

#### IEP Meeting

By or before **March 29, 2024**, the Student's IEP team will meet. The meeting will be held in-person if the Parents would like an in-person meeting.<sup>13</sup> At the meeting, the IEP team must discuss the reevaluation and the Student's needs, determine placement, and amend the Student's IEP as appropriate. The IEP team will also develop a draft compensatory education plan, which OSPI will review and either modify or approve.

By **April 5, 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; iv) the draft compensatory education plan; and v) any other relevant documentation.

OSPI will review the draft compensatory education plan and provide further deadlines related to compensatory education.

### DISTRICT SPECIFIC:

#### Policy/Procedure Development

By or before **April 26, 2024**, the District will develop and send OSPI a draft policy/procedure to address responding to parent requests for IEP meetings and scheduling IEP meetings, including typical lines of communication (i.e., who should respond) and best practices around a reasonable amount of time to respond.

OSPI will review and provide feedback, next steps, and further deadlines for finalizing and distributing the policy/procedure.

#### Training

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will co-develop and co-present training on the below topics. The District will provide the trainer with a copy of this decision, SECC 24-10.

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<sup>13</sup> OSPI notes that while remote/virtual meetings can offer flexibility for teams, there is no regulatory justification to require parents to meet virtually, especially when parents request an in-person meeting and other families have the option and opportunity to access in-person meetings. Further, OSPI reminds the IEP team that attorneys are not necessarily acting in a "representative" capacity at an IEP meeting as an IEP meeting is not a legal proceeding. Thus, there is no requirement that a meeting must be virtual because attorneys are attending the meeting.

The following District staff will receive training: District special education administrators, District legal counsel, and all staff at the Student's school who are part of her IEP team and evaluation group. The training will cover the following topics:

- Facilitating parent participation and regulatory requirements for parent participation
- Prior written notice requirements
- IEP meeting requirements, including scheduling and district best practices for timely scheduling

*Note: OSPI strongly recommends the District also conduct training on reevaluation procedures, written informed consent, and regulations addressing the "review of existing data" requirements.*

The training will include examples.

By or before **April 5, 2024**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **April 26, 2024**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by May 3, 2024.

By **May 17, 2024**, the District will conduct the training regarding the topics raised in this complaint decision.

By **May 24, 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 18th day of March, 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.)