

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-13**

### **PROCEDURAL HISTORY**

On January 26, 2024, 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 Northshore 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 January 26, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on January 31, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On February 16, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On March 4, 2024, OSPI received the Parent's reply. OSPI forwarded that reply to the District on March 11, 2024.

OSPI considered the 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 January 27, 2023. 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.

### **ISSUE**

1. Between January 27 and July 9, 2023, did the District follow proper procedures for providing the Student with a free appropriate public education (FAPE)?<sup>1</sup>

### **LEGAL STANDARDS**

Provision of FAPE: An IEP is required to be "reasonably calculated to enable the child to receive educational benefit." It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982).

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<sup>1</sup> The following questions will also be relevant to this inquiry: whether the District followed proper discipline and reevaluation procedures between January 27 and July 9, 2023?

For a district to meet its substantive obligation under IDEA, a school must “offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” An IEP must “aim to enable the child to make progress”, the educational program must be “appropriately ambitious in light of [the student’s] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom, ” and the student should have the opportunity to meet challenging objectives. *Andrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017).

IEP Implementation: A district must also ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student’s IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

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

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education community complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district’s violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9<sup>th</sup> Cir. 2011). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9<sup>th</sup> Cir. 1994). The award of compensatory education is a form of equitable relief and the IDEA does not require services to be awarded directly to the student. *Park ex rel. Park v. Anaheim Union School District*, 464 F.3d 1025, 46 IDELR 151 (9<sup>th</sup> Cir. 2006).

Appropriate relief in the form of compensatory education is “relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9<sup>th</sup> Cir. 1994). Compensatory education is not an appropriate remedy for a purely procedural violation of the IDEA. *Maine School Administrative District No. 35 v. Mr. and Mrs. R. ex rel. S.R.*, 321 F.3d 9, 38 IDELR 151 (1<sup>st</sup> Cir. 2003).

“There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting.” *In re: Mabton School District*, 2018-SE-0036.

## FINDINGS OF FACT

### 2022–23 School Year

1. At the start of the 2022–23 school year, the Student was eligible for special education services under the category of emotional behavioral disability, was in the fifth grade, attended a District elementary school's "social emotional program", and the Student's April 2022 individualized education program (IEP) and behavioral intervention program (BIP) were in effect.

The April 2022 IEP provided the Student with the following specially designed instruction in a *special education setting*:

- Reading: 180 minutes a week (to be provided by special education staff)
- Writing Language: 120 minutes a week (to be provided by special education staff)
- Social Emotional: 523 minutes a week (to be provided by special education staff)
- Behavior: 522 minutes a week (to be provided by special education staff)

The April 2022 IEP provided the Student with the following specially designed instruction in a *general education setting*:

- Social Emotional: 365 minutes a week (to be provided by special education staff)

The April 2022 IEP provided the Student with the following related services in a *special education setting*:

- Motor: 30 minutes a week (to be provided by an SLP)

2. According to the District's 2022–23 school calendar, the time period from January 27 through June 20, 2023 (the final day of the school year) represented approximately 18 weeks of instruction.
3. The Parent stated the Student was "expelled" on January 26, 2023.
4. The District's response included progress reporting related to the April 2022 IEP, dated January 27, 2023:
  - Reading: mastered;
  - Written Language 1: mastered;
  - Written Language 2: emerging skill;
  - Social Emotional: emerging skill;
  - Behavior 1: mastered;
  - Behavior 2: emerging skill; and,
  - Motor: mastered.
5. A manifestation determination meeting took place on February 7, 2023. A prior written notice, dated February 24, 2023, relating to the manifestation meeting read, in part:

A manifestation meeting was held on February 7, 2023. At this meeting, the team determined that the incident for which Student was emergency expelled on January 27, 2023 was a manifestation of Student's disability...Consensus was not reached [regarding alternative placements for Student that the IEP team discussed] at the meeting and Parents reported...they would get in touch about their feelings on changing Student's placement ([whether they were] in favor or against [such a change in placement]).

It is now February 13, 2023, and the team has not heard from Parents. In order to plan for Student's current needs, the team is proposing to complete a reevaluation to inform ongoing services.

6. According to the Parent, an "IEP [and] reevaluation meeting" took place on February 16, 2023, and "during [that] meeting, Parent was informed the teachers refuse[d] to be at school if Student [was] there and [that] if Parent decided to take Student home a tutor would be provided [but] a tutor was never provided."

According to the District, on February 16, 2023, the Parent consented to a reevaluation of the Student. The District further stated, "Parents met with principal and agreed for Student to continue accessing school materials at home via Zoom."

7. According to the District, on February 17, 2023, "the Parents [and District] agreed to a change in Student's placement and requested tutoring during the search for a new placement."
8. According to the District, though, subsequent to February 17, 2023, "the District was unable to secure a tutor to work directly with the Student...The District continued to provide Student access to work for a Student to do at home."
9. Also, on February 17, 2023, the Parent emailed, "We have decided it would be best for Student to be placed at a school that can better fit his needs and would like to go ahead with the tutoring while it is decided where he can attend."
10. The District was on break February 20–24, 2023.
11. According to the Parent, in March 2023, she was "informed [the] only school option [for Student] was [an] out-of-state residential" facility.
12. On March 3, 2023, the principal emailed the Parent instructions on how the Student could "access [certain] academic content", including "several self-guided learning academic resources."
13. A reevaluation meeting took place on March 20, 2023. According to the District, in part, on March 20, 2023, the IEP team "agreed to change Student's placement to a non-public agency [NPA] [but] unfortunately the District was unable to locate any local NPAs that would begin serving Student."
14. A March 20, 2023 prior written notice read, in part, "The IEP team determined that a therapeutic NPA day school placement was needed to support Student's social emotional and behavior needs...The IEP will be amended after Student's acceptance at an NPA day school to reflect the service minutes."

A draft March 20, 2023 IEP provided the Student with the following specially designed instruction in a *special education setting*:

- Reading: 180 minutes a week (to be provided by special education staff)

- Writing Language: 120 minutes a week (to be provided by special education staff)
- Social Emotional: 523 minutes a week (to be provided by special education staff)
- Behavior: 522 minutes a week (to be provided by special education staff)

The March 2023 IEP provided the Student with the following specially designed instruction in a *general education setting*:

- Social Emotional: 365 minutes a week (to be provided by special education staff)

The March 2023 IEP provided the Student with the following related services in a *special education setting*:

- Communication: 80 minutes a month (to be provided by an SLP)
- Mental Health Specialist: 30 minutes a week (to be provided by a therapist)

The March 2023 IEP provided the Student with the following supplementary aids and services in a *general education setting*:

- Motor: 200 minutes a year (to be provided by an OT or PT)

The various service areas in the draft March 2023 IEP aligned with the service area recommendations in the March 2023 reevaluation summary.<sup>2</sup>

15. According to the Parent, on March 22, 2023, she provided the District “with [a] new diagnosis of autism.”
16. The District was on break from April 10–14, 2023.
17. On May 2, 2023, the Parent emailed the director, stating, in part, “It has now been over three months that Student has been out of school with no formal education. I [have informed you] residential placement was not an option for us.”(In other May 2023 email exchanges, it was clear the director had made exploratory efforts regarding enrolling the Student in numerous out-of-state residential centers.)
18. According to the Parent, on May 7, 2023, the Parent “declined [the District’s] offer for residential placement.”
19. According to the Parent, at the “end of May 2023, Student was accepted into an out-of-District school.”
20. According to the District, “On June 16, 2023, the District proposed starting Student at [local NPA], an NPA, on July 10, 2023 [and] Student [did] start...at [NPA], as proposed, on July 10, 2023.”
21. The District’s last day of school in the 2022–23 school year was June 20, 2023.

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<sup>2</sup> The March 2023 reevaluation summary had a “meeting date” of March 3, 2023, but certain staff signed said document on March 20, 2023.

22. In its response to this complaint investigation, the District stated:

The District admits that it failed to provide Student a FAPE and proposes the following corrective actions:

**Student-Specific:** Student's IEP in place at the time of the January 27, 2023 emergency expulsion provided for Student to receive 29 hours of [specially designed instruction] each week. Student therefore did not receive 18 weeks of direct IEP instructional services between the January 2023 emergency expulsion and the end of the District's regular school year. Accordingly, the District proposes to provide Student 261 hours of compensatory education via one-to-one instruction with a NPA contracted by the District. This quantity of compensatory is equal to half of the 522 hours of missed SDI and reflects the more intensive nature of 1:1 services over the group instruction contemplated in Student's April 29, 2022 IEP. These compensatory education services would be provided, with agreement from Parents, during breaks from instruction at [NPA].

**District Corrective Action:** Conduct staff training with the District special education administrators and...administration [at the Student's spring 2023 school] regarding the requirements of WAC 392-172A-03105 regarding the District's obligation to implement a student's IEP in all material respects. The District would provide OSPI with its proposed training materials for approval prior to conducting the training and a roster of participants following the training.

### 2023–24 School Year

23. At the start of the 2023–24 school year, the Student continued to be eligible for special education, was in the sixth grade, attended an NPA and the Student's March 20, 2023 IEP was in effect, as most recently amended without a meeting on July 24, 2023.

24. The Parent's complaint request read, in part:

Student is currently attending [NPA]. This school appears to be fitting Student's needs and Student enjoys going to school now. The District's goal is to eventually move him back into [one of their] schools. At this time, we would like Student complete his schooling through 12<sup>th</sup> grade at [NPA] and for the District to continue to pay the tuition and provide transportation services unless Parents request that Student be transferred back [to a District school].

### CONCLUSIONS

**Issue 1: Provision of FAPE** – The Parent alleged the District did not provide the Student with FAPE from January 27 through July 9, 2023.

For a district to meet its substantive obligation under IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. An IEP must be appropriately ambitious in light of the student's circumstances. The student should have the opportunity to meet challenging objectives. A district must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that 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 student with a disability and those required by the IEP.

Here, the Student was emergency expelled on January 26, 2023, and a manifestation determination review on February 7, 2023 noted the Student's conduct on January 26, 2023 was the result of the Student's disability. On February 17, 2023, the Parent and District discussed providing the Student with a tutor pending the identification of an appropriate placement for the Student, but no such tutor was ultimately provided and on March 20, 2023, the Student's IEP team determined that placement at an NPA was appropriate for the Student. June 20, 2023 was the last day of school for the 2022–23 school year, and the Student started attending the NPA on July 10, 2023.

Importantly, between January 26 and June 20, 2023, while the Student may have accessed certain "self-guided learning academic resources" online, the Student was not provided with individualized instruction. As acknowledged by the District, this represents a failure to implement the IEP and provide the Student with FAPE, and certain compensatory education is warranted.

A state educational agency is authorized to order compensatory education through the special education community complaint process. Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. There is no requirement to provide day-for-day compensation for time missed. There is no statutory or regulatory formula for calculating compensatory remedies. However, generally, services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting.

The District proposed, as compensatory education, providing the Student with half of the hours missed, in a 1:1 setting. OSPI finds this to be an appropriate corrective action. January 26 through March 20, 2023 represents approximately six weeks of instruction. Accordingly, under the April 2022 IEP, half of the instruction the Student should have received during said time period would approximately be:

- Reading: 9 hours
- Writing Language: 6 hours
- Social Emotional: 26 hours
- Behavior: 26 hours
- Social Emotional: 18 hours
- Motor: 1.5 hours

March 20 through June 20, 2023 represents approximately 12 weeks of instruction. Accordingly, under the draft March 2023 IEP, half of the instruction the Student should have received during said time period would approximately be:

- Reading: 18 hours
- Writing Language: 12 hours
- Social Emotional: 52 hours
- Behavior: 52 hours
- Social Emotional: 37 hours
- Communication: 2 hours
- Mental Health Specialist: 3 hours
- Motor: 0.5 hours

The totals for the foregoing two time periods will be added together, and represent the required compensatory education for these corrective actions.

The Parent request, as part of the compensatory education award, that the District be ordered to keep the Student at the NPA through the 12th grade. This would be an inappropriate order at this point, as the Student is only in the sixth grade this school year, and the Student's needs resulting from the Student's disability will likely change throughout the next six years.

### **CORRECTIVE ACTIONS**

By or before **April 5, 2024, June 7, 2024, September 13, 2024, and February 28, 2025**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Compensatory Education**

By or before **April 5, 2024**, the District and Parent will develop a schedule for the following hours of compensatory education:

- Reading: 27 hours
- Writing Language: 18 hours
- Social Emotional: 78 hours
- Behavior: 78 hours
- Social Emotional: 55 hours
- Communication: 2 hours
- Mental Health Specialist: 3 hours
- Motor: 2 hours

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider. 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 **April 5, 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. The services must be completed no later than **February 28, 2025**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **June 7, 2024** and **September 13, 2024**, of the compensatory services provided to the Student at that point. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **February 28, 2025**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

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 **February 28, 2025**.

**DISTRICT SPECIFIC:**

None.

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

**RECOMMENDATION**

In its response, the District proposed a training of certain staff regarding the need to provide students with IEPs with FAPE. Based on the information provided to OSPI during this investigation, OSPI does not believe it must mandate that step in this instance. For example, it is clear District staff were aware of its obligation to provide FAPE to the Student, did provide the Student with access to certain materials electronically, and made several attempts to locate a suitable NPA for the Student. Still, while such a training will not be required by this decision, the District is encouraged to complete the same.

Dated this 25th day of March, 2024

Dr. Tania May  
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**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.)