

Special Education Community Complaint (SECC) No. 24-21

PROCEDURAL HISTORY

On February 12, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of two students (Students A and B) attending the Seattle 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 Students' education.

On February 12, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on February 15, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On March 8, 2024, OSPI gathered the District's responses received February 29, March 7, and March 8, 2024. A copy of the response was forwarded to the Parent on March 8, 2024. OSPI invited the Parent to reply. The Parent did not provide a reply in this matter.

On March 18, 2024, OSPI received the District's supplemental response to the complaint and forwarded it to the Parent on the same date.

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

ISSUES

1. Per WAC 392-172A-03105, has Student A's individualized education program (IEP), including his behavioral intervention plan (BIP) and health plan, been implemented properly since September 2023?
2. Per WAC 392-172A-03105, has Student B's individualized education program (IEP), including his behavioral intervention plan (BIP) and transportation plan concerning the Student's attendance, been implemented properly since September 2023?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (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).

Behavior: When considering special factors unique to a student, the IEP team must consider the use of positive behavioral interventions and supports, as well as other strategies, to address behavior in the case of a student whose behavior impedes the student's learning or that of others. WAC 392-172A-03110(2)(i). Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior. WAC 392-172A-01142.

Functional Behavioral Assessment (FBA): An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a BIP that will reduce or eliminate the misbehavior. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2). The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

Behavioral Intervention Plan (BIP): A behavioral intervention plan (BIP) is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The BIP, 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.

Health Plans: An IEP must include a statement of how the student's disability affects the student's involvement and progress in the general education curriculum, and the IEP team is required to consider, and describe in the IEP as appropriate, the related services, supplementary aids and services, and accommodations a student needs to enable his/her participation in his/her education and to support his/her teachers. 34 CFR §300.320; WAC 392-172A-03090. Any nursing or health services a qualified school nurse or other qualified person provide to the student with an IEP should be documented in the student's evaluation and IEP as a related service. This includes an Individualized Health Plan (IHP), an emergency action/care plan, emergency evacuation plan, and any medical accommodations. If services are outlined in an IHP, best practice is to include the IHP as a section in the IEP or to attach the IHP to the IEP and document as a related service. The IEP team is also not required to include information under one component of a student's IEP that

is already contained under another component of the student's IEP. 34 CFR §300.320(d); WAC 392-172A-03090(2)(b).

Specialized Transportation as a Component in the IEP: In determining whether to include transportation in a student's IEP, and whether the student needs to receive transportation as a related service, the IEP team must consider how the student's impairments affect the student's need for transportation. Included in this consideration is whether the student's impairments prevent the student from using the same transportation provided to nondisabled students, or from getting to school in the same manner as nondisabled students. If transportation is included in the student's IEP as a related service, a school district must ensure that the transportation is provided at public expense and at no cost to the parents, and that the student's IEP describes the transportation arrangement. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 33); *Yakima School District*, 36 IDELR 289 (WA SEA 2002). The term "transportation" is defined as: travel to and from school and between schools; travel in and around school buildings; and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for students eligible to receive special education services. 34 CFR §300.34(c)(16); WAC 392-172A-01155(3)(p).

FINDINGS OF FACT: STUDENT A

1. At the start of the 2023–24 school year, Student A was eligible for special education services under the category of other health impairment, was in the 10th grade, attended a District high school, and their June 13, 2023 IEP was in effect.
2. Student A's June 13, 2023 IEP included specially designed instruction in math, written language, social/emotional/behavioral, and study/organizational skills; and as a supplementary aid and service: occupational therapy. The Student's June 13, 2023 IEP provided the Student with the following specially designed instruction in a *special education setting*:
 - Math: 100 minutes a week
 - Written Expression: 100 minutes a week
 - Occupational Therapy: 60 minutes a month (to be provided by occupational therapist (OT))

The Student's June 13, 2023 IEP provided the Student with the following specially designed instruction in a *general education setting*.

- Math: 100 minutes a week
- Study/organizational skills: 100 minutes a week
- Social/Emotional/Behavioral: 240 minutes a week

Student A's IEP also included an emergency care plan (health plan) to monitor and address a medical condition (diabetes). The plan guided staff to recognize signs and symptoms of an emergency and actions to follow in the case of low blood sugar or if the Student is unresponsive or unconscious.

3. Student A's current triennial evaluation results include functional behavioral assessment (FBA) data, and the results of the behavioral and adaptive assessments indicated the Student has

difficulties following directions, caring for oneself, personal hygiene, and learning and following routines, as well as being at-risk or clinically significant in most areas of the behavior assessment scale for children.

4. On September 8, 2023, District staff reached out to the Parent to update the health plan and supplies. The District reported difficulty in reaching the Parent.
5. Also, on September 8, 2023, District staff reached out to Student A's teachers to propose an IEP meeting, according to District response, "regarding Parent's concerns that everyone was not on the same page with [Student A's] IEP." The District noted that the BIP should be revisited to better support the Student in high school. A meeting was scheduled for October 4, 2023.
6. On September 22, 2023, District school staff emailed the District social worker to seek resources for supplies to support the health plan for Student A, after not successfully receiving the supplies from the Parent.
7. On September 29, 2023, the District noted the Student's BIP "focused on behaviors they were not seeing at [current District school] and did not include interventions for the behaviors they were concerned about (e.g., leaving class without permission and staying out in the halls)." Teachers reported Student A leaving math class for long periods.
8. The District response provided information about an October 4, 2023 meeting with District special education staff, a District school level administrator, and the Parent where there was confusion over the meeting location, and as the District response described, "which upset parent." The District stated, "Parent was angry but did calm once [District school admin] explained the meeting would have to end if she continued to escalate." The meeting resulted in a plan to collect data for a goal around non-compliance and understand better why the Student leaves class. Student A's breakfast and health condition were discussed.
9. On October 10, 2023, the District sent an internal email and suggested that Student A was escaping math class and schoolwork with behavior to avoid work not at his level and an IEP team meeting was suggested to propose and discuss scheduling a different math class for the Student.
10. On October 13, 2023, the District team requested teacher data on Student A's needed level of support in class. District staff reported difficulties in all classes, and even with support, algebra and literature comprehension were difficult for the Student.
11. On October 19, 2023, the District spoke to the Parent about designating a "parent designated adult (PDA)" to support the school nurse and Student A.
12. On October 20, 2023, the Parent met with school staff and provided the school with signed orders from children's hospital that stated that Student A would carry his own insulin and glucagon and would continue to carry his supplies, outside of an occasional need to consult

with a PDA or nurse, and noted that the Parent wanted to wait to complete the care plan until after staff at the District high school was designated as the PDA.

13. The District noted in their March 8, 2024 response to this complaint, regarding the October 20, 2023 meeting with the Parent, that District staff is not required to be a PDA but that they would ask for volunteers. No staff volunteered to be PDA.
14. The District reached out to the Parent to schedule an IEP meeting on October 31, 2023, to discuss math class.
15. On October 27, 2023, the Parent spoke to District staff and stated that the Parent wanted the Student to remain in algebra class and holding an IEP meeting was not supported by the Parent. The District proposed a short-term solution and assigned more support in the classrooms.
16. In October and November 2023, the District reported that concerns were raised that Student A did not have his supplies to support the health plan and that the school had not received supplies to keep at school.
17. In January 2024, District internal emails outline the Student struggling in math and physics and documented strategies and suggestions made by the District staff to scaffold and provide academic accommodations and modifications to support the Student.
18. The District contacted the Parent to schedule an IEP meeting and expressed the District's concern that Student A's algebra class was not appropriate, and that the Student continued to leave class frequently. The IEP meeting was scheduled for January 24, 2024.
19. Student A was involved in two incidences on campus, described by the District as fights, on January 18, 2024, which resulted in Student A with a bruised and lacerated eye.
20. Student A was suspended for one day and District administration scheduled a meeting for January 23, 2024, with the Parent, which did not occur.
21. On January 24, 2024, Student A's IEP team met and proposed the following specially designed instruction:
 - Math: 50 minutes a week in general education setting
 - Study/organizational skills: 125 minutes a week in special education setting
 - Written Language: 50 minutes a week in the general education setting
 - Social/Emotional/Behavioral: 125 minutes a week in the special education setting
 - Occupational Therapy: 60 minutes a month (to be provided by occupational therapist)

The Parent did not agree to these changes and cut the IEP meeting short.

22. The Parent filed this complaint with OSPI on February 12, 2024. As part of the complaint, the Parent reported that Student A had been out of school since January 20, 2024, after an assault incident at the school. The Parent alleged there was no communication from the District

related to discipline, the IEP, or re-entry. Additionally, the Parent alleged the District did not provide appropriate services and that Student A's setting for services did not match their needs or what the Parent understood in the IEP meeting.

23. The District response, dated March 8, 2024, denied the allegations outlined in the complaint for Student A—both the allegation that the health plan was not followed and that the BIP was not implemented. The District summarized that because the Parent has not provided the school with the necessary supplies to support the health plan, and Student A frequently left the supplies in class or at home, the District has fulfilled its responsibility to have a nurse available for consult to the Student as needed and therefore fulfilled the health plan. Regarding the implementation of the IEP and BIP, the District summarized that the BIP did not accurately reflect Student A's current levels of functional performance and therefore, while they did not implement the BIP as written, the District stated it attempted to meet with the Parent and update the BIP. However, the District stated the Parent "refused to meet or cut meetings short." The District outlined the specially designed academic instruction and classroom supports Student A received apart from the BIP.

CONCLUSIONS: STUDENT A

Issue One: IEP and BIP Implementation – The Parent alleged there was no communication from the District related to discipline, the IEP, or re-entry. Additionally, the Parent alleged the District did not provide appropriate services and that Student A's setting for services did not match their needs or what the Parent understood in the IEP meeting.

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 students, the results of the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the student. The parents of a student with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their student. This is an active role in which the parents (1) provide critical information regarding the strengths of their student and express their concerns for enhancing the education of their student; (2) participate in discussions about the student's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the student 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 student and in what setting.

A BIP is incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The BIP, 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.

Here, Student A's FBA and the results of the behavioral and adaptive assessments indicated the Student had needs related to behavior and difficulties following directions, caring for oneself, personal hygiene, and learning and following routines, as well as being at-risk or clinically significant in most areas of the behavior assessment scale for children. The Student had a BIP; however, the investigation indicated, and the District acknowledged that the BIP did not accurately reflect Student A's current levels of functional performance and therefore, it did not implement the BIP as written. OSPI would not expect the District to implement a BIP that it felt was inappropriate, but in that case, the District had an obligation to update the IEP and BIP. The District stated that it attempted to meet with the Parent and update the BIP, but the Parent "refused to meet or cut meetings short." The District outlined the specially designed academic instruction and classroom supports Student A received apart from the BIP.

Despite the BIP not being formally updated, the District did take steps to address the Student's behavior needs. The District held an IEP meeting at the beginning of October and began to collect additional data on the Student's needs. The District identified that the function of the behavior was likely escape and avoidance due to Student A not accessing the content level of the class—the Student left the classroom regularly. The District did assign more support for the Student in the classroom and the District attempted other strategies to scaffold instruction and provide academic accommodations and modifications to support the Student. Unfortunately, during incidences when the Student was out of the classroom in January 2024, the Student engaged in fights that resulted in Student A getting injured.

Overall, the District was able to make academic decisions to adjust the IEP services, in the allotted meeting times with the Parent over the course of the 2023–24 school year, and thus OSPI finds that while the District did attempt to implement other behavior supports, it could have and should have amended the BIP and other behavior strategies in the IEP. Ultimately, it is the District's responsibility to ensure that the IEP includes the special education and related services that are necessary to provide the student with a FAPE, even if the District is not able to reach consensus with the Parent. Thus, OSPI finds a violation in that the District did not finish the process of updating the Student's BIP and thus did not sufficiently provide the Student with appropriate behavior supports and interventions to address the behaviors that were limiting the Student's access to instruction. The District will be required to hold an IEP meeting to update Student's BIP.

Issue Two: Individual Health Plan Implementation – The Parent alleged the District failed to follow the Student's health plan.

School districts are required to implement IEP health plans and ensure all teachers and service providers are informed of the requirements for implementation. Typically, 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's health plan described that Student A was to carry a backpack of supplies to monitor glucose levels and administer insulin and that the Student would have access to the school nurse for consult, per the October 2023 doctors' orders. From the beginning of the year, the Student was unable to demonstrate the ability to carry the backpack and meet their responsibility in the health plan, and evaluative data showed the Student's functional and adaptive behavior and communication skills are low functioning, likely contributing to the ineffectiveness of the Student taking responsibility for the steps in the health plan. This was compounded by the challenge the District had getting the necessary supplies from the Parent. The District provided evidence that the school emailed the existing plan to the Parent to request supplies, but that the Parent and Student have been unable to provide the supplies.¹

Overall, OSPI finds that given the barrier to obtaining supplies, the District did implement the health plan by providing a nurse consult. However, considering the Student's cognitive and functional profile, as described by the District and in materials reviewed during the investigation, the Student is likely not capable of his role in the health plan without increased support. So, while OSPI finds no violation with respect to the implementation of the plan, OSPI strongly recommends the IEP team modify the health plan to increase the support provided to the Student in carrying out the health plan and/or consider whether updated doctor orders are needed.

FINDINGS OF FACT: STUDENT B

24. At the start of the 2023–24 school year, Student B was eligible for special education services under the category of other health impairment, was in the eighth grade, and their May 23, 2023 IEP was in effect. The Student attended a District K–8 school noted to be a Parent choice enrollment in the District, as the school was not the Student's "neighborhood" school.

25. Student B's May 23, 2023 IEP included specially designed instruction and annual goals in reading, math, written language, study/organizational skills, and speech communication as a related service. The Student's May 23, 2023 IEP provided the Student with the following specially designed instruction in a *special education setting*:

- Math: 100 minutes a week
- Reading: 50 minutes a week
- Writing: 100 minutes a week
- Social/Emotional/Behavioral: 100 minutes a week
- Speech Language Pathologist: 60 minutes a week (to be provided by an speech language pathologist (SLP))
- Study/Organizational Skills: 100 minutes a week

The Student's May 23, 2023 IEP provided the Student with the following specially designed instruction in a *general education setting*:

- Study/organizational skills: 100 minutes a week
- Reading: 50 minutes a week

¹ OSPI notes that RCW 28A.210 addresses students with diabetes and associated health plans. Per regulations, Districts are not required to provide supplies such as insulin. Thus, whether these supplies were provided by the family is outside the scope of this special education community complaint.

- Writing: 40 minutes a week
- Social/emotional/behavioral: 100 minutes a week

Student B also had a functional behavioral assessment (FBA) and a behavioral intervention plan (BIP), dated June 27, 2023, in place. The May 23, 2023 IEP included "special education" transportation.

26. On September 15, 2023, the Parent sent an email to Student B's special education case manager, requesting a meeting due to concerns around the Student's impulsiveness and getting to school safely while catching public transportation to get to school.

27. A September 18, 2023 email between District staff indicated that for the previous two school years, transportation was provided and there were questions as to why that changed.

District documentation indicated that previously, transportation was provided under McKinney-Vento.

28. A September 20, 2023 email between District staff and the Parent outlined that Student B will have a check-in with District staff when arriving at school and a call will be made to the Parent from a District line at the beginning of the day and the end of the day, to begin immediately.

29. On September 22, 2023, the District emailed the Parent a "student housing questionnaire", which would determine qualification for McKinney-Vento, and the District stated, "qualifying would potentially mean extra financial supports and resources for you all."

30. The Parent responded to the District email on the same date, September 22, 2023, that they now have a lease.

31. On September 29, 2023, the District communicated with the Parent about a behavior report, indicating the Student struggled with non-compliance and defiance, including where to sit, drawing on things, giving up his phone, what happens with a skateboard and football, and completing work. The outcomes listed in the communication were that the Student would lose access to lunch recess until the District has some positive goals to work towards.

32. An internal October 2, 2023 email from the District outlined that Student B had an incident of defiant behavior and inappropriate language outside of the main office. District staff requested specific strategies for encountering these behaviors. The case manager responded same day, indicating the Student had a difficult late morning.

33. The District shared an internal October 3, 2023 email, indicating a meeting scheduled to discuss Student B and concerns around behavior and attendance.

34. The District responded to Student B's continued absences, tardiness, and skipping class with an attendance agreement on October 20, 2023.

35. On October 23, 2023, the District contacted the District social worker to check the McKinney-Vento status of the Student and determined that the Student did not qualify for transportation to the currently enrolled District school, because Student B's permanent address changed in the spring of 2023 and the transportation eligibility expired. The Student was eligible for District transportation to the neighborhood school.
36. On October 26, 2023, a meeting was held to discuss Student B's behavior incidences in addition to the many communications between the Parent and District on Student B's behavior and the BIP.
37. On October 31, 2023, the Parent indicated that they wanted the Student to remain at the current District K-8 school and the District arranged for the Student to carpool with another student beginning November 6, 2023, indicating that the Student was eligible for special education transportation at the "the middle school near his new permanent housing", and that this arrangement was arranged through the District social worker.
38. An IEP meeting was scheduled for November 8, 2023, to discuss Student B. The Parent was unable to attend. The meeting was rescheduled for November 13, 2023, and the Parent was unable to attend.
39. On November 16, 2023, the Parent emailed the District, stating the school was being unresponsive to the request for an IEP meeting and alleged that attempts to schedule a meeting were not made.
40. The District sent a meeting invitation and scheduled an IEP meeting for November 21, 2023, and the IEP team convened to propose an updated FBA. The Parent requested a 1:1 paraeducator for the Student and a more restrictive environment. The team agreed to have Student spend more time in the special education setting and rejected the request for a 1:1.
41. The Parent declined to sign consent for an FBA.
42. On December 5, 2023, the District connected the Parent with the District behavior program specialist to indicate the school team support on strategies and interventions to address Student B's behaviors.
43. The Parent and District exchanged emails and scheduled a meeting for December 14, 2023.
44. On December 14, 2023, Student B was disciplined for disruptive conduct and served a one-day suspension with a re-entry meeting scheduled for January 2, 2024.
45. On January 2, 2024, a re-entry/IEP meeting/ was held that included discussion of behavior intervention strategies and a trauma informed framework for interacting with Student.
46. On January 23, 2024, Student B served a one-day suspension for disruptive behavior in an incident involving a specific District staff member.

47. On January 25, 2024, a re-entry meeting was scheduled for Student B. The Parent responded to the January 25, 2024 meeting request, expressing concern that the District was not meeting Student B's needs. The District offered to "partner with the parent on solutions". The scheduled re-entry meeting was not held, and Student B did not return to school.
48. On January 31, 2024, the District reached the Parent after various contacts. The Parent stated that Student B would not return to school until a plan was in place that ensured safety, and alleged that the District school was fabricating reported behavior in school by Student B.
49. The District continued to communicate with the Parent via text, phone calls, and a home visit to reengage Student B to school between January 31 and February 12, 2024.
50. On February 12, 2024, the District sent an email to the Parent with options aimed at reengaging Student B and addressing Parent concerns. An IEP meeting was proposed.
51. On February 12, 2024, the Parent filed this complaint with OSPI. As part of the complaint, the Parent reported that Student B was not currently attending school and had not since January 24, 2024, due to Parent concerns that the District was not following plans set by a behavior specialist and worry of retribution or unprofessional encounters with staff.
52. On February 13, 2024, the Parent asked the District for a meeting with the behavioral strategist and a phone call was scheduled to go over the strategies proposed for Student re-entry and safety by the District. The Parent declined an IEP meeting at the time.
53. On February 28, 2024, the District contacted the Parent by email to request a re-engagement meeting, proposing three options in March. An attorney responded for the Parent, and a meeting was scheduled for March 8, 2024.
54. On March 5, 2024, the District sent a meeting notice, provided in the District supplemental response, dated March 18, 2024, requesting a videoconference IEP meeting to review instructional needs and a school re-engagement plan for Student B.
55. On March 5, 2024, the District sent a prior written notice, provided in the District supplemental response, dated March 18, 2024, proposing to continue a re-engagement/re-entry to school, and an IEP meeting to review instructional needs, and a school re-engagement plan for Student B.
56. On March 8, 2024, Student B's full IEP team met to discuss Student B's supports and re-entry plan to school. The Parent, reported by the District to be represented by legal counsel, requested that Student B be served primarily in the special education setting. The District agreed to trial more time in the special education with science work in the special education classroom versus the general education science classroom setting. The trial was documented in a prior written notice and any formal changes to the Student's LRE would be made in the next scheduled IEP meeting. The team reviewed the draft BIP and agreed that the document would also be finalized at a future IEP meeting.

57. In the March 8, 2024 IEP meeting, the District offered to conduct a current FBA for Student B to inform future placement and support decisions.
58. On March 11, 2024, the IEP team for Student B met for a re-entry meeting. Per the District response notes, the Parent was represented by counsel. The Parent advocated for more time in the special education classroom and the team discussed Student B's schedule and made further temporary adjustments for the Student's re-entry, pursuant to a temporary trial with data collection, stipulating that the team would reconvene to further discuss Student B's least restrictive environment in a future IEP meeting. The trial included Student B to start each general education class with a check-in from special education staff to review the class plan and expectations, and Student B transitioning to the special education classroom to complete independent work during the independent work time for the full class. The team discussed behavior response strategies for staff and other behavioral intervention tools, including communication guidelines.
59. In the March 11, 2024 IEP meeting, the Parent indicated continued concern about returning the Student to school due to specific District staff presence, but agreed Student B would return, and the District offered mitigating solutions to reduce interaction between Student B and identified District Staff.
60. On March 12, 2024, Student B returned to school.
61. In its response to the Parent's complaint for Student B, the District denied both of the factual allegations contained in the Parent's complaint as related to the transportation plan and the BIP. Regarding transportation, the District stated that, "Pursuant to the District's transportation policies, if a family elects to attend a school outside of their region (versus being placed at a school by an IEP team), the District does not provide transportation."

The District stated that the family elected for the Student to remain at the non-neighborhood school and thus "does not qualify for special education transportation." The District noted that the Student would receive special education transportation at his neighborhood school. The District denied there was a failure to implement transportation.

Regarding the IEP and BIP, the District summarized the actions the team has taken to adjust the BIP, update the FBA, and work with the Parent to implement the IEP. The District also acknowledged that a specific District staff "comment to the Student (B) was inappropriate" and summarized the District's attempts to work with the Parent through social workers and counselors to re-enter the student to school.

CONCLUSIONS: STUDENT B

Issue One: IEP and BIP Implementation – The Parent alleged generally that the Student's IEP and BIP were not implemented to support the Student's behavior needs.

Typically, 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.

Regarding the IEP and BIP implementation for Student B, the District summarized the actions the team has taken to adjust the BIP, update the FBA, and work with the Parent to implement the IEP. The District provided email communication with the Parent and IEP team, behavior strategies and evidence of meetings to discuss student progress and adjust the behavior interventions and strategies for District staff to implement and address behaviors and interventions. The District also acknowledged that a specific District staff "comment to the Student (B) was inappropriate" and summarized the District's attempts to work with the Parent through social workers and counselors to support the Student's re-entry to school. The District demonstrated that it has followed the IEP and BIP when the Student is present and was working with staff to improve their capacity to address behaviors consistently and therein, no violation is found.

Issue Two: Transportation – The Parent alleged the District failed to provide the Student transportation to school.

In determining whether to include transportation in a student's IEP, and whether the student needs to receive transportation as a related service, the IEP team must consider how the student's impairments affect the student's need for transportation. Included in this consideration is whether the student's impairments prevent the student from using the same transportation provided to nondisabled students, or from getting to school in the same manner as nondisabled students. If transportation is included in the student's IEP as a related service, a school district must ensure that the transportation is provided at public expense and at no cost to the parents, and that the student's IEP describes the transportation arrangement.

Here, the Student's May 2023 IEP included "special education" transportation. However, the Student attended a school that was not his neighborhood school, instead the District's documentation indicated the Student had previously attended the school under McKinney-Vento status and that the family elected to keep the Student enrolled at that school, even after the family obtained housing in another part of the District, which would have made a different District school the Student's neighborhood school.

The District stated that while the Student was eligible for transportation to his neighborhood school, District policy included that "if a family elects to attend a school outside of their region (versus being placed at a school by an IEP team), the District does not provide transportation." The District stated that the family elected for the Student to remain at the non-neighborhood school and thus "does not qualify for special education transportation."

OSPI notes a few concerns with the District's policy, specifically that while it may be acceptable to not provide transportation to choice schools outside a student's neighborhood school zone, a blanket policy applied without consideration of the individual special education needs of a student eligible for special education is contrary to the IDEA. Here, the Student's IEP continued to indicate

a need for special transportation and the District's policy seems to indicate that special transportation is based on school location and does not seem to take into account disability related need. It is not clear that the Student's IEP team discussed whether the Student's receipt of FAPE changed based on the school location, and if the current school is the offer of FAPE, whether special transportation is needed as a related service to ensure the Student can access a FAPE. OSPI also notes that the IEP team could determine that the Student does not have a disability related need for special transportation or that FAPE could equally be provided at the neighborhood school. Here, OSPI finds that the District should have considered whether the Student had a disability related need for special transportation instead of citing blanket District policy to decline providing transportation. OSPI finds a violation and as corrective action, the Student's IEP team will have a discussion regarding the need for special education transportation connected to which school placement is the District's offer of FAPE. Importantly, OSPI notes that the District did, as of the beginning of November 2023, support the Student with transportation to school, arranging for a carpool with another student; thus, transportation was not completely denied.

CORRECTIVE ACTIONS

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

STUDENT SPECIFIC

IEP Meeting Student A

By or before **May 3, 2024**, Student A's IEP team will meet. At the meeting, the IEP team must discuss the Student's needs related to behavior and amend the BIP to address the Student's current behavior related needs.

OSPI also strongly recommends the IEP team modify the health plan to increase the amount of support that is provided to the Student in carrying out the health plan based on this other disability related needs or consider whether updated doctor orders are needed.

By or before **May 10, 2024**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) the IEP if amended and the BIP; and d) any other relevant documentation.

IEP Meeting Student B

By or before **May 3, 2024**, Student B's IEP team, will meet. At the meeting, the IEP team must address the following topics:

- Which school location supports the District's offer of FAPE for the Student; and,
- Whether special transportation is required as a related service to provide the Student access to FAPE.

By or before **May 10, 2024**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) the IEP if amended; and d) any other relevant documentation.

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.

Dated this 11th 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.)