

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-15

PROCEDURAL HISTORY

On January 27, 2024, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Tacoma School District (District). After being notified by OSPI, the Parent provided a copy of the complaint with a signature on January 31, 2024, and OSPI opened the investigation. 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 31, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on February 1, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On February 12, 2024, the District requested an extension of the timeline to respond to the complaint. On the same day, OSPI granted the extension to February 23, 2024.

On February 28, 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 20, 2024, the OSPI complaint investigator interviewed the Parents.

On March 21, 2024, the OSPI complaint investigator interviewed the school assistant principal and visited the Student's school.

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

ISSUES

1. Did the District implement the behavior intervention plan during the 2023–24 school year according to WAC 392-172A-03105?
2. Did the District follow isolation procedures according to 392-172A-02110 when using the "cubby"?

LEGAL STANDARDS

IEP Implementation: A district must 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.

Behavioral Intervention Plan (BIP): A behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes

the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031.

Isolation: Isolation as defined in RCW 28A.600.485 means: Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. WAC 392-172A-01107.

Disciplinary Removals: When a district removes a student from their current placement for disciplinary reasons, it must make sure that the removal is consistent with state laws and regulations governing discipline for all students. 34 CFR §300.530; WAC 392-172A-05145. A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days, or when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. 34 CFR §300.536; WAC 392-172A-05155. When a district removes a student eligible for special education from school for a stated period of time, but does not characterize that removal as a "suspension," it must be determined whether that action was in fact a disciplinary one (that is, used as a form of corrective action or punishment). WAC 392-400-205(1) (defining "discipline"). It must also be determined whether the removal resulted in a change of that student's educational placement. 34 CFR §300.530; WAC 392-172A-05145.

FINDINGS OF FACT

1. At the start of the 2023–24 school year, the Student was an 11th grader who attended a District high school. The Student was eligible for special education services under the category of intellectual disability.
2. The District's 2023–24 school year began on September 7, 2023.
3. On November 28, 2023, the Student's IEP team developed a new annual IEP for the Student. "Team Considerations" included the Parents' concern about physical aggression towards staff and peers when frustrated and the Student's ability to communicate that frustration. Regarding behavior, the IEP stated strategies and supports used to address these behaviors were documented in the behavioral intervention plan (BIP). The IEP included annual goals in reading, written expression, math, adaptive/self-help, and social/emotional/behavioral with progress reporting at the semester. The Student's November 2023 IEP provided the Student with the following specially designed instruction in a special education setting:

- Speech: 20 minutes, 3 times weekly (to be provided by a speech/language pathologist or speech/language pathologist assistant)
- Math: 55 minutes, 5 times weekly (to be provided by a special education teacher)
- Reading: 55 minutes, 5 times weekly (to be provided by a special education teacher)
- Written Expression: 55 minutes, 5 times weekly (to be provided by a special education teacher)
- Adaptive/Self help: 55 minutes, 5 times weekly (to be provided by a special education teacher)
- Social/Emotional/Behavioral: 55 minutes, 5 times weekly (to be provided by a special education teacher)

The IEP provided 16 accommodations and modifications, including breaks available when frustration level escalates and a setting free from distractions and reinforcers.

4. At the November 2023 IEP meeting, the team also reviewed the BIP for the Student. The target behaviors in the BIP were physical aggression, disrobing, and verbal aggression. Setting strategies included "break space in classroom" and using a visual break card, among others. The behavior response plan was as follows:

Physical Aggression

- Step between [Student] and other student
- Give specific, scripted direction: "safe body. Time to take a break"
- Minimize verbal direction. Repeat scripted prompt. Only one speaker
- Avoid overly authoritative tone. Keep tone light, neutral and calm.
- If needed, separate or evacuate other students to another space for safety

Disrobing

- Use a barrier between [Student] and other students to provide privacy and dignity
- If [Student] is escalated, remind here of break options once she gets dressed
- Redirect: Point to the visual cue card that shows expected behavior. Minimize verbal redirection to single phrase
- Immediate access to break activity once she has put her clothes back on

Verbal Disrupting Behavior

- Redirect: Point to the visual cue card that shows the expected behavior. Minimize verbal redirection to a single phrase. EX: "Quiet Voice Please."
- Prompt [Student] to request a break from her visual break menu. Shows/point to the visual menu and provide simple verbal prompt. EX: "looks like you need a break. What choice will you make?"
- Use calm voice with low volume. Avert attention, look away.
- Provide behavior specific praise and acknowledgement immediately after appropriate use of break strategy or acceptance of redirection.

5. The prior written notice that accompanied the November IEP and BIP stated, "Teacher, specialist, and parent input were used in the development of [Student's] updated BIP. Classroom observations and data were used to evaluate target behavior progress, and used to adjust the BIP as necessary."
6. On January 24, 2024, the Student received an emergency removal for assaulting another student.
7. On January 27, 2024, the Parent filed this complaint with OSPI.

8. On February 12, 2024, the assistant principal emailed the Parents the following list of the dates and times that the Student was in the "cubby room":
 - 12/12/2023 1:20PM 10 min
 - 12/13/2023 11:20AM Lunch 15 min
 - 1/5/2024 12:42PM 10 min
 - 1/9/2024 8:25AM 5 min
 - 1/16/2024 12:33PM 5 min
 - 1/17/2024 9:45AM 10 min
 - 1/24/2024 10:00AM 5 min
9. When the complaint investigator interviewed the Parents, they stated they were not informed about the District using the cubby room until the Parents were notified by the District that the Student had been placed on emergency removal. The cubby room was used when the Student had difficulties with aggression and disrobing. The Student was placed in the cubby room and given a timer for when she could leave. Although the door was not locked, the Parents stated the Student did not understand she could leave at any time. The Parents stated that the Student was isolated and the District should have reported them as isolation incidents. The Parents suspected the Student was placed in the cubby room more than what was indicated in the email. In addition, the room was not consistent with the Student's BIP.
10. When the assistant principal was interviewed by the complaint investigator, she stated that the room was used for any student waiting to see her and a place for students to "reset." The room was used for the Student a "handful of times," lasting five through ten minutes each. When the Student became too disruptive in the classroom, she would escort the Student to the cubby room. There was one incident when another student became disruptive, which tended to agitate the Student. To prevent the Student from becoming agitated, the Student was taken to the cubby room while the classroom disruption was addressed. Although the Student could leave the cubby room at any time and the door was unlocked, the Student never left without prompting. Staff periodically checked on the Student while she was in the cubby room. After resetting, she would return to her classroom. The assistant principal stated she did not attend the Student's IEP meeting, but she did attend the BIP review. Since the complaint was filed, the District is no longer using the room with the Student.
11. The OSPI complaint investigator observed the "cubby room" (there are four rooms, which are all adjacent). The "cubby room" was a small room with space for a single desk. The door had a window and the door did not have a lock. The room was located near the assistant principal's office and was not in or connected to the Student's classroom.

CONCLUSIONS

Issue One: Implementation of BIP – The complaint alleged the District did not implement the Student's BIP as written. A district is required to ensure that special education services, including a BIP, are implemented in conformity with the IEP and BIP.

Here, the Student's BIP called for behavior supports and interventions to address challenges with physical aggression, disrobing, and verbal disrupting behavior. One of the setting strategies was a break space in the classroom. The BIP did not call for any removal from the classroom or mention the cubby room, which was not in or connected to the Student's classroom. In response to the

Student's behavior incidents that began in December 2023, the District began using the cubby room to both to intervene and prevent the Student from escalating. The District used the cubby room a total of six times before ceasing to use it. The District was required to implement the BIP as written, but it unilaterally implemented the cubby room without input from the IEP team. Because the use of the cubby room was not consistent with the Student's BIP, a violation is found. The District must ensure that the BIP is implemented as written, unless the IEP team determines the BIP needs to be revised to permit the Student being removed from the classroom. As corrective action, the District will provide assurances that the BIP is being implemented and provide staff with training.

Given the way the cubby room was being used, the removal of the Student to the cubby room should be considered a disciplinary removal.¹ When a district removes a student from their current placement for disciplinary reasons, it must make sure that the removal is consistent with state laws and regulations governing discipline for all students and follow special education disciplinary regulations, including determining whether the removals constituted a change of placement. The Student was removed from the classroom seven times, which did not result in a change of placement. However, the District is required to count these removals in its calculations of a change of placement.

Issue Two: Isolation – The complaint alleged the use of the cubby room with the Student constituted isolation and the District failed to follow isolation procedures, including not informing the Parents of the isolation incidents. Isolation is defined as restricting a student alone within a room or any other form of enclosure, from which the student may not leave.

Here, the District used the cubby room for when the Student needed to deescalate. The cubby room was small with one desk. The door had a window and there was no lock. The District explained that the Student would enter the room with prompting for a short time until the Student was deescalated. Staff regularly checked on the Student. According to the District, the Student could leave at any time, although the Student never did without being prompted. The Parents believed that because the Student did not have requisite understanding that she could leave at any time, and thus the Parents believed the Student being in the cubby room should have been considered isolation. Although the Student may not have understood she could leave at any time, the cubby room was unlocked, and the Student could leave any time. Thus, the Student being in the cubby room did not meet the definition of isolation. Therefore, no violation is found.

CORRECTIVE ACTIONS

By or before **April 12, 2024, April 19, 2024, and May 10, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

¹ See [Dear Colleague Letter on the Inclusion of Behavioral Supports in Individualized Education Programs \(PDF\)](#), OSERS, August 1, 20216.

STUDENT SPECIFIC:

By **April 12, 2024**, the District is required to provide OSPI with assurance that the Student's BIP is being implemented as written. If the IEP team determines that the BIP needs to be revised, the District will provide OSPI with documentation of the new BIP and prior written notice by the same date.

DISTRICT SPECIFIC:

By **May 3, 2024**, the District is required to provide training to the school's special education staff and all school administrators regarding implementing behavior supports and interventions in conformity with the BIP, tracking disciplinary removals, and a plan to ensure that the cubby room is used in conformity with other students' BIP.

By **April 12, 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 19, 2024**, the District will provide OSPI with the proposed training plan and post-training activities for review, input, and approval. OSPI will approve the materials or provide comments by April 26, 2024.

By **May 3, 2024**, the District will conduct the training regarding the implementation of a BIP, disciplinary removals, and the use of the cubby room.

By **May 10, 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 27th day of March, 2024

Dr. Tania May
Assistant Superintendent of Special Education
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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.)