

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-26**

### **PROCEDURAL HISTORY**

On February 23, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the complainant (Complainant) regarding students (Students) attending the Yakima 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 Students' education.

On February 23, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on February 26, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On March 13, 2024, OSPI received the District's response to the complaint and on March 14, 2024, forwarded a redacted version of the response to the Complainant. OSPI invited the Complainant to reply.

On March 15 and 18, 2024, OSPI asked the District for additional information, and the District provided it on March 18, 2024. This information could not be provided to the Complainant because it contained personally identifiable information about the Students and the Complainant had not submitted releases of information signed by the Students' Parents.

On March 19, 2024, OSPI asked the District for additional information, and the District provided it on March 19, 2024. The part of that information that did not provide the Students' personally identifiable information was sent to the Complainant on March 20, 2024. The part of the information that contained the Students' personally identifiable information was not sent to the Complainant because the Complainant had not submitted releases of information by the Students' Parents.

On March 22, 2024, OSPI asked the District for additional information, and the District provided it on March 22, 2024. This information could not be provided to the Complainant because it contained personally identifiable information about the Students and the Complainant had not submitted releases of information signed by the Students' Parents.

### **ISSUE**

1. Per WAC 392-172A-03105, have the Students' 1:1 nursing service in their individualized education programs (IEPs) been implemented properly since December 27, 2023?

### **LEGAL STANDARDS**

IEP Implementation: At the start of the school year, a district must have in effect an individualized education program (IEP) for every student in its jurisdiction served through enrollment who is eligible to receive special education services. For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Bd. Of*

*Educ. Of Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176, 200-01 (1982). “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 [child with a disability] and those required by the IEP.” *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

## FINDINGS OF FACT

### Background

1. The Complainant is a locally owned group home that provides full-time care for medically fragile children requiring round-the-clock nursing. Beginning in 2016, the Complainant and the District contracted for the Complainant to provide 1:1 nursing care during the school day for some of the District’s students. All of these Students had 1:1 nursing care listed on their IEPs.

### 2023–24 School Year

2. On August 22, 2023, the District held its first day of instruction for the 2023–24 school year.
3. The complaint identified seven Students. The Students’ grade levels ranged from pre-school to high school. All the Students were eligible for special education services under the multiple disabilities category, except for Student 2, who was eligible for special education services under the Orthopedic Impaired category.

Student	IEP in Effect
1	10/13/2022
2	11/16/2022
3	03/21/2023
4	06/12/2023
5	10/13/2022
6	05/17/2023
7	06/05/2023

4. All the Students had a 1:1 nurse listed as a related service in their IEPs, but only Student 5 had the Complainant specifically listed as the provider of that service. Otherwise, the IEPs just have the word “nurse” or “school nurse” as the provider of the service. The nursing services listed on the IEPs was for between 600 and 1,765 minutes per week.
5. During the fall of 2023, the following IEPs were renewed:
  - Student 1 on November 30, 2023
  - Student 2 on November 15, 2023
  - Student 5 on October 9, 2023

Regarding Student 5, a December 20, 2023 prior written notice (PWN) stated, “Due to clerical error, amendment/without a reconvene was done on 12/20/23 to remove staff responsible for nursing services from [Complainant] to nurse.”

6. On November 30, 2023, the District notified the Complainant that the District was canceling the nursing contract effective December 27, 2023.

7. In January 2024, the following Students were withdrawn from the District:

<b>Student</b>	<b>Withdrawal Date</b>
1	1/16/2024
2	1/19/2024
4	1/18/2024
7	1/18/2024

8. On February 23, 2024, the Complainant filed a complaint alleging in part that the District was in violation of special education regulations because:

- Students' IEPs specify a nurse from the Complainant is to provide all one-to-one nursing services. The proposed transition excludes the Complainant nurses, which would require signed consent from the parent/guardian per federal law. In our meeting, a District employee stated to the Complainant that 'parents do not have to consent to the nurse assigned to their child'. We disagree with that statement. Parents have both the right and responsibility to advocate for their child.
- The Complainant has not been provided with a viable plan for the transition of medical services of the children. District lacks both knowledge and understanding of the required competency base and training necessary to meet an acceptable standard of care for Students.
- The District indicated that requests to medical providers for patient records had not yet been completed. Therefore, the District did not have sufficient medical information in order to prepare adequately for the complex and fragile medical conditions of the children by the date of transition.
- In our meeting, the District stated that they do not have an established training/competency checklist, and seemed to lack insight into the need for a training checklist.
- The District does not have a documentation system compatible with the Complainant's system to facilitate the transfer of care of the Students, medications, and medical equipment. Although the Complainant provides a "home-like" environment for the Students, we are a licensed medical facility, not a private home. Therefore, we are required by the state to maintain a higher level of documentation for tracking Students, life sustaining medical equipment and medications, as well as many other factors related to patient care. The District has an unacceptable working plan for pharmacy/insurance preparation of medications for each Student, considering the Complainant is a facility and has licensing requirements for tracking and maintaining medications.
- The District stated that the responsibility to prepare the Students for transfer to school each morning falls on the Complainant. This assertion indicates that the District has little or no concept of the nursing resources required to prepare medically fragile and complex children for school. The funding received for our nurses to prepare the Students and equipment would no longer be in place and therefore the Complainant would not be able to provide the staffing necessary to get the children out the door to school each day. It also indicates [District's] apparent lack of knowledge of safety and liability issues regarding the handoff/sign-off of the Students, medical equipment, and medications from one agency to another.

9. On March 13, 2024, the District submitted its response to the complaint, stating, in part:  
The [District] has not unilaterally changed any substantive provisions of any students' IEP.

...

For each of the students identified as affected (with the exception of Student 5) their respective IEPs required the provision of 1:1 nursing service. [District] has provided those services and will continue to provide those services with its in-house nursing staff. For [Student 5], his IEP required the provision of 1:1 nursing service but mentioned that [Complainant] was the provider of that service. Prior Written Notice (PWN) was provided on December 20, 2023, regarding [Student 5's] IEP indicating that the word '[Complainant]' would be removed from the 1:1 nursing requirement as a clerical matter. Substantively, there was no change to the nursing requirement under the IEP; as a consequence, the IEP was modified without the necessity of a meeting of the IEP team.

No detail has been provided regarding any 'days missed' or the compensatory time that [Complainant] alleges is needed for any particular student.

10. On March 15, 2024, OSPI emailed the Complainant as follows, "I have read through your complaint and the District's response. Is there anything you would like to add about how the Students' nursing services have not been implemented properly since December 27, 2023?"

The Complainant did not respond to the question or provide additional information about their concerns.

11. On March 18, 2024, the District provided the names of seven 1:1 nurses for the seven Students. The nurses assigned to the Students who are currently withdrawn from the District are being cross trained to be able to care for other Students in case of nurse absence.

Medication and tube-feeding logs for February and March 2024 were provided for Students 3 and 6 who are currently attending school.

12. On March 19, 2024, OSPI sent the following email to the District, "In reviewing the three attendance sheets I received<sup>1</sup>, in each case there were many more absences after December 27, 2023 than before, and the students were absent for the month of January 2024...Can you explain what happened here?"

On the same day, the District responded, in part:

Regarding the increase in absences post December 27, 2023, those are due to actions taken and obligations imposed by [Complainant]. Where a student would not be permitted to go to school due to a [Complainant] reason or demand, those absences were marked as a medical reason absence. As discussed more fully in the District's Response, when engaging in the steps necessary to make the transition from [Complainant] nursing care to [District] nursing care, [District] requested copies of Medical Orders and other medical records related to each student from [Complainant]. [Complainant] refused to provide those records. As a consequence, [District] needed to obtain Requests for Information (ROIs) from the parents of the students to make a request for the information from the medical care providers for each student. [Complainant] was listed as the primary contract for the students. When [District] requested updated parent contact information from [Complainant], [Complainant] denied the request and refused to provide the information. The information was necessary to obtain ROIs to update student Health Plans. This created

---

<sup>1</sup> For Students 3, 5, and 6.

a delay. [Complainant], as a contractor for the District, was required to and should have provided the information freely to the District so that there would be no lapse in the services or education to the students.

13. On March 22, 2024, Student 5 began attending school again.

## CONCLUSIONS

**Issue 1: IEP Implementation** – Regarding the present case's issue, IEP implementation, the Complainant alleged, in part:

Students' IEPs specify a nurse from Complainant is to provide all one-to-one nursing services. The proposed transition excludes Complainant nurses, which would require signed consent from the parent/guardian per federal law. In our meeting, a District employee stated to Complainant that 'parents do not have to consent to the nurse assigned to their child'. We disagree with that statement. Parents have both the right and responsibility to advocate for their child.

At the start of the school year, a district must have in effect an IEP for every student in its jurisdiction served through enrollment who is eligible to receive special education services. 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 child with a disability and those required by the IEP.

The Complainant is a locally owned group home that provides full-time care for medically fragile children requiring round-the-clock nursing. The Complainant and the District had an active contract beginning in 2016 that outlined an agreement for the Complainant to provide 1:1 nursing care during the school day for seven of the District's Students. The seven Students had 1:1 nursing care listed on their IEPs, but only Student 5's IEP specifically mentioned the Complainant as the provider of that 1:1 nurse. The nursing services listed on the IEPs was for between 600 and 1,765 minutes per week because the Students ranged in grades from pre-school to high school.

On November 30, 2023, the District notified the Complainant that the District was canceling the nursing contract effective December 27, 2023, and on December 20, 2023, the District amended Student 5's IEP and changed the 1:1 nurse from the Complainant to the generic word "nurse". Student 5's IEP was changed without Student 5's Parent being notified of the change.

In January 2024, Students 1, 2, 4 and 7 were withdrawn from the District, Students 3 and 6 were absent for the month of January 2024, and Student 5 returned to school in March of 2024. According to the District, those absences occurred because the Complainant did not provide requested medical orders, medical records, and updated parent contact information.

Based on the present case's facts, OSPI does not find a violation because the District has not materially failed to implement the Students' nursing services since December 27, 2023. The District has provided the currently enrolled Students their 1:1 nurses as that service is listed in the Students' IEPs; and the District has also stated that it has 1:1 nursing staff ready for those Students

who were withdrawn from the District should those Students re-enroll. There is no requirement that the IEP specify the name of the provider of a particular service and here, the District implemented the 1:1 nursing services on the IEPs, regardless of whether it was a contracted provider or a District nurse.

Finally, in the present case, the District changed Student 5's IEP without holding a meeting with Student 5's Parents. Despite this, OSPI is not going to find a violation because the District did not remove the Student's 1:1 nursing service or substantively change the IEP; instead, the District changed the provider of that service from the Complainant to the District and the District stands ready to provide that service. Despite this conclusion, OSPI would like to remind the District that parents should always be notified whenever their student's IEP is being changed, and generally, parents must agree to amend an IEP without a meeting.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

Dated this 22nd day of March, 2024

Dr. Tania May  
Assistant Superintendent of Special Education  
PO BOX 47200  
Olympia, WA 98504-7200

#### **THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)