

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-19

PROCEDURAL HISTORY

On February 5, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from a community member (Complainant) regarding a student (Student) attending the [REDACTED] 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 February 5, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on February 7, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On February 20, 2024, OSPI received the District's response to the complaint and forwarded a redacted version of the response¹ it to the Complainant on February 21, 2024. OSPI invited the Complainant to reply.

On February 27, 2024, OSPI requested the Parent provide additional information and the Parent provided the information on February 28, 2024, which OSPI forwarded to the District the same day.

On March 1, 2024, OSPI interviewed the District's executive director of special services, principal, counselor, and special education teacher at the District's alternative learning experience (ALE or "academy").

On March 8, 2024, OSPI received a release of information signed by the Parent, giving permission to share records with the Complainant and forwarded the Complainant the full District response the same day.

On March 8, 2024, OSPI requested that the District provide additional information, and the District provided the requested information on March 11, 2024. OSPI forwarded the information to the Complainant the same day.

On March 18, 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, Parent, and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the interviews.

¹ The Complainant is not the Student's parent and had not, at that point, provide a release of information signed by the parent, giving OSPI permission to share Student personally identifiable information (PII). A release of information was provided later, giving OSPI permission to share Student PII.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on February 6, 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.

ISSUES

1. Since February 6, 2023, has the District team addressed the Student's behavior needs, including addressing incidents on the bus, behavior needs in the resource classroom, and holding individualized education program (IEP) meetings as requested?
2. Per WAC 392-172A-03100, has the District provided the Parent with a copy of the Student's IEP since February 6, 2023?
3. Per WAC 392-172A-03090, has the District provided the Parent with progress reports since February 6, 2023?
4. Did the District appropriately address whether the Parent's decision to move the Student from the middle school to Explorer Academy in December 2023/January 2024 was a change in placement?

LEGAL STANDARDS

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

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, the IEP team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

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. 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).

Copy of IEP for Parents: A district must provide parents with a copy of their student's IEP, with any amendments, at no cost to the parents. 34 CFR §300.322(f); WAC 392-172A-03100(8).

Progress Reporting: IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c). 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.

Change in Placement: One of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016). The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

Physical Location is Not Placement: Although the term "educational placement" is not specifically defined, the IDEA does require that students receive a free appropriate public education (FAPE) in the least restrictive environment (LRE). *A.W. v. Fairfax County School Board*, 372 F.3d 674, 681 (4th Cir. 2004). However, the precise physical location of where a student is educated does not need to be included in the statement of the student's placement. *A.W. at 681* (citing *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 202-03, 102 S. Ct. 3034, 73 L.Ed.2d 690 (1982)).

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 specific learning disability, was in the sixth grade, attended a District middle school, and his April 2022 individualized education program (IEP) was in effect.
2. The school year began on September 7, 2022.
3. The April 2022 IEP indicated the Student’s behaviors did not impede the learning of others, but they did negatively impact his own learning and that he received specially designed instruction to address behavior. The IEP included goals in reading (fluency, comprehension), math (problem solving), and social/behavior (independent engagement/work completion), with progress reporting at the trimester. The IEP included the following minutes of specially designed instruction, provided by a special education teacher:
 - Reading: 150 minutes per week (provided in a special education setting)
 - Math: 150 minutes per week (provided in a special education setting)
 - Behavior: 180 minutes per week (provided in a general education setting)

The IEP included several accommodations, including those related in part to behavior, such as preferential seating, model directions, a daily morning check in with the special education teacher, and a daily incentive system. The IEP indicated the Student would spend approximately 82% of his time in the general education setting.

The IEP indicated the participants, including that the Parent attended and participated in the meeting via videoconference.

4. On February 3, 2023, progress reports were sent home with the Student and were available to the Parent on “Parent Square.”²
5. The complaint investigation timeline began on February 6, 2023.
6. On April 25, 2023, the Student’s IEP team met to discuss the Student’s progress and develop the annual IEP. The Parent attended the meeting.

The April 2023 IEP indicated that if the Student was “struggling with the work or instructional area, he may act out instead of asking for help. This has been an impediment to both his learning and those of other students.” The IEP included goals in reading (fluency, comprehension), math (problem solving), and social/behavior (working with minimal

² According to the District’s website, the District uses “ParentSquare for school communication, primarily with email, text and app notifications” and that “ParentSquare automatically generates an account for each parent, using their preferred email address and phone number. We encourage parents to access their accounts so they can download the mobile app and update their preferences on when and how they are notified.”

reminders), with progress reporting at the semester. The IEP included the following minutes of specially designed instruction:

- Reading: 50 minutes, 5 per week (provided by a special education teacher, in a special education setting)
- Math: 50 minutes, 5 per week (provided by a paraeducator, in a special education setting)
- Behavior: 180 minutes per week (provided by a special education teacher, in a general education setting)

The IEP continued to include accommodations, such as a daily morning check in with the special education teacher and a daily incentive system. The IEP indicated the Student would spend approximately 74% of his time in the general education setting.

The prior written notice documented that the Parent attended the IEP meeting.

7. The District, in its response, noted that the Parent attended the April 25, 2023 IEP meeting and was provided a copy of the IEP.
8. The District stated that, in general, parents are provided a copy of the IEP and evaluation documents at every IEP meeting or evaluation meeting. The District stated, "in addition, [parents] are asked if they want the finalized copies mailed, put in their child's backpack, or picked up" and here, the Parent "requested that the documents be put in [Student's] backpack.
9. On June 20, 2023, progress reports were sent home with the Student and available to the Parent on "Parent Square."
10. Regarding "Parent Square," the Parent stated that generally, the District did not communicate to parents about "Parent Square" "the way it should be. [District] has majorly dropped the ball there as I've personally had to explain to people what it is."
11. The District's school year ended on June 22, 2023.

2023–24 School Year

12. At the start of the 2023–24 school year, the Student continued to be eligible for special education services, was in the seventh grade, attended a District middle school, and his April 2023 IEP was in effect.
13. The District's 2023–24 school year began on September 5, 2023.
14. On September 28 and 29, 2023, the Student received a bus referral for using his cell phone on the bus one day and unsafe behavior the second day.
15. Regarding the bus, the District noted that it occurred near the beginning of the Student's seventh grade year and that the Parent worked with the District transportation department to address her concerns. The District stated:
[Parent] requested to review the videos. The Transportation Department provided her the records request forms and asked that once she return the form that she make an

appointment to review the film as they would need to protect the other students' identities on the bus. The parent did not return the form, nor did she contact the Transportation Department again. There were no more incidents on the bus.

Later emails provided more information: On November 27, 2023, the superintendent emailed the director of transportation, regarding a message he received from the Parent, indicating the transportation department did not respond to her request for a video of the bus incident.

In a follow up email, the director of transportation explained and provided October 2023 emails documenting that the transportation department emailed the Parent multiple times and met with the Parent regarding "video of alleged bullying that they say continually occurs against [the Student] as well as his interaction with the driver." The transportation department requested they file a records request for the video and to set up an appointment to view the video, and that the Parent did not respond or follow up. The transportation department "informed [the Parent] of [Student's] disregard for following the bus rules and addressed mom's concerns of alleged bullying [and] has watched video and rode the bus and never observed [Student] getting bullied."

16. On November 16, 2023, according to the District's response, the Student stated he needed to go to the bathroom and that "Earlier in the day, another teacher reached out to the counselor because she felt that [Student] smelled of feces and she was worried about him."

The email from the counselor to the assistant principal stated:

I spoke with [Student's] mom and she told me that they were withdrawing him due to him not being allowed to use the restroom and then he soiled himself yesterday afternoon.

It seems relevant, so I just wanted to let you know that that morning...[general education teacher] had called me and asked me to check on [Student] because she noticed that he smelled like he might have soiled himself. I went and checked on him, asked him multiple times if things were going okay this morning, and got as close to him as I reasonably could to see if I noticed anything. I did not notice a small...and he told me everything was going well...I let [general education teacher] know that he seemed ok. Given everything that transpired, I am now wondering if [general education teacher] was right.

According to an email from the school security officer, he indicated that he reviewed the video and noted the Student leaving the classroom and heading to the restroom multiple times during fifth and sixth period. At one point, on the video, the dean of students (dean) went looking for the Student and escorted him back to class.³

A written statement from the dean, dated November 16, 2023, but labeled "Incident date: 11/14/23" noted he was called to the special education teacher's class because the Student had been excused but had been out of the classroom too long. The dean stated that he found the Student in the restroom, talking to another student, and escorted him back to class. The statement recorded that when they arrived back at class, the paraeducator suggested they

³ OSPI notes that the email began "Nov 14, 2023." Given other documentation, OSPI finds it is most likely that the incident in question occurred on November 14, 2023.

review "basic expectations because they had been off task too much" and they addressed this in the doorway. The dean stated the Student approached him and "said he was leaving," the dean asked if he had a pass or a note. The statement further noted:

I asked him if he had a pass or a note, and he said no. I asked him if someone had called for him, and he said his mom let him know she was coming. I told him we normally need a message from the office to send for him, to which he had no response. I told him I would send him if I had a note, to which he replied he would just leave out the back door. He walked out the back door at 2:26pm.

Other contemporaneous emails from other staff corroborate that on November 14, 2023, that staff generally had to reiterate behavior expectations as there had been a substitute teacher in fifth period and that at one point, the Student "expressed a need for a drink of water" and was told he would need to wait until attendance was taken and assignment instructions given. One staff person indicated in an email that she wrote the Student's name on the list for a pass to go get a drink of water and that "After the instructions for the assignment were given and made clear, he was told he could go."

17. Emails from mid-November 2023 indicated the Parent planned to part time enroll the Student in another program and have the Student attend the middle school for "specialist" classes.
18. In December 2023, according to the complaint, there was an incident where the Complainant alleged the Student's teacher would not allow the Student to go to the restroom. The Complainant stated the Student "soil[ed] himself in front of his classmates."

In the reply to the District's response, the Complainant, on behalf of the Parent, stated that one of their concerns is that there were never any discussions or follow up discussions of incidents such as this or incidents on transportation. The Complainant stated that these are issues the IEP team should have resolved.

19. On December 4 or 5, 2023, District staff met to discuss the Parent's recent application for the Student's enrollment at the District's alternative learning experience (ALE) program (academy). The team discussed that special education services would continue to be provided at the Student's middle school.
20. On December 11, 2023, the Parent enrolled the Student at the District's ALE program, the academy for general education and 59% at the middle school to receive specially designed instruction and electives.

The District stated that the Student's team determined and the Parent agreed the Student would receive general education instruction through the academy and special education services at his middle school.

21. In the reply to the District's response, the Complainant, on behalf of the Parent, stated that no IEP meeting was held to "discuss both [the Parent's] concerns and her placement decision" and that, "While the absolute final decision is hers, the district [should have informed] the parent if the placement she desires is not correct for her son." The Complainant goes on to

state that while currently the academy seems to be “working” for the Student, the Complainant and Parent also questioned whether the academy “has the capability to fully meet his needs given the information in his evaluation and IEP.”

The Complainant stated that the eventual meeting in February 2024 “happened well after the law states it needs be both begun and completed”, stating that the District delayed holding an IEP meeting until after the complaint was filed.

22. According to the District’s website, the academy is a “K-12 online school option...that offers a hybrid of online and on-campus instruction with teacher support.” At the academy, “students receive most of their instruction at home from a parent-partner using [District] provided materials.”

In an interview, District staff shared that the academy is mostly online, students have weekly and monthly check-ins, and that there are a few classes that occur on campus. Students attend the academy by parent request and application. In general, when a student eligible for special education services transfers to the academy, the student’s IEP team will meet and discuss the IEP and special education services. Most students continue to receive special education services at their neighborhood/“home” school, although the academy has special education staff that provides some special education services at/through the academy. The academy special education staff person becomes part of the IEP team that works between the academy and neighborhood school to coordinate services.

The District also stated when students eligible for special education start at the academy, it might represent a change of placement, depending on the student and that the District has done reevaluations as needed. However, the District staff stated a reevaluation is not always needed.

23. According to the complaint, because the new school “needed to do some academic testing” the Student was “out of school for over two weeks.” In additional information in the Complainant’s reply, the Complainant also stated that the Student was “out of school due to the issues at [the middle school].”
24. According to the District, the Student was not excluded from school at any point during this period. However, the District staff stated that in the Student’s case, the Parent was not taking the Student to the middle school for his special education services after part-time enrolling at the academy. The District stated the Student was welcome at the middle school and the District stood ready to provide services.
25. According to the Student’s attendance records, he was absent November 15 through December 8, 2023, with the reason coded as “vacation” and “personal absence”, and then was absent fifth and sixth period from December 12, 2024 through February 7, 2024.
26. The District was on winter break from December 21, 2023 through January 3, 2024.

27. On January 12, 2024, there was an incident at school, which in response, the Parent filed a police report. In the complaint, the Complainant stated the Student was "elbowed...with considerable force" by a staff member when the Student "attempted to squeeze by him."

According to a report from the county sheriff's office included in the District's response, a "simple assault" was reported and investigated. The officer spoke with the Parent, who reported the Student was yelling at a peer and then a teacher yelled at the Student, the Student attempted to walk past the teacher, and the teacher "shoulder checked [Student] into the door frame." A supplemental incident report from the sheriff's office indicated a video of the incident was viewed and showed the Student and teacher walking near each other and the teacher "possibly brushes up against [Student's] forearm." Following that, they talk and the teacher directs the Student to the office, the Student tries to walk away, and the teacher stands in his way. The Student ultimately goes around the teacher and "there does not appear to be any physical contact made. There was clearly not a shoulder check, or any other assault."

In the reply to the District's response, the Complainant and Parent indicated that the Student perceived there to be contact regardless of what the report or video show. The Complainant questioned the sufficiency of law enforcement's investigation and expressed concern that there was no follow up with the Parent or outreach by the District to the Parent when she filed a complaint with the sheriff's office. The Complainant stated that "these items are for the IEP team to sort out and determine a course of action for [Student's] based on his behavioral disabilities and evaluations."

28. On February 5, 2024, the Complainant filed this complaint making several allegations, including that the District failed to properly address incidents that occurred on the school bus and in the classroom, that the District has not given the Parent a copy of the Student's IEP since before December 2021, that the Parent has never received any progress reports on the Student's IEP goals, and that the District has not address the Student's potential change in placement when he moved schools.

29. On February 12, 2024, the Parent withdrew the Student from the middle school and enrolled him full time at the academy.

30. Also, on February 12, 2024, according to the District, the special education teacher at the academy began the process of scheduling the "Change of Placement IEP."

31. On February 16, 2024, the District sent the Parent copies of the Student's March 2022 evaluation, April 2022 and 2023 IEPs, and progress reports from 2022 through 2024 in a certified letter/package in response to the allegations in the complaint that the Parent had not received these documents.

The District also stated that in response to this complaint, it would train IEP teams to document in the prior written notices that parents have received copies of their documents.

32. In additional information, the Parent stated she received the packet from the District with the IEPs. The Parent stated "I do not recall having copies of them at prior meetings nor how many

I was actually in attendance. Progress reports that I did get from my son were trackers. This year 2023 were the most I've ever gotten as [special education teacher] was amazing at making sure I got them and communicating with me."

33. On February 21, 2024, the Student's IEP team met, and the Student's IEP was amended following the Student's full enrollment at the academy. The prior written notice documenting the meeting indicated the IEP was amended to reflect where special education services would be provided and a changed amount of specially designed instruction. The notice indicated the Student still had the option of received some special education services at the middle school but that the family elected for the Student to receive all services at the academy.
34. Regarding the Student's behavior needs, the District stated that all the Student's IEPs have included goals and services focused on social and behavior needs. The District stated that it has continued to review the Student's needs and in past, "provided para[educator] support as supplementary aides, then removed the support when he no longer needed it. They have monitored his needs and consistently met him where he was at in the moment."
35. Regarding IEP meetings, the District stated it has no record of the Parent requesting IEP meetings that were not responded to but noted that if the Parent was requesting a meeting, it would schedule a meeting at the convenience of the Parent.
36. In additional information, the Parent stated the "one IEP meeting I've asked for was fulfilled by [academy]" and that, "[Staff person] has been on top of making sure [Student's] IEP placement for [academy] was scheduled and met." The Parent stated the Student "has NEVER been more confident in his learning and education since we've moved him to [academy]."
37. District staff stated that the Student has been doing well at that the academy.

CONCLUSIONS

Issue One: Behavior Needs – The complaint included information related to several behavior incidents, and the Complainant alleged generally that these incidents were not properly addressed by the District, that the Student's behavior needs were not being met, and that the District was not responsive to the Parent's requests for IEP meetings.

When developing each student's IEP, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the student. The team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior.

In general, the Student had some behavior needs and the investigation shows these were addressed. The Student's IEP indicated that if the Student was "struggling with the work or

instructional area, he may act out instead of asking for help. This has been an impediment to both his learning and those of other students." The IEP included specially designed instruction in behavior and accommodations, such as a daily morning check in with the special education teacher and a daily incentive system. The District stated that all the Student's IEPs have included goals and services focused on social and behavior needs. The District stated that it has continued to review the Student's needs and in past, "provided para[educator] support as supplementary aides, then removed the support when he no longer needed it. They have monitored his needs and consistently met him where he was at in the moment."

In September 2023, there were some concerns related to the Student's behavior on the bus, and the Student received two bus referrals; however, this appeared to address the behaviors and there were no further incidents. There was communication between the Parent and District transportation department regarding the incidents and the Parent's request to view videos from the bus. Based on this communication, it appeared the Parent also made allegations that the Student was being bullied on the bus. The transportation department followed up with the Parent, communicated regarding the records and that the Parent could set up an appointment to view the video, and investigated the concerns related to bullying. Overall, there is no indication that the bus incidents were indicative of an unmet behavior need resulting from the Student's disability and the Parent's concern seemed to be more related to alleged bullying and access to records, both of which the District responded to and attempted to address.

The Complainant alleged there was an incident in December 2023 related to access to the bathroom. The investigation here shows that this related to occurrences on November 14, 2023, where there was some concern the Student "smelled of feces." The documentation shows that the counselor followed up with the Student that day and did not note concerns when she checked on the Student. Additionally, District investigation into the incident showed that the Student was not prevented from accessing the bathroom at any point during that day and video and staff records show the Student accessed the restroom multiple times during the time period in question, to the point where the dean of students had to escort the Student back to class as he had been out of the classroom too long, "The dean stated that he found the Student in the restroom, talking to another Student, and escorted him back to class" and then reviewed basic on task behavior expectations with the Student. While it is not entirely clear what occurred that caused the Parent's concern, there is no indication that the Student was prevented from accessing the bathroom and there is no indication this shows an unmet behavior need resulting from the Student's disability.

Finally, in January 2024, an incident occurred where the Parent alleged and reported to local law enforcement that a staff person "elbowed [the Student]...with considerable force". Law enforcement investigated, including watching the video of the alleged incident, and determined "there does not appear to be any physical contact made...clearly not a shoulder check, or any other assault." The Complainant and Parent indicated that regardless of the video and law enforcement report, the Student perceived there to be physical contact and they expressed concern that no one from the District followed up with the Parent following the incident. The Complainant stated that "these items are for the IEP team to sort out and determine a course of action for [Student's] based on his behavioral disabilities and evaluations."

OSPI notes that the Student's eligibility category was specific learning disability and that while his IEP did include specially designed instruction in behavior, his goals were focused on independent engagement, work completion, and working with minimal reminders. There was no documentation that indicated the Student has behavior challenges with aggressive or physical behaviors. The January 2024 IEP, even considering the Student's perception of what happened, does not indicate an unmet behavior need resulting from the Student's disability nor does this clearly trigger a need for an IEP meeting. The Parent's concern seemed to be more related to general communication and feeling like the District was following up on concerns. Further, the other two incidents, described above, do not necessarily trigger the need for an IEP meeting, as overall it does not appear there was a pattern of new or changed behaviors.

Regarding requesting IEP meetings, in additional information, the Parent stated the "one IEP meeting I've asked for was fulfilled by [academy]". And there is no indication that the Parent requested that an IEP meeting be scheduled at any other time during the current school year and the District stated it has no records of the Parent requesting IEP meetings that were not responded to, but noted that if the Parent was requesting a meeting, it would schedule a meeting at the convenience of the Parent.

Overall, OSPI finds there is no indication that the Parent requested an IEP meeting and finds that while there were a few behavior "incidents", these did not indicate an unmet need or necessarily trigger an IEP meeting. OSPI finds no violation.

Issue Two: Copy of the IEP – The Complainant alleged the Parent never received a copy of the Student's IEP. Districts must provide parents with a copy of their student's IEP.

The District stated that the Parent was provided copies of the Student's IEP, although acknowledge it did not have documentation to necessarily prove that. The District stated, in general, parents are provided a copy of the IEP and evaluation documents at every IEP or evaluation meeting. The District stated, "in addition, [parents] are asked if they want the finalized copies mailed, put in their child's backpack, or picked up" and here, the Parent "requested that the documents be put in [Student's] backpack." While the Parent stated in additional information that she does not recall having received a copy of the Student's IEPs, she did attend the Student's annual IEP meetings and a February 2024 IEP meeting. OSPI notes that even if the Parent did not receive a copy of the Student's IEP, there is no indication that this negatively impacted her ability to participate in the Student's educational planning and decision making. And subsequent to the complaint being filed, on February 16, 2024, the District sent the Parent copies of the Student's April 2022 and 2023 IEPs, and other special education documents in a certified letter/package in response to the allegations in the complaint. The Parent acknowledged receiving the package from the District. The District also stated that in response to this complaint, it would train IEP teams to document in the prior written notices that parents have received copies of their documents.

Overall, OSPI finds that while there is not definitive proof that the District provided the Parent a copy of the IEP, it is likely the District did put a copy in the Student's backpack; however, that is not a guarantee that the Parent received that copy. The District has now provided copies of special education evaluations, IEPs, and progress reporting, thus OSPI finds no violation. OSPI does

recommend the District take the step it outlined to document that parents have received copies of documents and potentially revisit sending documents, such as IEPs, home in backpacks as those documents can get lost, or if it continues that practice, to send a duplicate copy via email or mail.

Issue Three: Progress Reports – The Complainant alleged the Parent never received the Student’s progress reporting.

IEPs must include a statement indicating how the student’s progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student’s progress toward meeting those annual goals. A district must ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP.

Here, the Student’s IEP required progress reporting at the trimester. The District stated that progress reports were provided to the Parent via being sent home in the Student’s backpack and were available on “Parent Square”, an application for parent and school communication. The District provided OSPI copies of the progress reporting as part of the complaint and in response to the complaint, sent the Parent a certified letter/package with copies of progress reports from 2022 through 2024, which the Parent acknowledged receiving. Additionally, in contrast to the allegations in the complaint, the Parent stated in additional information provided to OSPI, “This year 2023 were the most I’ve ever gotten as [special education teacher] was amazing at making sure I got them and communicating with me.” Further, while the Parent stated that she generally thought the District did not communicate to parents about “Parent Square” the way they should, the Parent indicated she was aware and knew how to use “Parent Square” as she said she has “personally had to explain to people what it is.”

Overall, the documentation and information from the Parent indicates that she has been provided progress reports this school year and has had access to progress reports via “Parent Square.” OSPI finds no violation.

Issue Four: Change in Placement – In December 2023, the Student started the transition to enrollment in the District’s alternative learning experience (ALE) or “academy”—an online school option in the District that offered a hybrid of online and on-campus instruction. The Complainant alleged that the District failed to hold an IEP meeting to “discuss [the Parent’s] concerns and her placement decision,” while also stating that the “absolute final decision” about attending the academy and that the District should have informed the Parent “if the placement she desires is not correct for her son.” The Complainant stated the eventual meeting in February 2024, “happened well after the law states it needs to be both begun and completed” and said that while currently the academy seems to be “working” for the Student, the Complainant and Parent also questioned whether the academy “has the capability to fully meet his needs given the information in his evaluation and IEP.”

Here, the Student’s IEP included goals and specially designed instruction in reading, math, and social/behavior. The Student’s IEP indicated he would spend approximately 74% of his time in the general education setting. In December 2023, the Student was enrolled part time at the academy for general education and 59% at the middle school to receive specially designed instruction and

electives. While the location of general education instruction changed, the Student's special education services, setting for services, and least restrictive environment (LRE) did not change. Here, at least initially, there seems to be a conflation of location with a *special education placement*. Although the term "educational placement" is not specifically defined, the IDEA requires that students receive a free appropriate public education (FAPE) in the LRE. However, the precise physical location of where a student is educated does not need to be included in the statement of the student's placement. And here as well, the Student's enrollment in the academy was due to Parent choice (the Parent applied for the Student's enrollment) and the District indicated the Parent initially agreed with this plan.⁴ While the Student's IEP team could have met at this point, it is not a violation that the IEP team did not meet as the Student's IEP and special education services did not change.

The Complainant alleged that the Student was "out of school for over two weeks" either because the academy "needed to do some academic testing" or "due to the issues at [the middle school]." The Complainant seemed to indicate that the Student's IEP team should have addressed this or offered compensatory education. However, upon investigation, the Student was not excluded from school by the District. At this point, the Student was still receiving his special education services at the middle school and after part-time enrolling at the academy; however, the Parent stopped bringing the Student to the middle school for services. The District stated the Student was welcome at the middle school and the District stood ready to provide services. And according to the Student's attendance records, he was absent November 15 through December 8, 2023, with the reason coded as "vacation" and "personal absence", and then was absent fifth and sixth period from December 12, 2023 through February 7, 2024.

Later, on February 12, 2024, the Parent withdrew the Student from the middle school and enrolled him full time at the academy.

OSPI notes that one of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and whether the new placement option is the same option on the continuum of alternative placements.

⁴ OSPI notes that the District's ALE model is that most students continue to receive special education services at their neighborhood/"home" school and are accessing general education through the ALE. However, the District provided information that the academy has special education staff that provides some special education services at/through the academy, depending on the individualized needs of the specific student. The academy special education staff person becomes part of the IEP team that works between the academy and neighborhood school to coordinate services.

Given the degree of change and the fact that full time enrollment at the academy could change the Student's special education placement, the Student's IEP team should have and did meet. On February 21, 2024, the IEP team met and the Student's IEP was amended, including the setting for services and some of the service amounts. At this point, the Student's placement has changed, although in part due to Parent choice. The District stated when students eligible for special education start at the academy, it might represent a change of placement, depending on the student and that the District has done reevaluations as needed. Here, however, it is not clear whether the IEP team considered whether a significant change in placement had occurred for this Student and whether any reevaluation was needed. Although, notably, the Parent stated in an email, providing additional information to OSPI, that the Student "has NEVER been more confident in his learning and education since we've moved him to [academy]." District staff also stated the Student was doing well.

Overall, OSPI finds that the Student's IEP team did meet once he was fully enrolled in the academy and amended his IEP. While the IEP team could have met earlier when the Student was part time enrolled in the academy and middle school, the IEP team was not necessarily required to as there was no change in placement at that point. OSPI finds the District followed procedures to address the Student's transition to the academy and finds no violation. While OSPI does not find a violation, OSPI recommends, given the concerns raised by the Parent and Complainant, that the IEP team reconvene and consider whether a reevaluation would be beneficial and to address any remaining questions the Parent has about the academy.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATION

OSPI recommends, given the concerns raised by the Parent and Complainant, that the IEP team reconvene and consider whether a reevaluation would be beneficial given that the Student is not fully enrolled in the academy and receiving his special education services there. The IEP team should also address any remaining questions the Parent has about the academy.

Dated this 2nd day of April, 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.)