

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-43**

### **PROCEDURAL HISTORY**

On March 25, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from an attorney (Complainant) representing the parents (Parents) of a student (Student) attending the Northshore 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 March 25, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on March 26, 2024. OSPI asked the District to respond to the allegations made in the complaint by April 12, 2024.

On April 9, 2024, the District requested an extension of time to respond to the complaint. OSPI granted the extension to April 19, 2024.

On April 19, 2024, OSPI received the District's response to the complaint and forwarded it to the Complainant on April 22, 2024. OSPI invited the Complainant to reply.

On May 3, 2024, the Complainant requested an extension of time to reply to the District's response, and OSPI granted the extension to May 10, 2024.

On May 8, 2024, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on the same day.

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

### **ISSUES**

1. Whether, during the 2023–24 school year, the District has followed special education discipline procedures?
2. Whether, during the 2023–24 school year, the District has addressed concerns regarding the Student's behaviors, including by addressing the need for positive behavior supports and strategies?
3. Whether the District unilaterally changed the Student's speech language pathology services to a consultative service?

### **LEGAL STANDARDS**

Disciplinary Removals – No Change of Placement: School districts may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not

constitute a change of placement under WAC 392-172A-05155. 34 CFR §300.530(b)(1); WAC 392-172A-05145(2).

Disciplinary Removal that Results in a Change of Educational Placement: A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days, or when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. 34 CFR §300.536; WAC 392-172A-05155. After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. WAC 392-172A-05145(2),(4). If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. WAC 392-172A-05145(4).

Educational Services During Suspensions: A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or fewer in that school year, if it provides services to a student without disabilities who is similarly removed. 34 CFR §300.530(d)(3); WAC 392-172A-05145(2). A school district may not suspend the provision of educational services to a student in response to behavioral violations. During the suspension, expulsion, or emergency expulsion of a student, a school district must provide the student with the opportunity to receive educational services. The educational services must enable the student to: (i) Continue to participate in the general education curriculum; (ii) Meet the educational standards established within the district; and (iii) Complete subject, grade-level, and graduation requirements. WAC 392-400-610.

As soon as reasonably possible after administering a suspension or expulsion, a school district must provide written notice to the student and parents about the educational services the district will provide. The school district must provide the written notice in person, by mail, or by email. The notice must include: (a) A description of the educational services that will be provided; and (b) The name and contact information for the school personnel who can offer support to keep the student current with assignments and course work as required under this section. WAC 392-400-610.

For students subject to suspension or emergency expulsion for six to ten consecutive school days, a school district must provide at least the following: (a) Course work, including any assigned homework, from all the student's regular subjects or classes; Access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes. School personnel must make a reasonable attempt to contact the student or parents within three school business days following the start of the suspension or

emergency expulsion and periodically thereafter until the suspension or emergency expulsion ends to: (i) Coordinate the delivery and grading of course work between the student and the student's teacher(s) at a frequency that would allow the student to keep current with assignments and course work for all of the student's regular subjects or classes; and (ii) Communicate with the student, parents, and the student's teacher(s) about the student's academic progress. An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency expulsion. WAC 392-400-610.

Behavior: When considering special factors unique to a student, the individualized education program (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 other. WAC 392-172A-03110(2)(i).

Positive Behavioral Interventions: Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner 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.

## **FINDINGS OF FACT: ISSUES ONE AND TWO**

### **Background Information**

1. The Student was eligible for special education services under the category of autism and attended a District middle school.
2. On May 24, 2023, a functional behavioral assessment (FBA) was completed for the Student, with the team comprised of the Parent, physical therapist (PT), District representative, school psychologist, occupational therapist (OT), speech language pathologist (SLP), and special education teacher. The comprehensive assessment included the delineation of target behaviors, triggers, setting events, antecedents, hypotheses, and recommendations for the IEP team. The FBA recommended a behavior intervention plan (BIP) be developed to teach replacement behaviors, and that the school environment be set up with sensory supports, visual schedules, access to social stories, less verbal input, and quiet break areas to decrease the likelihood of the target behaviors occurring. Possible pre-teaching strategies were recommended to address preceding and environmental events, and specific teaching strategies for the Student to begin managing their own behavior and emotions were detailed.
3. On May 31, 2023, the Student's IEP team developed a new annual IEP for the Student. The IEP included annual goals in communication (conversational skills), mental health, adaptive (responding to peers), behavior (self-advocacy, whole group instruction), social-emotional (self-regulation, sharing concerns), written language (paragraph writing), reading (comprehension), and math (fractions, word problems), with progress to be reported at the

quarter. The Student's May 31, 2023 IEP provided the Student with the following specially designed instruction in a *special education setting*:

- Communication: 120 minutes/month (to be provided by an SLP)
- Social-emotional: 30 minutes/week (to be provided by special education staff/mental health)
- Social-emotional: 150 minutes/week (to be provided by special education staff)
- Adaptive: 60 minutes/week (to be provided by special education staff)
- Behavior: 150 minutes/week (to be provided by special education staff)
- Written language: 120 minutes/week (to be provided by special education staff)
- Reading: 120 minutes/week (to be provided by special education staff)
- Math: 240 minutes/week (to be provided by special education staff)

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

- Social-emotional: 350 minutes/week (to be provided by special education staff)
- Adaptive: 135 minutes/week (to be provided by special education staff)
- Behavior: 350 minutes/week (to be provide by special education staff)

The Student's May 2023 IEP included the support of two behavioral technicians as supplementary aids/services, supervised by an agency board-certified behavior analyst (BCBA), as well as occupational therapy consultation services for school personnel for 80 minutes/month. These staff were provided through a contract with a private agency (behavior agency).

4. As part of the IEP meeting of May 31, 2023, the team developed a BIP based on the data collected through the FBA process and recommendations of the FBA team. The BIP included a reinforcement plan for the two target behaviors. The reinforcement plan included high levels of praise, earns points towards incentives, honoring a compromise, offering of choices/sensory breaks, and provided a preferred activity. The BIP also included specific directions for Student de-escalation, and management of a crisis event, and that the Student was to be supported by two behavior technicians who will implement the plan and take data to ensure fidelity and consistency.
5. On June 21, 2023, the Parent signed consent for an emergency response protocol (ERP) that indicated emergency conditions during which isolation, restraint, or a restraint device may be used with the Student. Specifically, a two-person escort may be used to move the Student directly to the break room. The door would be locked, and a trained staff would remain at the door and maintain visual contact until the Student is able have a calm body for three minutes. School administrators, special education staff, and contracted behavioral support staff interacting with the Student during an emergency will be annually trained in appropriate safety procedures.
6. Progress on IEP goals was reported to the Parent in June 2023, November 2023, January 2024 and for some goals in March 2024 with the following information included:
  - Behavior (Self-Advocacy): June 2023-new goal; November 2023-emerging skill; January 2024-emerging skill

- Behavior (Whole group instruction): June 2023-new goal; November 2023-emerging skill; January 2024-emerging skill
- Social emotional (Share concern): June 2023 new goal; November 2023-emerging skill; January 2024-emerging skill
- Social emotional (Self-regulation): June 2023-new goal; November 2023-emerging skill; January 2024-emerging skill
- Math (Fractions): June 2023-new goal; November 2023-insufficient progress; January 2024-insufficient progress
- Math (Word problems): June 2023; new goal; November 2023-insufficient progress; January 2024-no data
- Reading (Comprehension): June 2023-new goal; November 2023-insufficient progress; January 2024; insufficient progress; March 2024-insufficient progress
- Written language (Paragraph writing): June 2023-new goal; November 2023-insufficient progress; January 2024-insufficient progress; March 2024-insufficient progress
- Communication (Conversational skills): June 2023-new goal; November 2023-sufficient progress; January 2024-sufficient progress
- Adaptive (Responding to peers): June 2023-new goal; November 2023-emerging skill; January 2024-emerging skill

### **2023–24 School Year**

7. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of autism, attended a District middle school, and the Student’s May 31, 2023 IEP was in effect.
8. The District’s 2023–24 school year began on September 6, 2023.
9. On September 11, 2023, the Student was emergency expelled from school due to aggressive actions towards peers and staff, including threats related to shooting and killing. The Student’s Parent was provided a notice of emergency expulsion on September 12, 2023, which detailed that the Student would be on emergency expulsion, beginning that same day, pending a threat assessment. The notice also included a disciplinary appeal form for the Parent to appeal the decision.

The Student’s teachers were notified of the expulsion and District staff requested the teachers connect with the Student and Parent to “let them know what the Student can be working on at home.”

10. On September 13, 2023, the Student had a threat assessment conducted by a local agency, that included consultation with the Student’s school providers, as well as the BCBA overseeing the Student’s behavior program at school, and the Student’s medical provider. The Student returned to school on September 26, 2023, after 10 consecutive days of suspension. The Student’s medical provider suggested that the school “assess their ability to meet the Student’s needs”, and the local agency clinical staff recommended that the Student attend a “more specialized (behavioral) school that is better equipped to safely de-escalate behavior.”

11. The District proposed to hold a manifestation determination meeting on September 25, 2023, and sent the Parent a meeting invitation on September 22, 2023. The Parent indicated they would attend the meeting.
12. On September 25, 2023, the District conducted a manifestation determination meeting following the Student's emergency expulsion. The Parent attended via videoconference. The team determined that the behavior had a direct and substantial relationship to the Student's disability, and that the District had not failed to implement the Student's IEP and BIP; however, the Parent disagreed with this last statement. The manifestation determination form included the recommendations from the clinical staff at the local agency that the Student attend a more specialized school better equipped to safely de-escalate behaviors. The Parent was not open to considering a change in placement, though she did agree to a temporary shortened day (late start) and alternate schedule for the Student. Finally, the emergency expulsion was converted to a short-term suspension of 10 days, and notice provided to the Parent.
13. The District provided the Parent with a prior written notice (PWN) following the manifestation meeting of September 25, 2023. The PWN outlined that the IEP team agreed that the Student's BIP and most recent evaluation from spring 2023 identified the behaviors observed on September 11, 2023, that resulted in the emergency expulsion. The IEP also discussed out-of-District placement options, though the Parent did not feel that was best for the Student, at that time. The team rejected the option of not returning the Student to school after the 10-day removal. The District would provide release of information forms to the Parent to assist in gathering information about out-of-District placements.
14. On September 26, 2023, the Student returned to school on a temporarily shortened day.
15. Following the manifestation determination meeting on September 25, 2023, the IEP team met on September 26, 2023, to discuss, and possibly amend, the Student's ERP. The Parent was unable to attend and gave permission to proceed with this meeting during the manifestation determination meeting of September 25, 2023. A PWN was provided to the Parent following the ERP meeting, proposing to include a two-person restraint, and if used, when the Parent would be notified. This action was proposed since a two-person restraint was used and the team wanted to establish protocol if it was necessary to employ in the future. The decision was based on data collected from the behavioral incident of September 11, 2023.
16. In October 2023, the behavior agency BCBA and behavior technicians working with the Student provided a detailed report of the Student's BIP, called a positive behavior support plan. The comprehensive report included: 1) definition of the Student's challenging behaviors, 2) behavioral hypotheses of the behaviors, 3) replacement behaviors, 4) use of positive behaviors, 5) antecedent strategies, 6) teaching strategies and supports, 7) consequence strategies, 8) motivating operations, 9) preferred stimuli, 10) measures to ensure consistency of implementation, 11) decreasing level of support, 12) school staff intervention, and 13) incident response plan. This positive behavior support plan was specifically tied to the Student's FBA and BIP developed by the District and was utilized by the behavior technicians in their daily support of the Student.

17. On October 11, 2023, the Student engaged in threatening behavior towards staff and peers, including threatening their math teacher. The Student was suspended for one day (short-term suspension) on October 12, 2023, and returned to school on October 13, 2023. The Parent was provided the notice of short-term suspension, along with appeal procedures. The Student's teachers were notified of the suspension and directed to email the Parent any work the Student could do at home.
18. On October 16, 2023, the Student was issued a short-term suspension of three days for assaulting (punching) a peer without provocation. The Parent was provided the notice of short-term suspension, along with appeal procedures. The notice detailed that previous discipline included short-term suspension for threats and conference with administrator for disruptive conduct. The Student's teachers were notified of the suspension and directed to email the Parent any work the Student could do at home.
19. On October 26, 2023, the Parent met with District special education administrators to discuss change of placement options, as well as extending the Student's schedule. The Parent also wanted to discuss the disciplinary use of suspensions. The PWN provided to the Parent outlined the proposal for an out-of-District placement based on the following factors: the Student's needs for high school and beyond, academic progress, positive peer interactions, behavior management and five possible placements were offered. The team proposed increasing the Student's school day to comply with service minutes, and to offer instruction opportunities in the general education setting.
20. At the end of October, the behavior agency BCBA and behavior technicians provided the District with a year-to-date report, detailing behavioral information on the Student from September–October 2023. The report notes that the goals are derived from the Student's FBA, IEP, and BIP. Specific behaviors targeted for reduction included 2:1 support, aggression towards adults and peers, elopement, escalation of behaviors, loud vocalizations, and inappropriate peer interactions. Behaviors noted as trending up were following individual directives from behavior technicians and school staff, with following group directions requesting a compromise trending down. Aggression towards peers was noted as trending flat and aggression towards adults trending down.
21. On November 7, 2023, the Student engaged in physical aggression towards staff and verbally threatened staff. The District issued a short-term suspension of one day and provided the Parent the notice of short-term suspension inclusive of appeal procedures. The Parent was provided the notice of short-term suspension, along with appeal procedures. The notice detailed that previous discipline included short-term suspensions for threats and conference with administrator for disruptive conduct.
22. On November 8, 2023, the school registrar emailed the Student's teacher to let them know the Student was suspended for the day and directed them to email the Student about work he could complete at home.
23. The Student continued to exhibit behavioral challenges through November and December 2023, though none resulted in formal disciplinary procedures.

24. On December 4, 2023, the Student's alternate schedule was removed, and the Student moved back to a regular school schedule.
25. On January 11, 2024, the Student was issued a 1.5-day short-term suspension for aggression towards two staff members. The school secretary emailed the Student's teachers to notify them of the suspension and directed them to contact the Student via email or Schoology to share what work could be completed at home.
26. On January 26, 2024, the Parent signed consent for an amended ERP, which included the use of isolation, restraint, or a restraint device as described in the amended ERP. The amended ERP included the use of a two-person restraint to prevent the Student pursuing a targeted peer or staff and to allow for the safe evacuation of peers and staff, in addition to the use of a two-person escort to move the Student directly to the break room.
27. In February 2024, the behavior agency BCBA and behavior technicians provided the District with a monthly school report, summarizing behavioral information about the Student. It is noted that the goals were derived from the Student's FBA, IEP, and BIP. Behavior targeted for increase included following directions, obtaining points via reinforcement for expected behaviors, remaining in class, tolerating non-preferred stimuli, and requesting a compromise, sharing a concern reciprocating peer greetings. The behaviors targeted for decrease included aggression towards adults and peers, elopement, inappropriate peer interactions, loud vocalizations, 2:1 support and escalation of behaviors. Overall, the Student was making some progress with following directives, remaining in class, initiating peer greetings, and sharing a concern. Aggression towards adults appeared to be trending down, along with tolerating non-preferred stimuli, though the Student was not following individual directives of the behavior technicians and was not earning reinforcement points. Aggression towards peers remained at the same level as did the need for 2:1 support and escalation of behaviors.
28. On March 11, 2024, the Student was short-term suspended for the remainder of the day for physically assaulting a teacher. The school registrar emailed the information to the Student's teachers and indicated that they should contact administration if they had any questions.
29. In its response to this complaint, the District stated that it:

Never determined that these additional removals constituted a pattern of removals. Indeed, based upon the amount of time between each of these incidents, and the fact that Student was never excluded in total in excess of 10 school days, it was reasonable for the District to not make such a determination under WAC 392-172A-05145. In turn, because Student did not experience another disciplinary change in placement this school year, another MDR was not required under WAC 392-172A-05146.
30. In contrast, in the Complainant's reply on behalf of the Parents, the Complainant stated the Student has experienced "repeated removals" that "constitute another 'change in placement' beyond the ten-day removal he experienced at the beginning of the year." The Complainant noted that the subsequent seven days of removals were for behaviors that were substantially similar to previous incidents—all behaviors related to making threats or engaging in physical

aggression toward peers or adults. The Complainant also noted that the Student was suspended at least once a month, excluding December and winter break, for a total of six events—“this includes twice in October – just a few days after [Student] returned from a suspension in September.” The Complainant stated, “Given the similarity between [Student’s] suspensions, the multiple day long exclusions, and the frequency with which he has been suspended, [Student’s] removals following the initial ten-day suspension constitute a pattern and thus an additional change in placement.”

In addition, the Complainant emphasized that while the District asked teachers to email the Parent work for the Student, the Parent only heard from a few teachers offering “worksheets” and noted “An offer to provide worksheets is not reasonably calculated to ensure [Student] can access his FAPE. [Student] is incapable of completing worksheets on his own, as is readily apparent from his IEP and BIP.” The Complainant stated, “In fact, during his suspensions, [Student] was unable to complete any work. This is confirmed by [Student’s] IEP progress notes that show he has made ‘sufficient progress’ on only one goal.”

### **CONCLUSIONS: ISSUES ONE & TWO**

**Issue 1: Special Education Discipline Procedures** – The Complainant alleged that the District did not appropriately follow special education discipline procedures when dealing with Student behaviors in the 2023–24 school year.

School districts may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days to the extent those alternatives are applied to students without disabilities and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement.

In this case, the Student was suspended for 17 total days during the 2023–24 school year between September 2023 and March 2024, because of six behavioral incidents.

First Manifestation Determination: The longest consecutive days of suspension was 10 days, during September 2023. The Student had initially been emergency expelled, which represented an open-ended disciplinary removal with a strong likelihood of the removal being over 10 consecutive school days. Following a manifestation determination meeting where the team decided the behavior was related to the Student’s disability, the emergency expulsion was converted to a 10-day short-term suspension, and the Student was returned to his placement. OSPI finds the District followed procedures to hold a manifestation determination for the first removal.

Series of Removals: A change in placement via discipline can also occur when a student is subjected to a series of removals that constitute a pattern because 1) the removals total more than 10 school days in a school year, 2) the student’s behavior is substantially similar to previous incidents that resulted in removals, and 3) additional factors, such as the length of each removal,

the total amount of time the student is removed, and the proximity of the removals to one another. When considering whether there is a series of removals that constitute a pattern, a district should consider all disciplinary exclusions in a school year, even when a prior manifestation determination has occurred. A district may need to review the overall pattern after each disciplinary removal, to determine if there is a pattern of exclusion due to the student's disability.

Following the 10-day suspension in September 2023, the suspensions that followed were either a 3-day suspension, a 1-day suspension, a 1.5-day suspension or a suspension for the remainder of the day of the behavior incident, totaling 7 days. None of these suspensions resulted in a manifestation determination meeting. The District's response stated that the District never determined that the additional removals constituted a pattern based upon the amount of time between each incident and the fact that the removals after the September 2023 suspension did not total more than 10 days.

However, OSPI finds that the District's analysis missed elements of the regulations that address a series of removals. Washington special education discipline regulations state a district may remove a student eligible for special education services who violates a code of student conduct from his current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days, and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement. This authority to remove a student via discipline necessitates a district analyzing each removal to determine if it is a change in placement or pattern of a series of removals constituting a change in placement.

First, a district must look at whether removals total more than 10 school days in a school year. A previous manifestation determination in a school year does not mean that the earlier removals should not be considered when determining there was a pattern. Here, the two additional incidents in October 2023 resulted in another four days of suspension, putting the total for the school year over 10 school days by October 2023. Second, OSPI notes that the Student's behavior in all the incidents was substantially similar—all behaviors resulting in discipline related to verbal and physical aggression toward students and staff. District documentation of all the suspensions describe the Student behavior as threats, disruptive conduct, or violence without major injury. Finally, additional factors, including proximity must be analyzed. While it could be argued that the March and even January 2024 removals were not close in proximity. The October and November 2023 removals were close in proximity, the first October removal was approximately two weeks after the Student had returned to school following the 10-day suspension.

The District did not convene a manifestation determination meeting following the behavioral suspension in October and November 2023, which OSPI finds that the District should have held another manifestation determination, likely in October 2023. The District also does not have appeared to consider whether, when looking at the overall disciplinary history during the 2023–24 school year, the January or March 2024 removals are part of a series of removals constituting a pattern when District documentation clearly indicated a pattern of Student behavior, as well as temporal proximity of the behavioral episodes. Therefore, OSPI finds a violation. The District will be required to conduct training on discipline regulations and procedures.

Services During Suspensions: In general, a school district may not suspend the provision of educational services to a student in response to behavioral violations. During the suspension, expulsion, or emergency expulsion of a student, a school district must provide the student with the opportunity to receive educational services. The educational services must enable the student to: (i) Continue to participate in the general education curriculum; (ii) Meet the educational standards established within the district; and (iii) Complete subject, grade-level, and graduation requirements. For students eligible for special education, if the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate educational services that provide FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

Here, the District's disciplinary documentation includes general information for parents regarding educational services to be offered to students who are suspended or expelled, including the opportunity to continue to participate in the general education curriculum, meet educational standards of the District, and complete subject/grade-level/graduation requirements. In this case, the school registrar/administrative support emailed the Student's teachers following the issuance of the suspensions to direct teachers to contact the Parent and Student to provide or discuss work that the Student could complete at home. The Complainant noted that a few teachers offered the Student "worksheets" and noted that this was not reasonably calculated for the Student to access FAPE. The Complainant stated, "[Student] is incapable of completing worksheets on his own, as is readily apparent from his IEP and BIP" and, "In fact, during his suspensions, [Student] was unable to complete any work. This is confirmed by [Student's] IEP progress notes that show he has made 'sufficient progress' on only one goal."

Further, as at least the first emergency expulsion/10-day suspension was a change in placement and as discussed above, likely subsequent removals represented a series of removals forming a pattern and thus a change in placement, the Student's IEP team should have determined appropriate educational services that provide FAPE so as to enable the Student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP. Here, there was no indication that the Student was provided specially designed instruction or special education services during the removals. There is insufficient District documentation that any educational services provided to the Student during the multiple suspensions beyond offers of a few worksheets. OSPI finds that this does not sufficiently meet the requirements that the Student be provided educational services while suspended and thus the Student was denied a FAPE. Therefore, OSPI finds a violation. The Student will be provided compensatory education, as detailed in the corrective action section, for the 17 days of removals based upon the services in his IEP.

**Issue 2: Positive Behavior Supports** – The Complainant alleged that the District did not address the Student's behaviors using positive behavior strategies and supports during the 2023–24 school year.

In this case, the District and Parent conducted an FBA in May 2023, followed by the development of a BIP for the Student. The FBA outlined the behaviors of concern, as well as hypotheses as to

why the Student engaged in the target behaviors. The FBA recommended a BIP be developed to teach replacement behaviors, and that the school environment be set-up with sensory supports, visual schedules, access to social stories, less verbal input, and quiet break areas to decrease the likelihood of the target behaviors occurring. Possible pre-teaching strategies were recommended to address preceding and environmental events, and specific teaching strategies for the Student to begin managing their own behavior and emotions were detailed. The BIP that was developed by the IEP team, including the Parent, incorporated the information from the FBA and included a reinforcement plan for the two target behaviors. The reinforcement included high levels of praise, earns points towards incentives, honoring a compromise, offering of choices/sensory breaks, provided a preferred activity. The BIP also included specific directions for Student de-escalation, and management of a crisis event, and the Student is supported by two behavior technicians who will implement the plan and take data to ensure fidelity and consistency.

The behavior agency team provided the District with regular reports of the Student's behavior and response to positive interventions throughout the school year. The data indicated inconsistent performance by the Student related to replacement skill development or challenging behaviors decreasing during the school year, even with behavior technician support and the use of positive behavioral interventions. Following the manifestation determination meeting in September 2023, documentation indicated that the BIP and FBA continued to identify and address the behaviors that resulted in discipline. Even if the BIP and behavior supports were materially implemented, it does not guarantee that the Student will not be subject to discipline at some point in time and the fact that discipline occurred does not mean that the District was not also implementing positive behavioral supports. OSPI notes that the Student's behaviors were at times intense and complex, and the detailed data from the behavior agency team again indicated inconsistent progress—progress in some areas was flat and in other areas challenging behaviors did trend downward—which is understandable given that the Student is working to combine many skills, including self-regulation skills, appropriate interactions, and sensory overload at the same time. However, OSPI also notes that if, as discussed above, subsequent manifestation determinations occurred, that would have given the team the opportunity to determine if the FBA and BIP needed to be further revised to address the emerging pattern of discipline. At the same time, overall, the FBA and BIP included and addressed the behaviors the Student was exhibiting, so there is not a clear need to amend the BIP. Here, OSPI finds that the BIP was appropriate, and that behavior supports were materially implemented. Therefore, OSPI finds no violation.

### **FINDINGS OF FACT: ISSUE THREE**

#### **Speech Language Services**

31. The Student's IEP included 120 minutes per month of communication services to be provided by an SLP.
32. The SLP's documentation log indicated when services were provided/offered to the Student and included notations when the Student was absent or refused services. The log contained information from September 2023 through March 19, 2024, as follows:

- The Student was suspended from September 13–25, 2023, so no SLP services were provided during that time frame. The SLP marked September 27, 2023, with a question mark, though the Student had returned to school.
  - On October 4, 2023, the Student refused SLP services, and had a behavioral incident on October 11, 2023, so was not available for services on that date. The Student was suspended October 17–19, 2023, so was also not available for services on those days. The SLP provided therapy services to the Student on October 24, 2023.
  - In November 2023, the SLP provided service on November 7, 2023, November 14, 2023 (Student refused to participate), and November 21, 2023. The Student was not available due to a school-related situation on November 28, 2023, and departed school early that day.
  - The SLP offered services on December 5, 2023 (Student refused) and December 12, 2023 (Student participated for 10 minutes).
  - During January 2024, the SLP offered services on January 2, 2024 (Student did not participate), January 9, 2024 (Student not available due to school-related situation), January 16, 2024 (Student participated for 10 minutes), January 23, 2024 (Student not available due to school-related situation), and on January 30, 2024, when the Student participated for 10 minutes.
  - During February 2024, the SLP offered services on three dates (February 6, 13 and 27, 2024), and the Student participated in two of the sessions and was not available due to a school-related situation for one of the sessions.
  - March 2024, data indicated three opportunities for SLP services, with the Student participating in two sessions (March 14 and 19), though was involved in a school-related situation on March 5, 2024.
33. On October 4, 2023, the SLP emailed the Student’s special education teacher/case manager to share what occurred during the Student’s therapy time. The SLP indicated the Student was agitated and swearing, and that she requested the two behavior technicians take him out of the room to help de-escalate the situation. The SLP further stated that she believed that services should be consultative support until the Student behavior challenges were resolved and offered to discuss this with the special education teacher/case manager.
34. On October 24, 2023, the SLP emailed the special education teacher/case manager that she was in the Student’s special education English class and observed the Student engaging in “some really nice conversations with peers”, and that the Student participated in a learning game she had put together. She indicated that she did not think they needed to meet tomorrow to discuss SLP services. The SLP believed that she could provide SLP minutes in the classroom environment.
35. The SLP emailed the special education teacher/case manager that she planned to provide therapy services during the Student’s special education English class and have the Student participate an in-class activity she and the teacher organized. The SLP also offered to share materials with the special education teacher that address social language.
36. The Student’s special education teacher and SLP continued to communicate and share materials from November 2023 to March 2024 regarding supporting the Student’s social language.

37. On March 14, 2024, the SLP shared with the special education teacher that the Student came to speech therapy and played a game with three peers.

### **CONCLUSION: ISSUE THREE**

**Issue 3: Unilateral Change to Speech Language Services** – The Complainant alleged that the District unilaterally changed the Student’s speech language pathology services to a consultative service.

In this case, the speech language minutes are to be provided by the SLP for 120 minutes/month in a special education setting, per the Student’s May 2023 IEP. The SLP’s service log indicates that she was not able to provide services when the Student was suspended, and there were times that the Student refused to participate. On October 4, 2023, when the SLP experienced an unsuccessful session with the Student, she wrote to the case manager with her concerns and wanted to discuss if consultative services might be more appropriate at this time. The Student had recently returned from emergency expulsion (reduced to a 10-day suspension) and was attending school on a reduced schedule. Despite two other suspensions during October, the SLP next provided services on October 24, when she took the opportunity to work with the Student during their special education English class and found this to be more successful for the Student. She continued to provide the SLP service minutes with the Student during the class, taking advantage of peer interactions and conversations to further the Student’s progress on the goal of conversational skills. As evidenced by the SLP’s progress reports, the conversational skills goal was the only goal rated as ‘sufficient progress’ over two progress reporting periods, indicating it was anticipated that the Student would achieve the annual goal within the duration of the IEP. The District did not unilaterally change the Student’s SLP services to a consultation model, and the SLP continued to provide SLP services to the Student. Therefore, OSPI finds no violation.

### **CORRECTIVE ACTIONS**

By or before **June 21, 2024, August 16, 2024, October 4, 2024, November 8, 2024,** and **February 7, 2025,** the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Compensatory Education**

By or before **June 14, 2024,** the District and Parent will develop a schedule for the following hours of compensatory education, to address services not provided during 17 days of suspension, divided as follows<sup>1</sup>:

---

<sup>1</sup> A state educational agency is authorized to order compensatory education, as appropriate, through the special education community complaint process. 34 CFR §300.151(b)(1); WAC 392-172A-05030. Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district’s violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9<sup>th</sup> Cir. 2011); *See also, Letter to Lipsitt*, 181 LRP 17281 (2018). “There is no statutory or

- 1.5 hours of speech therapy
- 4 hours of reading instruction
- 4 hours of written language instruction
- 8 hours of math instruction
- 4 hours of adaptive instruction
- 12 hours of social-emotional instruction
- 12 hours of behavior instruction

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services will be provided outside the District's school day and can be scheduled on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program if that program provides specially designed instruction in the Student's areas of service. The District will provide OSPI with documentation of the proposed schedule for services by or before **June 21, 2024**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **January 31, 2025**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **August 16, 2024** and **November 8, 2024**, of the compensatory services provided to the Student at that point. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **February 7, 2025**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **February 7, 2025**.

## **DISTRICT SPECIFIC:**

### **Training**

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will co-develop and jointly conduct a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 24-43.

---

regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting." *In re: Mabton School District, 2018-SE-0036.*

The following District staff will receive training: District special education administrators for the region the Student's school is located in, and the following at the Student's school: principal, assistant principal, and special education certified staff (teachers). The training will cover the following topics:

- Discipline procedures, including conducting manifestation determinations and determining patterns of removal that result in a change of placement, including WAC 392-172A-05155.
- The provision of education services during suspension, expulsions, emergency expulsion.
- District processes and best practices for providing educational services, including special education services, to students whose placement has been changed via discipline.

The training will include examples.

By or before **June 21, 2024**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **August 16, 2024**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by August 23, 2024.

By **September 27, 2024**, the District will conduct the training regarding the topics raised in this complaint decision.

By **October 4, 2024**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

## **RECOMMENDATIONS**

OSPI notes that the Student's IEP team is clearly aware of the Student's patterns of behavior and the targeted areas for desired growth. We strongly recommend the team continue to connect regularly on behavior strategies, supports, and instructional strategies for the Student.

OSPI also recommends reviewing the instructional strategies and environmental/communication supports being provided by the SLP during the social conversation games she organized for the Student during therapy. OSPI notes during the investigation that the communication goal was the one area where the Student has had success and made sufficient progress. The SLP may have additional insight to share with the team regarding potential supports and instructional strategies that work with the Student.

Dated this 22nd day of May 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.)